

Written evidence submitted by the Public Administration and Constitutional Affairs Committee (PACAC)

In the last parliament the Public Administration and Constitutional Affairs Committee (PACAC) carried out an in-depth inquiry into the parliamentary scrutiny of international agreements, reporting in January 2024. As the report sets out:

Over the last century, there have been significant quantitative and qualitative changes to the nature of international agreements; they now reach into people's everyday lives in the UK and around the world. They seek not only to deal with relations between states, but increasingly to address problems which one state cannot solve alone. In many instances, treaties have, as a consequence, become more akin to domestic legislation. International agreements are now concerned with domestic as well as international affairs, and accordingly this makes them a fundamental concern for Parliament.

Parliament is not sufficiently engaged with international agreements. The UK's parliamentary democracy operates on the basis of the dual constitutional principles of parliamentary sovereignty and parliamentary accountability. As such it must be understood that scrutiny of international agreements is a core constitutional function of the UK Parliament.

Overall PACAC found the current arrangements to be wanting in terms of the opportunities provided for scrutiny and in the unfettered exercise of the international relations prerogative power. The report makes important recommendations with the view of empowering Parliament, and particularly the House of Commons (as the democratically elected chamber) to carry out this core function.

We believe this is an issue of ongoing importance and believe this is a subject worth further consideration by the Modernisation Committee. The report published by our predecessor committee contains relevant conclusions and recommendations based on the evidence received - Public Administration and Constitutional Affairs Committee, Second report of the Session 2023-24, [Parliamentary Scrutiny of International Agreements in the 21st century](#), HC 204

In order to aid the Modernisation Committee's consideration of this issue we have provided a short summary of key points and recommendations on the following pages:

Public Administration and Constitutional Affairs

Summary

International agreements broadly take two forms: legally binding agreements known as 'treaties', and agreements that are politically but not legally binding known as 'non-legally binding instruments (NLBIs)'. The Committee raised concerns with the scrutiny of both forms, but mainly focused on scrutiny of treaties. The Committee considered the current arrangements in three respects: in relation to the use of the prerogative, the current legislative arrangements for consideration ratification, and the role of implementing legislation.

First, under the UK's constitutional arrangements, the power to negotiate and enter into treaties is drawn from the royal prerogative. This means that the power still rests notionally with the sovereign, but in practice is exercised exclusively by the Government, who have considerable power and flexibility in how it is used. PACAC set out that in order for the exercise of prerogative power by the Government to be legitimate, a minister must assure themselves that they are acting in accordance with the will and confidence of the House of Commons. PACAC raised concerns with the adequacy of the arrangements for the House of Commons oversight of the Government's use of such an important prerogative power, and the governments assumption that it is acting with the confidence of the House.

Second, while the UK was an EU Member State, many of the treaties the UK was party to were negotiated, scrutinised and approved at the EU level. Now the UK has left the EU, treaty scrutiny arrangements have reverted to those that emerged and crystallised almost a century ago. Until 2010, Parliament had no statutory role at all in the process of the UK entering international obligations. Instead, by a convention dating from 1924, Parliament was given the opportunity to consider and scrutinise treaties (at least, that is, those that require ratification) for 21-sitting days. The Constitutional Reform and Governance Act 2010 (CRAG) did not change the arrangements, but sought to place this convention into statute which, for the first time, provided the House of Commons a legal tool to delay ratification where it was not satisfied with a treaty. Under CRAG, the Government is required to lay some treaties along with an explanatory memorandum, and after a period of 21-sitting days, if the Commons has not voted to delay ratification, a treaty can be ratified. The evidence PACAC received was clear that CRAG has been an insufficient legislative tool to facilitate meaningful Parliamentary scrutiny of treaties. Three main areas of concern with the current system for parliamentary scrutiny of international agreements under CRAG were identified:

- the current legislation provides only a passive role for Parliament and as such there is no opportunity for Parliament to express its explicit approval or disapproval of a treaty.
- several categories of treaty are not captured by CRAG at all.
- the 21-day sitting period is an arbitrary and, in many cases, a wholly insufficient period for the scrutiny of treaties, especially in light of their increasing length, complexity and impact at the domestic level.
- it is largely in the gift of the government to allow the Commons to consider a motion that would have effect under CRAG. In the last parliament for example the timely request of the House Affairs Committee to consider a motion under CRAG on the Rwanda Treaty was not accepted by the Government.

