

## Written evidence from the Welsh Parliament (SIT 22)

### Public Administration and Constitutional Affairs Committee

### The Scrutiny of International Treaties and other international agreements in the 21st century inquiry

#### 1. Introduction

We note that the Llywydd responded to your inquiry in June 2021 shortly after the Senedd elections. The response advised that the newly-formed Sixth Senedd had not yet debated matters of relevance to the inquiry and signposted to the following from the previous Senedd:

1. Report of the External Affairs and Additional Legislation Committee, UK international agreements after Brexit: A role for the Assembly (December 2019); and
2. Oral evidence provided by Mick Antoniw MS as Chair of the Fifth Senedd's Constitutional and Legislative Affairs Committee to the House of Lords Constitution Committee; evidence which was included in the Committee's final report on parliamentary scrutiny of treaties.

While we are aware that the deadline for providing written evidence has now passed, we wish to submit this paper to reflect developments since the Llywydd's response of June 2021.

Annexed to this submission is an infographic showing the Senedd's international agreements scrutiny process and a table listing agreements considered by this Committee since we were established in June 2021.

#### 2. Background

The UK Government negotiates and agrees treaties on behalf of the UK via the Royal Prerogative. There is no legal requirement to consult the devolved governments and legislatures but they are often responsible for putting treaties into practice and must make sure that they comply with the UK's international obligations.

The implementation of international agreements can fall within Senedd competence, place duties on the Welsh Ministers and fall on Welsh public bodies to deliver, as acknowledged by the First Minister. They can also require changes to Welsh legislation.

In January 2019, during the Brexit negotiations, the Senedd became the first devolved parliament to establish a **dedicated approach** to international agreements scrutiny, led at the time by the External Affairs and Additional Legislation Committee.

**The process** followed treaties laid in the UK Parliament under the process formalised in the **Constitutional Reform and Governance Act 2010** (CRaG). It asked whether an agreement covered devolved areas, or had important policy implications for Wales. If it did, the Committee would explore whether significant issues had been addressed and report to the Senedd, the Welsh and UK governments, and other UK parliaments.

### 3. New process following 2021 Senedd elections

After the 2021 elections, this process changed. Treaties are now initially considered by one of two Senedd committees, depending on whether or not they are trade agreements or non-trade agreements.

The UK's trade agreements are considered by the Economy, Trade and Rural Affairs Committee (ETRA). ETRA recently took evidence on the **UK-New Zealand** agreement to ascertain its impact on Wales, and previously did the same for the **UK-Australia** deal. Both are explored in a **recent article** by Senedd Research.

Our Committee considers **non-trade agreements**. To date, we have considered 31 treaties, and for 13 of those we have taken further action, where an impact on Wales is expected.

Where matters of material interest are identified, we seek further information from the Welsh Government, as well as draw this to the attention of other Senedd committees. We **report regularly** to the Senedd and share our findings with the House of Lords **International Agreements Committee**.

It is not always possible for the Senedd to undertake scrutiny of international agreements within CRaG's initial 21-day period. However, it proves that input from devolved legislatures is possible and can yield important results, despite CRaG's limitations.

#### Early results

This process has:

- obtained information from **the Welsh Government** which would not otherwise be provided to the Senedd or the UK Parliament, including for **live committee inquiries**;
- ensured this information is in **the public domain**;
- enhanced our understanding of the devolved implications of international obligations from **a constitutional** and **practical perspective**;

- provided new information on intergovernmental ways of working. The Welsh Government has advised us of its level of involvement in the negotiation and implementation of international agreements; whether it had prior knowledge that an agreement was concluded; where Memorandums of Understanding are in place between the four governments for certain categories of international agreements; the relationships between multiple international agreements and domestic mechanisms; the Welsh Government's approach to its international obligations and where it holds a different view to the UK Government;
- notified the House of Lords International Agreements Committee of conflicting accounts from the Welsh and UK governments of engagement with devolved governments during treaty development;
- identified where information relating to devolution is missing from treaty documents, for example regarding the Welsh Government's involvement and the UK Government's view on devolved legislative competence; and
- secured a commitment from the Welsh Government to make it clear when UK Bills subject to Senedd consent intersect with international obligations, and to provide more information.

### Key issues

3. Importantly for the Senedd, CRaG does not provide a formal role for the devolved legislatures, nor does it contain a duty to consult with the devolved legislatures before the UK Parliament forms its conclusions.
4. The parliamentary process for international agreement scrutiny means that the UK Parliament becomes involved at very end of the process ahead of ratification. As mentioned above, the Committee often seeks further information from Welsh Government through exchanging correspondence. As such, it may not always be able to complete scrutiny within CRaG's initial 21-day period provided to the UK Parliament, and to therefore share relevant information to inform its conclusions as recently highlighted in the Committee scrutiny of the Convention on the International Organization for Marine Aids to Navigation.
5. Post-Brexit legislation has reduced the scrutiny role afforded to the UK Parliament in some areas by authorising the use of secondary legislation to implement international agreements. The Committee warned of the risk that the Senedd could be bypassed by such processes, including in areas of devolved competence, during its scrutiny of the Welsh Government's Legislative Consent Memorandum on the

Health and Care Bill. Subsequent amendments to the Bill ensured that the Senedd retained the ability to have sight and undertake scrutiny of implementation arrangements under future international healthcare agreements, albeit this will be via regulations subject to the negative procedure.

6. Information relating to devolution is not always included in an agreement's Explanatory Memorandum. The **Committee has noted** how this means that there is no information available on the involvement of the Welsh Government, nor is there clarity on the UK Government's view on devolved legislative competence. Treaty Explanatory Notes do not include as standard sections that are typically found in documents accompanying domestic legislation, such as territorial application tables or impact assessments. The Committee frequently learns of information for the first time in the course of correspondence with the Welsh Government. For example, from:

- the First Minister in relation to **the UK-Switzerland Social Security Convention**, whose response set out the remit and responsibilities of each of the Welsh Government, Senedd and local health boards;
- the Minister for Economy in relation to the Very High Neutron Flux Reactor agreement between the UK, France and Germany, where no devolution information was included. In **his response** to the Committee, the Minister stated that "my officials have enquired and not found anyone in the Welsh Government who has been consulted on this renewal proposal. Consequently, it has not been considered."

7. Examples of best practice exist that could be used as a blueprint for improved scrutiny of the implications of international agreements for devolved matters. For example, the Committee recently considered the Council of Europe **Convention on preventing and combating violence against women and domestic violence**. Its accompanying documents contained helpful information on devolution, including listing specific articles containing duties of the devolved governments. Furthermore, as a result of a separate **legal requirement** to report on the Convention's implementation until its ratification, there was substantially more information readily available to assist the Committee in its consideration than is usually the case. The **Welsh Government's response** provided further insight on the divergent policy between the UK and Welsh governments, and also informed a **live Senedd committee inquiry** into the experiences of migrant women of violence against women, domestic violence and sexual violence.

8. During our regular exchanges, the House of Lords International Agreements Committee **informed us** that it is in ongoing discussions with the UK Government on the “proper involvement of the devolved nations” in treaty negotiations.

### **Support for devolved involvement**

UK parliamentarians and committees have called for **devolved involvement** and have welcomed the views of the Senedd since it started international agreement scrutiny.

The UK Government has also recognised the interests of the devolved governments in **its response** to the House of Lords International Agreements Committee’s 2020 inquiry into **treaty scrutiny working practices**, describing its discussions with them as “critical” for the future.

Devolved involvement more broadly is also supported by legal experts, such as **Jill Barrett, Alexander Horne**, and **Joanna Harrington**, and legal practitioners, such as **Deloitte** and the **Law Society of Scotland**.

## 4. Conclusions

1. The UK Government is responsible for agreeing international agreements which can modify Senedd competence, cover matters within the Senedd’s competence or matters that have important policy implications for Wales. Their implementation can require changes to Welsh legislation, place duties on the Welsh Ministers and fall on Welsh public bodies to deliver, as acknowledged by **the First Minister**.
2. The Senedd and the Welsh Ministers are required to comply with the UK’s international obligations in accordance with the devolution settlement and the Welsh Government’s Ministerial Code. An **article by Senedd Research** explains how the devolution settlement works to ensure that actions taken by the Welsh Government remain compatible with such obligations
3. We regret that the CRaG process does not provide a formal role for the devolved legislatures, including where international agreements modify or fall within devolved competence, or have important policy implications.
4. It is not always possible for the Senedd to undertake scrutiny of international agreements within CRaG’s initial 21-day period. However, our process demonstrates that input from devolved legislatures is possible and can yield

