

Draft Principles for a Parliament-Government Framework Agreement on Treaty Scrutiny

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This written evidence proposes some principles for future discussions between Parliament and the Government (with the devolved executives and legislatures) on a Framework Agreement on treaty scrutiny. It supplements my written evidence published on 13 February 2019 ([SCS0004](#)).

A new Framework Agreement on treaty scrutiny

1. The **aim** of a new Parliament-Government Framework Agreement on treaty scrutiny would be to set standard levels of expectation for cooperation and information on treaties to allow for effective scrutiny. Greater or lesser standards could be agreed where appropriate, for instance between a particular Committee and the Government over a particular category of treaties. The Framework Agreement would be without prejudice to existing powers and prerogatives.
2. There should be **five broad principles for treaty scrutiny**:
 - a. **Recognising the different treaty roles of each institution**
 - b. **Transparency**
 - c. **Timeliness**
 - d. **Flexibility**
 - e. **Appropriate engagement with the devolved institutions**

These are expanded upon below.

3. The **implementation** of the Framework Agreement should be assessed periodically by Parliament, the Government and the devolved institutions, and there should be provision for a timely review in the light of practical experience, with clear processes for how any amendments would be made.

Recognising the different treaty roles of each institution

4. Parliament should recognise that the Government is responsible for representing the UK in international negotiations and for treaty actions including signature, ratification and withdrawal.
5. The Government should recognise that Parliament is responsible for scrutinising and holding to account the Government's treaty actions, representing constituents' interests relating to treaties, and (where necessary) legislating to implement treaties.
6. The devolved executives and legislatures should recognise that treaties are a reserved matter for the UK Government, on which it is held to account by the UK Parliament.
7. The UK Government and Parliament should recognise that the devolved executives and legislatures are responsible for implementing treaties and legislating where necessary to do so in areas of devolved competency, and therefore should be engaged in treaty actions that relate to devolved competences.
8. Each institution should commit to providing the appropriate resources to fulfil its own treaty role effectively.

Transparency

9. There should be a general principle of transparency for treaty information. Parliament should be immediately and fully informed at all stages of the negotiation and conclusion of international treaties.
10. Parliament should be similarly informed about meetings and decisions of bodies (such as Joint Committees) set up by international treaties whenever those bodies are empowered to amend the treaty itself or to make decisions which may require legislation to implement them.
11. Limited exceptions to the principles of transparency (e.g. where to make the information public would undermine the object and purpose of the treaty or would cause grave harm to national security or to an individual) should be clearly specified, and when invoked should be justified by the Government as soon as practicable.
12. New procedures and safeguards to allow Parliament and its Committees to handle different levels of confidential information should be developed.
13. Where a Committee asks for a specific piece of treaty information, the Government should within a reasonable time either provide it or explain why it cannot.
14. The Government should continue to accede wherever possible to requests from committees for private briefings from Ministers and officials.
15. The Government should commit to providing time to debate treaties on the floor of the House of Commons if requested by the Committee that has led on scrutiny.
16. Both Government and Parliament should develop compatible and comprehensive new public treaty-tracking websites.
17. The Government should aim to publish all international arrangements that are politically but not legally binding (often referred to as Memorandums of Understanding). Where this is not possible, the Government should explain why not and provide the maximum possible amount of information.

Timeliness

18. Parliament should be engaged as early as possible in the treaty process, to allow potential issues to be identified at a point where they can be addressed. Ideally this means before the Government finalises its negotiating mandate.
19. There should be a general principle that the Government supplies all treaty information in enough time for Parliament and its committees to be able to engage with stakeholders and/or express their views, and for the Government then to be able to take those views into account.
20. Where this is not possible, the Government should nevertheless explain and provide the information at the earliest possible opportunity.

Flexibility

21. The basic principles set out here should apply to all treaties, whatever their subject. But beyond that, different treaties will require different levels of information and scrutiny.

22. Consideration should be given to developing a flexible and comprehensive categorisation of treaties as 'major', 'minor' or 'technical', with different levels of information and scrutiny for each. In such a model, the Government should propose the categorisation of each treaty, but Parliament should be able to request recategorization.
23. By way of example, the following principles should apply to **major treaties**:
- a. **Before negotiations:** Government should provide its forward programme on treaties as far as feasible. For each proposed negotiation it should provide a draft mandate and detailed impact assessment following an agreed template, and carry out public consultation and engagement with stakeholders including devolved authorities. A scrutiny reserve for the negotiating mandate may be agreed with Parliament.
 - b. **At the start of negotiations:** Government should provide Parliament and all relevant committees with specified information including the agreed mandate, core issues and timetable.
 - c. **During negotiations:** Parliament should be informed of major developments at regular intervals. Certain types of agreement should include standard human rights clauses.
 - d. **At the end of negotiations:** Government should provide Parliament with the draft text when initialled, and a detailed Explanatory Memorandum following an agreed template as soon as possible.
 - e. **Once a treaty is concluded:** Government should produce a transposition note showing how the international obligations are (or will be) implemented domestically, and regular implementation reports. Any subsequent legally binding Protocols and amendments should also be subject to the Framework Agreement.

Appropriate engagement with the devolved institutions

24. For treaties that relate to devolved competencies and interests, the Government should agree appropriate information and engagement arrangements with the devolved executives and legislatures.
25. The Government should enable the devolved executives to lay treaty information (eg draft mandate, explanatory memorandums, draft and final agreements, proposed treaty amendments etc) before the devolved legislatures at the same time as it is laid before Parliament, where it relates to devolved competencies and interests.
26. Members of the devolved legislatures should be provided with the same level of access as UK parliamentarians to information on negotiations, , where it relates to devolved competencies and interests.
27. UK Ministers should make themselves available to the devolved legislatures for scrutiny of how their relationships with devolved Ministers interact with the UK negotiating position. Devolved Ministers should update the devolved legislatures on progress with the negotiations at regular intervals, , where it relates to devolved competencies and interests.
28. Wherever possible, any implementing legislation required should be made or introduced by devolved Ministers and scrutinised by the devolved legislatures (rather than routing such legislation through Westminster under the legislative consent convention).

29. Existing informal channels of communication between the UK's legislatures (and in particular between their respective committees) should be developed and if necessary adapted to help the treaty scrutiny process and to reduce gaps and duplication.