Public Administration and Constitutional Affairs

Third, the UK is a dualist state which means international law obligations require legislation to have effect within the UK. At first glance, this appears to provide Parliament with the opportunity to consider treaties during their implementation phase. However, treaties are often implemented either only in part through primary legislation or through secondary legislation. Treaties may also not require legislation to be implemented but restrict what legislation can be brought forward in the future without breaking the agreement. As such Parliament's opportunity to debate, approve or reject implementing legislation is no substitute for proper parliamentary consideration of the entirety of a treaty.

Having made this assessment PACAC recommended:

as a matter of constitutional principle, all treaties should require the explicit approval of the democratically elected House of Commons before they enter into force. To be clear, this would not change the fact that treaties are negotiated and entered into under prerogative power; instead it would make the exercise of that prerogative to enter into an agreement that places, alters or removes a legal obligation on the UK, or to withdraw from such an agreement, conditional on the explicit, active approval of the House of Commons

PACAC went on to make the specific recommendations as to how CRAG should be amended to implement new arrangements to give effect to this principle and propose a new system by which the House of Commons must indicate its explicit approval of international agreements for them to bind the UK.

Under the new system, the Government would be required to submit all treaties to a sifting committee, which would have 21-sitting days to recommend either a 'standard' scrutiny period of 21-sitting days, or an 'extended' scrutiny period which will vary in length depending on the content of the treaty itself. The purpose of the scrutiny period is to allow parliamentary committees, as well as other stakeholders across the UK, to carry out effective scrutiny of the treaty and to inform the debate in the House of Commons to approve the treaty. A treaty would then be brought forward for a debate and approval in the House of Commons. Amendments to treaties by contracting parties or bodies established under those treaties, which are currently often not captured under the CRAG arrangements, should also be provided to the sifting committee so that Parliament can consider those which the committee deems to require scrutiny and approval. PACAC left it open for the House to devise the most effective and efficient way for it to signal its vote of approval.

A key point raised by PACAC is that it is not enough for it only to be involved at the end of the international agreement process and that requiring approval would stimulate engagement between Government and Parliament earlier in the process. To aid this PACAC recommended that a working practices agreement be produced setting out arrangements for how Parliament will be informed of the progress of negotiations and consulted on negotiating mandates.

PACAC concluded that the Commons lacks satisfactory systematic scrutiny arrangements. PACAC noted that the departmental committee structure in the House of Commons, makes it well placed to carry out detailed policy-focused scrutiny on international agreements. It recommended that the scrutiny of international agreements be added to the core tasks and remit of all relevant committees. It also recommended that a sifting committee be

Public Administration and Constitutional Affairs

established as well as consideration given to the need for a dedicated international agreements committee in the Commons.

On the issue of devolution PACAC noted that while the legal authority and responsibility for international agreements rests with the UK Government, devolved governments and legislatures will necessarily have a legitimate interest where agreements intersect with areas of devolved competence. PACAC said the current arrangements for timely and meaningful consultation between the UK and devolved governments on the negotiation of international agreements that impact areas of devolved competence are not working effectively and have thus recommended that they be updated or replaced. Devolved legislatures will also have an interest in scrutinising aspects of an international agreements that fall within areas of devolved competence and recommended that this be factored into the scrutiny period set for treaties.

Finally, PACAC considered the other category of international agreements, non-legally binding instruments (NLBIs). These are political agreements reached between states or other international actors which create no legally binding obligations under international law but can impose political obligations that guide Government action and can even result in financial obligations being placed on the UK. PACAC was clear that when the UK makes such commitments, this should be viewed as essentially equivalent to making a legally binding obligation. PACAC said that Parliament needs to be kept informed of all international agreements, including NLBIs, and recommended that the government have a central repository for all NLBIs. further PACAC said that where concern about a particular NLBI is raised the government make time for debate of the NLBI on the floor of the House.

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