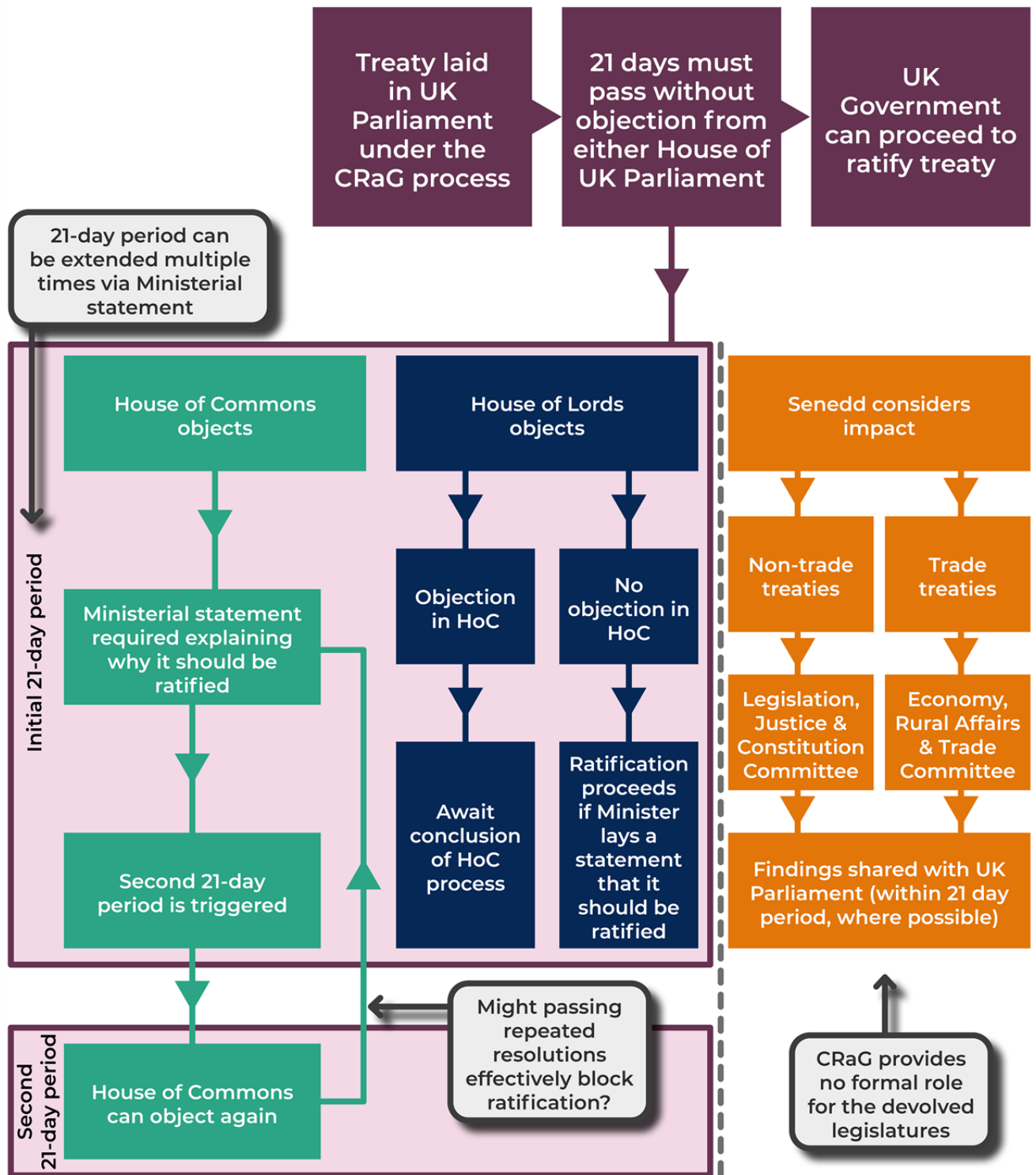
important results.

- 5.** We believe that the Senedd has made a valuable contribution to UK international agreements scrutiny in the last four years, including as set out in this submission. This Committee will proudly continue this work.
- 6.** We believe UK parliamentary scrutiny could only benefit from the devolved legislatures having a formal role, with our view being recognised and accommodated. This would also provide members of the UK Parliament with greater opportunity to incorporate important conclusions from a devolved perspective.
- 7.** In the course of our scrutiny, we regularly identify that devolution information is missing from agreement documents. Detailed devolution information greatly assists us in our scrutiny of each agreement's implications for Wales. Moreover, it expedites our scrutiny process, which in turn maximises our ability to share our views with the UK Parliament within CRaG's initial 21-day period.
- 8.** Where information is included, it is not always sufficiently detailed to enable the Committee to draw conclusions. Information on engagement with the devolved governments in the development of agreements and an agreement's impact on devolved competence would be particularly useful. Conversely, where no engagement occurs or no impact is envisaged, it is useful that the documents confirm this to be the case.
- 9.** Having a consistent format and approach to presenting devolution information would assist the Committee in its scrutiny. We would welcome a requirement to include certain devolution information as a minimum.
- 10.** In respect of implementation, we reiterate our concerns that the Senedd could be bypassed by post-Brexit legislation intending to implement future agreements, including in areas of devolved competence, via secondary legislation where primary legislation would conventionally be used.
- 11.** We note and welcome the support of members and committees of the UK Parliament, and external experts, for devolved involvement in international agreements scrutiny.
- 12.** We extend our offer to contribute to future discussions on devolved involvement in international agreements scrutiny with the UK Parliament or the UK

Government.

*November 2022*

Annex 1 – The CRaG’s process alongside the Senedd’s process





Annex 2 – International agreements considered (June 2021 – November 2022)

	<b>Parties</b>	<b>Type</b>	<b>Area</b>	<b>Further action</b>
<b>1</b>	UK-Peru	Mutual Recognition of Degrees	Education	Y
<b>2</b>	UK-Japan	Nuclear energy cooperation	Energy	Y
<b>3</b>	UK-Russia	Prevention of incidents at sea	Marine	N
<b>4</b>	UK-Estonia	Protection of classified information	Security	Y
<b>5</b>	UK-Latvia	Protection of classified information	Security	Y
<b>6</b>	UK-Belgium	Protection of classified information	Security	Y
<b>7</b>	UK-Italy	Protection of classified information	Security	Y
<b>8</b>	Multilateral	UNESCO Convention on the recognition of Higher Education qualifications	Education	Y
<b>9</b>	UK-Portugal	Employment of family members at diplomatic missions	Diplomacy	N
<b>10</b>	UK-Albania	Readmission of persons	Judicial cooperation	N
<b>11</b>	UK-Antigua & Barbuda	Establishing a maritime boundary with Anguilla	Marine	N
<b>12</b>	UK-Switzerland	Social security coordination	Social security	Y
<b>13</b>	Multilateral	1968 Convention on road transport	Transport	N
<b>14</b>	UK-Albania	Transfer of sentenced persons	Judicial cooperation	N
<b>15</b>	Multilateral	Convention on ship ballast water and sediment	Transport	N
<b>16</b>	Multilateral	ILO Convention on Violence and Harassment	Labour	Y
<b>17</b>	UK-Ukraine	Credit support for development of Ukrainian naval capabilities	Defence	N
<b>18</b>	UK-Kenya	Defence cooperation	Defence	N
<b>19</b>	UK-Australia-USA	Exchange of navy nuclear propulsion information	Defence	N

<b>20</b>	UK-France	Railway licences in respect of the Channel Tunnel	Transport	N
<b>21</b>	UK-France	Train driver driving licences in respect of the Channel Tunnel	Transport	N
<b>22</b>	UK-Serbia	Readmission of persons	Judicial cooperation	N
<b>23</b>	Multilateral	International Organisation for Marine Aids to Navigation	Marine	Y
<b>24</b>	UK-France-Germany	Construction and operation of a very high neutron flux reactor	Research	Y
<b>25</b>	UK-France	Maritime and port security in relation to passenger vessels	Marine	N
<b>26</b>	Multilateral	Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence	Human rights	Y
<b>27</b>	Multilateral	Amendment to Article 50(a) of the Convention on International Civil Aviation	Transport	N
<b>28</b>	Multilateral	Amendment to Article 56 of the Convention on International Civil Aviation	Transport	N
<b>29</b>	Multilateral	Protocol to the North Atlantic Treaty on the Accession of the Republic of Finland	Defence	N
<b>30</b>	Multilateral	Protocol to the North Atlantic Treaty on the Accession of the Kingdom of Sweden	Defence	N
<b>31</b>	Multilateral	Convention on Cybercrime on Enhanced Co-operation and Disclosure of Electronic Evidence	Judicial cooperation	Y