



## Procedure Committee

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From Charles Walker OBE MP, Chair of the Committee

Rt Hon Stephen Barclay MP  
Secretary of State for Exiting the European Union

[REDACTED]  
London [REDACTED]

6 February 2019

**House of Commons scrutiny of international agreements**

Thank you for your letter of 25 January which updated the Committee on the Government's progress on ensuring continuity in the UK of the effects of existing EU international agreements in a no deal scenario. The Committee considered the matter at its meeting earlier today and discussed the issue extensively when taking evidence from the Parliamentary Under Secretary of State, Chris Heaton-Harris.

You refer in your letter to agreements soon to be laid for Parliamentary scrutiny under the procedures set out in the Constitutional Reform and Governance Act 2010 ("the 2010 Act"), and to agreements where the requirements of that Act have already been complied with and which are ready for ratification.

The Committee recalls the undertakings about scrutiny of treaties in the House of Commons given by the Government in its response to the predecessor Committee's report on *Parliamentary Scrutiny of Treaties* in 2000, undertakings which were repeated from the Despatch Box in the House of Lords during the passage of the 2010 Act. In brief, the Government committed itself to sending a copy of each international agreement laid before Parliament to the relevant select committee in the Commons, and undertook to arrange for a debate on an agreement within the period of 21 sitting days after laying should a Commons committee and the Liaison Committee request one.

The Committee is aware of the substantial work which has already been undertaken with the House of Lords authorities in arranging for the systematic examination of these agreements by a committee of that House. This has taken place in the context of the established system for treaty scrutiny in the Lords, for which there is no analogue in the Commons:

The Committee is concerned that, in the absence of commitments from the Government to facilitating comparable scrutiny arrangements in the Commons, the examination of these agreements in this House may go by default.

We have considered the matter in hand in the context of the statutory arrangements for parliamentary scrutiny established by the 2010 Act and the commitments given by the Government to the Procedure Committee in 2000.

On that basis, for the international agreements contemplated under the present “no deal” work programme, the Committee recommends the following:

- A copy of each signed agreement which the Government plans to ratify should be sent to the relevant departmental select committee no later than the day it is laid before Parliament
- The explanatory material provided with each agreement should include details of the EU agreement which it intends to continue, the legal base for adoption of the original agreement and an indication of the UK’s position on each agreement when it was adopted in the Council of Ministers
- Should the departmental select committee considering the treaty (a) find that a treaty raises major political issues, and (b) recommend that the treaty be drawn to the special attention of the House, the Government should provide time for a debate on the floor of the House to consider the treaty prior to its ratification
- Should that committee (a) find that a treaty raises major political issues, and (b) recommend that the treaty not be ratified, then the Government should, before the expiry of the statutory period for parliamentary consideration, provide time for debate on a motion that the treaty be ratified
- Wherever possible and reasonable, the Government should accede to a committee request to extend the statutory period for parliamentary consideration in order to allow committee scrutiny to be completed.

Turning to the list of international agreements in the annex to your letter, it would be helpful to the Committee and to the House if the Government would provide the following information:

- The EU agreement which each agreement listed intends to continue for the UK
- Which agreements are to be concluded as treaties subject to part 2 of the 2010 Act
- Which agreements are to be concluded as memorandums of understanding or as other instruments not subject to the requirements of the 2010 Act
- Which of the agreements listed require primary or secondary legislation before they can be ratified; what the arrangements will be for the passage of such legislation; and by when the Government expects such legislation to be enacted
- Whether the Government expects to apply section 22 of the 2010 Act, which allows the 21-day period for parliamentary scrutiny to be dispensed with in urgent cases, in respect of any agreement which requires ratification no later than 29 March.

Given the urgency of the matters under consideration, it would be helpful to receive a response as soon as possible and no later than noon on Wednesday 13 February.

Copies of this letter go to the chairs of the following committees: the Joint Committee on Human Rights; in the Commons, the Liaison Committee, the Committee on Exiting the European Union, the European Scrutiny Committee, the Foreign Affairs Committee and the International Trade Committee; in the Lords, the EU Committee, the Secondary Legislation Scrutiny Committee and the Constitution Committee.

A handwritten signature in black ink, appearing to read 'Charles Walker', written in a cursive style.

**Charles Walker OBE MP**



Department  
for Exiting the  
European Union

Rt Hon Steve Barclay MP  
Secretary of State for  
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Chair, Procedure Committee  
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13 February 2018

Dear Charles,

Thank you for your letter of 7 February in which you asked about the scrutiny of international agreements and the procedures set out in the Constitutional Reform and Governance Act 2010 (CRaG Act) more generally. I was pleased that Minister Heaton-Harris was able to give evidence to the Committee on 6 February and he will respond separately to the questions which were raised in the session. In the meantime, I have addressed your points in turn.

As you will know, the Government has been working with third countries for around two years to seek to put in place arrangements to deliver continuity of the effects of existing EU international agreements with third countries, and these will come into force either at the end of March in the event of no deal or after the end of the Implementation Period.

I would like to take this opportunity to set out how we have been engaging with Parliament on this ongoing programme of work. Successor international treaties, where subject to ratification, are being laid before both Houses in accordance with the procedure as set out in the CRaG Act. Officials in my Department, from the Foreign & Commonwealth Office (FCO) and the Department for International Trade have been engaging with staff of the International Trade Committee, and the Secondary Legislation Scrutiny Committee, and the EU Committee in the Lords, to keep the two Houses of Parliament suitably informed of the flow of treaties to be laid ahead of EU Exit. I should also reassure you that these successor agreements are being developed in order to replicate, as far as possible, the effects of our existing agreements and deliver continuity as we leave the EU. Where agreements diverge, we will make this very clear in the covering explanatory memoranda and accompanying documents.

Regarding your points about making time for debates, we are committed to ensuring that treaties have appropriate scrutiny in Parliament and agree that the expertise of Select Committees should be drawn on as part of this. As such, we would take seriously any recommendation from Select Committees. However, where any recommendations relate to time for debates, these will be considered in the context of the limited time available to secure essential legislation.

I note in that context the commitment you cite from a previous Government in 2000, that the Government would be "happy to undertake normally to provide the opportunity for the debate of any treaty involving major political, military and diplomatic issues, if the relevant select committee and the Liaison Committee so request". I also note the important qualifier that the form of the debate would remain a matter for the Government, although it would of course take the views of the Committee concerned and of the Liaison Committee into account, and that as the Committee had noted, there are some circumstances in which treaties are already subject to proceedings in Parliament so there could be no need to provide extra opportunities for debate on such treaties.

On the series of specific points you make about the scrutiny processes and the role of Select Committees, I can confirm that the FCO has been sending a copy of the treaty to the Commons' Foreign Affairs Committee and the Lords' EU Committee as it is laid. Departments have also been sighting their Select Committees as they deem appropriate, and given the interest in this programme we will encourage departments to consider whether there are other committees that might want to be alerted to the treaty when it is formally laid before Parliament.

We accept the need to allow time for the scrutiny of treaties. In relation to extending the statutory time period for parliamentary consideration, we would again take any requests from Select Committees seriously, whilst noting that the 21 days are sitting days in both Houses and the importance for business of ensuring agreements are in place by exit day. Provided circumstances permit and cases are well justified, the Government would aim to respond to such requests from Select Committees positively, although I am sure you will understand in the case of no deal there will be pressure to bring treaties into force as soon as possible to achieve the maximum possible continuity.

As for your points on international agreements specifically, I can reassure you that we aim to ensure that the explanatory memorandum (and in the case of the Free Trade Agreements, the parliamentary report) laid alongside the treaty, specifies the original EU agreement to which the new agreement relates and explains those effects which are being continued through the relevant successor bilateral or multilateral agreement. We will respond more fully in due course with a breakdown of the treaties listed in the annex to the earlier letter which you requested.

As you know, there is a central legislation delivery programme, to ensure that the primary and secondary legislation necessary to implement these agreements will be in place on or before Exit day. This includes any legislation that is required in order to implement successor international agreements. Much of the legislation has already received Royal Assent, for example the Nuclear Safeguards Act 2018. It is also worth noting that some agreements do not require any new implementing legislation, such as the Air Services Agreements.

Finally, you asked whether the Government expects to apply Section 22 of the CRaG Act. Section 22 provides that Section 20 of the 2010 Act does not apply to a treaty if a Minister of the Crown is of the opinion that, exceptionally, the treaty should be ratified without the requirements of that section having been met. In respect of international agreements which are concluded to ensure continuity to existing EU agreements following the UK's withdrawal from the EU, the Government's intention is to lay treaties subject to ratification under the 2010 Act in the normal way, but cannot exclude the possibility of using section 22 if an exceptional case should arise which justified its use.

I hope this provides a useful update. I myself or Minister Heaton-Harris would be happy to meet with you to discuss any of the above in more detail.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Steve Barclay', with a long horizontal line extending to the right.

**RT HON STEVE BARCLAY MP**  
**SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION**