

# GOVERNMENT RESPONSE TO THE CONSTITUTION COMMITTEE REPORT: PARLIAMENTARY SCRUTINY OF TREATIES

The Government notes the Constitution Committee report on ‘Parliamentary scrutiny of treaties’, which was published on 30 April 2019.

## Introduction

The Government has carefully considered the Committee’s report and the issues it raises. The Government’s formal response to the Committee’s recommendations and conclusions is set out below. The Committee’s findings are in bold and the Government’s responses are in plain text. For ease of reference, paragraph numbering follows the ‘Conclusions and Recommendations’ of the Committee’s report (pp. 39-42).

The Government welcomes the Committee’s comprehensive and timely report. The UK is navigating a period of constitutional change and the issues raised in this report deserve careful consideration.

The Government continues to believe that the legislative framework set by the Constitutional Reform and Governance (CRaG) Act 2010 is appropriate and provides sufficient flexibility to permit Parliament to undertake scrutiny in the manner of its choosing prior to ratification. However, the Government acknowledges the request for better information sharing with Parliament, and is committed to engaging with whatever parliamentary scrutiny structures the Houses implement, working together to make the operation of the scrutiny mechanisms available under CRaG more efficient and effective.

The Government is committed to strong and effective relations with the devolved administrations of the United Kingdom which it wants to see strengthened in the years ahead. The UK Government will continue to listen to and take account of the views of devolved administrations, and work closely with the Scottish Government, the Welsh Government and Northern Ireland Government on future treaties and legislation in line with the devolution settlements and principles outlined in the Memorandum of Understanding on Intergovernmental Relations. In the continued absence of an NI Executive, the UK Government will engage at an official level with the Northern Ireland Civil Service.

- 1. We recognise that treaty making—specifically the negotiation and signature of treaties—is a function of the Government, exercised through the Royal Prerogative. (Paragraph 14)**
- 2. The current mechanisms available to Parliament to scrutinise treaties through CRAG are limited and flawed. Reform is required to enable Parliament to conduct effective scrutiny of the Government’s treaty actions, irrespective of the consequences of Brexit. (Paragraph 33)**

The Government is clear that exiting the EU will allow the UK to engage in bilateral and multilateral international treaty negotiations in ways it has been unable to for the past 46 years. The UK’s exit from the EU does not change the constitutional principles by which we operate (including the Executive’s responsibility for negotiating treaties under the Royal Prerogative) or the Government’s commitment to the principle of effective parliamentary scrutiny.

The Constitutional Reform and Governance (CRaG) Act 2010 is the domestic statutory framework providing for scrutiny of international agreements subject to ratification. The Government strongly believes that CRaG remains a viable legal framework for scrutiny. However, the Government agrees that improvements can be made to the operation of the scrutiny mechanisms and processes within that framework, and that information provision between the Executive and Parliament can also be improved. This is considered in more detail in response to recommendations 8-14.

- 3. The powers that the European Parliament has developed over recent years suggest that effective scrutiny of international agreements can occur where there is sufficient political interest, information provision and powers. (Paragraph 46)**
- 4. While we do not recommend directly replicating the European Parliament’s treaty scrutiny mechanisms at Westminster, lessons may be learned from it, particularly in relation to information provision. (Paragraph 47)**
- 5. The UK’s departure from the European Union will result in the Government negotiating and signing more treaties than has been common in recent years. These will include complex trade treaties, which have hitherto been negotiated at EU-level and scrutinised by the European Parliament. Parliament’s scrutiny of treaties will need to adapt to these changes, as the provisions of the Constitutional Reform and Governance Act 2010 were enacted in a time where leaving the EU had not been seriously contemplated, and thus not designed to support detailed scrutiny of the volume and breadth of treaties that will be required in future. (Paragraph 54)**

The Government agrees with the Committee’s report that the current arrangements for European Parliament involvement in EU treaties with third countries should not be the model for treaties that the UK may enter into in its own capacity in future.

In regards to the volumes of future treaty work, in the short term the UK's exit from the EU has generated an increase in the number of new agreements with third countries as the Government seeks to replicate a large number of existing agreements that the UK has been part of as a Member State. As agreements which have already been substantially scrutinised in their original EU form, it is entirely appropriate that these should be subject to a different level of scrutiny from future free trade agreements.

The long-term impact of exit on treaty volume remains to be seen. The process of negotiating new trade agreements that best meet the needs and ambitions of the UK will inevitably be more complex and take longer than simply replicating existing EU agreements, but that does not mean the total volume of treaties will necessarily increase. There will be other areas where the Government may take a different approach. For example, the EU has signed numerous political cooperation agreements with third countries where the UK might choose to effect political cooperation in other forms.

The breadth of treaty making has not changed substantially since the establishment of the Ponsonby rule or the implementation of CRaG. Treaties (in particular multilateral treaties) negotiated directly by the UK have for a long time in recent history addressed broad matters of significant public and political interest. The European Convention on Human Rights (1950), the International Covenant on Civil and Political Rights (1966), the United Nations Convention Against Torture (1984), the United Nations Framework Convention on Climate Change (1992), and the Energy Charter Treaty (1994), are all good examples.

The Government recognises that the UK's exit from the EU, and the resumption of independent trade negotiations, has increased the appetite in Parliament for improved provision of information on treaties within that important sector. The Government position on this is covered in responses to recommendations 8-11 below.

- 6. We believe a dedicated treaty committee is required to provide effective parliamentary scrutiny of treaties. Such a committee would create a natural home and possible clearing house within Parliament for all treaty-related activity, building expertise amongst members and staff and providing better scrutiny of the Government's actions. (Paragraph 62)**
- 7. There is a choice to be made between establishing a treaty committee in either or both Houses, or establishing a joint committee. We recognise that there are advantages and disadvantages to any model and ultimately that it will be for the Liaison Committees in both Houses to consider whether a joint committee would be desirable. If a joint committee is not the preferred option, it would be appropriate for the House of Lords to appoint its own treaty scrutiny committee. (Paragraph 67)**

**17. We suggest that any treaty committee seeks to draw on the expertise of other committees and members to assist its scrutiny through whatever process it considers appropriate. (Paragraph 109)**

**18. We recommend that the proposed treaty committee undertake a sifting function to identify which treaties are of greatest significance and to draw those to the attention of Parliament. (Paragraph 110)**

**19. We recommend that the Government keeps the proposed treaty committee informed in broad terms about the treaties that are under negotiation, in order that the committee can anticipate which treaties will need to be sifted for greater scrutiny and prepare accordingly. (Paragraph 111)**

The establishment of, or amendment to, structures within Parliament to scrutinise new international agreements is a matter for Parliament itself. The Government observes that treaties are one tool by which a government may advance foreign or domestic policy and that treaties (or relevant parts of treaties) tend to be scrutinised by subject specific committees who have the expertise and relevant context in which to assess the potential impact of treaty provisions.

The Government remains committed to the principle of parliamentary scrutiny, and commits to engage with any committee tasked with scrutinising treaties in a constructive way. The Government recognises and appreciates the experience and expertise that exist across the Select Committees in both Houses.

For future trade agreements, as already highlighted, the UK's departure from the EU does not change the fundamental constitutional principles that underpin the negotiation of international treaties. Parliament should have the opportunity to scrutinise treaties that are subject to ratification and the Government remains committed to that principle. Consequently, the Government published its proposals in a Command Paper "Process for making free trade agreements after the United Kingdom has left the European Union", published in February 2019 (<https://www.gov.uk/government/publications/processes-for-making-free-trade-agreements-once-the-uk-has-left-the-eu>)

Since January, the Lords European Union Committee has held responsibility for scrutiny of transitioned international agreements (agreements replicating the effect of existing EU agreements that will cease to apply to the UK on exit from the EU). The Government has welcomed the regular, positive engagement between officials and the clerks of that Committee as agreements have progressed through the CRaG process. This engagement allowed the Government to address questions on the policy and technical approach to transitioning agreements, and helped the Government adapt and improve some processes based on Committee feedback. The Government recognises the benefit to all parties of that informal information sharing arrangement.

- 8. We do not believe that Parliament should be required to endorse the Government's mandate prior to commencing treaty negotiations. This would impinge inappropriately on the Government's prerogative power and limit the Government's flexibility in the negotiations. However, for significant or controversial treaties, the Government will want to ensure that it has the support of Parliament at the outset of negotiations in order to secure ratification to the final text of the agreement. While this may not be a formal resolution to approve a mandate or the commencement of negotiations, the Government should consider the merits of a debate or other forms of engagement at an early stage, so that Parliament is involved in the process. (Paragraph 76)**
- 9. We recommend that the Government should inform any treaty committee when treaty negotiations begin and provide background information about the parties to the negotiations and the broad subject areas that are expected to be discussed. This will improve the information available to Parliament and allow a treaty committee to plan its scrutiny work effectively. There may be circumstances where a treaty was not the outcome initially envisaged by the Government; in such cases, the Government should alert the committee as soon as formal negotiations begin. In many cases, especially in relation to trade negotiations, such information will be in the public domain and it will not compromise the Government's position to keep Parliament informed. We therefore welcome the Government's commitment to provide more information to Parliament at the beginning of the process for making free trade agreements and suggest this approach be considered for all treaties. (Paragraph 80)**
- 10. We recognise that there are rare instances where the fact that negotiations are taking place is sensitive and information could not reasonably be provided to a treaty committee. On these occasions, nothing that compromises the Government's ability to negotiate freely should be disclosed. We recommend that in such circumstances the Government informs any treaty committee at the earliest appropriate opportunity and explains why confidentiality was needed earlier in the process. (Paragraph 81)**
- 11. We believe that if Parliament is kept appropriately informed about the existence of ongoing treaty negotiations (subject to the qualification about exceptional circumstances in paragraph 81), existing parliamentary mechanisms, supplemented by the work of the proposed treaty committee, should be sufficient to provide effective scrutiny. (Paragraph 83)**

The Government welcomes the Committee's recognition of the fundamental right of the Executive to negotiate for the UK on the international plane, exercising its powers under the Royal Prerogative. This rule is not only the result of centuries of constitutional practice but also serves an important function: it enables the UK to speak

clearly, with a single voice, as a unitary actor under international law. It ensures that partners understand the United Kingdom's views and are able to have faith that the position as presented formally in negotiations is the position of the United Kingdom. Should Parliament have concerns regarding the conduct of negotiations, it already has the ability to question the Government through its existing powers. The Government agrees with the Committee that negotiating mandates for treaties should not ordinarily be subject to a requirement for parliamentary approval or be set out in statute.

Ministers considering the commencement of negotiation of a treaty will have a strong sense of what issues are significant or controversial to Parliament. The Government can assess what parliamentary engagement at that point would best secure support for the treaty. This does not necessarily require a specific debate or more formal engagement at the start of negotiations for the vast majority of treaties - though divergence from that norm can be considered, dependent on the context. For example, the unique circumstances posed by the UK's exit from the EU would be highly likely to necessitate a divergence from the norm; the Government would not expect Parliament's role in the negotiations on the future relationship with the EU to be constrained by a set of default arrangements for treaties of less fundamental significance.

Whilst the Government must retain ultimate discretion over the amount and detail of any information shared with Parliament, it recognises that alerting the relevant committee of the commencement of negotiation of a new treaty would enhance transparency and assist that committee in its role.

For third country trade agreements, given their highly technical nature, the intense public interest and their length and scope, the Government made the following commitments in the February 2019 Command Paper:

- At the start of negotiations, the Government will publish its Outline Approach which will include negotiating objectives and be accompanied by a scoping assessment. Parliament will have a role in scrutinising these documents.
- The Government proposes that it should draw on the expertise of Parliament throughout negotiations via a close relationship with a specific parliamentary committee(s).
- The committee(s) could have access to sensitive information that is not suitable for wider publication and could receive private briefings on an understanding of confidentiality.
- As with all parliamentary committees, the committee(s) would have the power to produce a detailed report on the agreement that had been reached.

- Where the committee(s) indicated that the agreement should be subject to a debate prior to the commencement of parliamentary scrutiny under CRaG, the Government would consider and seek to meet such requests where those requests are made within a reasonable timeframe and subject to parliamentary timetables.

For treaties in other sectors, there is a balance to be found and the system must retain flexibility, be proportionate to the level of public interest, and take account of other demands on parliamentary time. The Committee rightly recognises that there are also circumstances where confidentiality is essential in treaty negotiation. This extends not only to the content of the negotiations, but at times to the very existence of negotiations themselves. However, as mentioned above, the Government can see merit in sharing information (broad treaty subject, other negotiating parties) with Parliament at the beginning of negotiations in many cases. Any decision to do so would be taken after having assessed the confidentiality requirements of the treaty or negotiations, and having considered any third country concerns. This would remain at the strict discretion of Government. Government officials should discuss any such informal information sharing process with the clerks of any treaty scrutiny committee.

**12. The level of information that can reasonably be provided to Parliament during negotiations will vary considerably, but we believe there should be a general principle (rather than a legal requirement) in favour of transparency during treaty negotiations. We would not expect such information to include negotiating strategies, 'red lines' or potential areas of compromise; rather the Government might provide an assessment of progress, information on any areas on which agreement had been reached, and any changes to the list of subjects under discussion. (Paragraph 90)**

**13. The Government must remain in control of what information it considers is appropriate to disclose about negotiations. There will be instances when it is not in the UK's national interest for information to be shared with Parliament. We expect such occasions to be the exception rather than the norm. (Paragraph 91)**

**14. While an effective working relationship between any treaty committee and the Government should be established from the committee's inception, trust regarding the sharing of confidential documents can develop only gradually over time. We welcome the Government's commitment to provide select committees with sensitive information about free trade agreements on a confidential basis and we recommend that, where appropriate, this be extended to negotiations relating to other forms of treaty. (Paragraph 98)**

The Government does not agree that it should operate on a presumption of transparency for all treaty negotiations. In considering what information to provide to Parliament, Ministers have to balance competing public interests (as indeed Parliament has recognised in other contexts including the Freedom of Information Act

2000, which itself contains an exemption covering international relations (Section 27)). The consideration of whether and what type of information it will be in the public interest to release in the context of ongoing negotiations will involve weighing the need for transparency and openness against a range of other factors including the risk of undermining the UK's negotiating position, any prejudice to the UK's relationship with other States and any expectation of confidentiality on the part of those States. The approach to information sharing will inevitably depend on the nature and context of the treaty, and the expectations of other parties.

For trade agreements, the Government has already committed to the enhanced transparency and information sharing referred to above. Multilateral negotiations within the context of the UN may also allow for much greater transparency than bilateral negotiations.

If a third country's domestic procedures mean it will publish a draft treaty at an earlier stage, then the Government will also look to do similar to ensure that the UK Parliament is not receiving less information than the Parliaments of negotiating partners. Where ministers feel progress on a particular treaty negotiation requires an update to, or view from, Parliament, there are processes in place to enable that, without the need for a new scrutiny process specific to treaties.

Ultimately, however, the Government will need to take a view on the appropriate level of information that is provided. Negotiation inevitably involves fine judgements about the importance of particular issues to both sides, including what each side will be willing ultimately to concede. Disclosing the Government's approach, or indeed the response from the third country, during live negotiations may undermine the negotiator and the relationship with the other party, harming the wider national interest.

That is not to say there will be no scrutiny. Most significant treaties will be subject to ratification and therefore CRaG procedures. The fact that all treaties will be subject to public scrutiny will be at the forefront of any negotiator's mind. Where implementing legislation is required, without Parliament's approval of that legislation, the Government cannot ratify the treaty.

The Government is supportive of improving the information provision and engagement with Parliament at the commencement of negotiations, where it deems appropriate, and to support Parliament's role scrutinising concluded agreements under CRaG. Informal engagement with any scrutiny committee would ensure that Parliament is kept updated in broad terms of treaties under negotiation, when the Government judges that useful.

## **15.A treaty committee must be able to secure a debate on treaties it deems**



**significant. We do not believe that many treaties each session would warrant a substantive debate and so the impact on parliamentary time would be limited. (Paragraph 103)**

**16. While the Constitutional Reform and Governance Act 2010 could be amended to provide for an affirmative resolution, we suggest altering the application of the procedures would be more straightforward. A treaty committee should be empowered to recommend a debate on a treaty and the Government should commit to providing time for it within the 21-day period. If there is opposition to the treaty, the debate would take place on a motion under section 20 of CRAg that the treaty should not be ratified. If the treaty is significant and worthy of debate, but faces no opposition, the debate could be on a neutral motion. (Paragraph 104)**

The Government welcomes the fact the Committee saw no need to amend CRAg and is committed to working with Parliament as it reviews scrutiny structures.

The mandate, operation and recommendations of any treaty scrutiny committee are clearly issues for Parliament itself. Requests for debates must be balanced against the reality that parliamentary time is at a premium. Finding time for the House of Commons to grant express approval for even a small percentage of treaties negotiated in one year would be challenging. Whilst the long-term impact of the UK's exit from the EU on the number of treaties is yet to be seen, it is undoubtedly the case that the amount of domestic legislation Parliament must scrutinise will increase as it assumes responsibility for legislating in areas where EU rules would previously have flowed through directly into domestic law, further increasing demands on Parliament's time.

Notwithstanding these constraints, where a scrutiny committee raises serious concerns with a treaty and recommends a debate within the processes allowed for by CRAg, the Government will endeavour to ensure parliamentary time is found to do so. The Government has already shown its willingness in this regard by allocating time for two recent debates on motions relating to transitioned trade agreements in the House of Lords. The proposed approach for future third country trade agreements is in the above response to recommendations 8-11.

**20. We welcome the Government's commitment to provide the text of trade agreements to a committee prior to laying them before Parliament for the purposes of the Constitutional Reform and Governance Act 2010. We recommend that this process is followed for all types of treaty. (Paragraph 115)**

**21. In addition, section 21 of the Constitutional Reform and Governance Act 2010 allows for the 21 sitting day period to be extended at the discretion of ministers. A treaty committee should not be constrained in its scrutiny by the 21 sitting day provision in the CRAg. We recommend that the Government commits to extending the treaty consideration period if**

**requested by the proposed treaty committee to allow for the completion of scrutiny, unless there are exceptional reasons not to do so. (Paragraph 116)**

The Government has outlined its commitments in this area for future trade agreements in its recent command paper (see response to recommendation 11).

However, the Government is clear that formal parliamentary scrutiny of all other treaties should always take place within the CRaG framework. The Government believes that the 21 sitting day period is sufficient to allow a committee to scrutinise most modern non-trade related treaties. Bilateral treaties outside the trade sector are often smaller and less complex in nature. To impose a blanket requirement that all treaties are laid for consideration by a scrutiny committee before CRaG begins could introduce unnecessary delay, and potentially put at risk the timely ratification and implementation of the benefits of that treaty. The Government believes that increased provision of information at the commencement of negotiations, improved information in Explanatory Memoranda in support of formal scrutiny under CRaG and the ability to extend the 21 day period removes the need for the routine provision of full agreement text at the point of conclusion with the Third Party. However, the Government will consider on a case-by-case basis any request by a committee for early disclosure of signed treaty text to aid a committee in its work, for a short period before formal laying under CRaG, solely to help that committee in managing its scrutiny workload.

As the Committee notes, there is already provision within the CRaG framework for extensions to the 21 sitting day period to be made, by means of a minister laying a Written Ministerial Statement to that effect. The Government will consider any request from a scrutiny committee to extend the sitting day period where there are compelling reasons, and sufficient time, to do so.

**22. The quality of explanatory memorandums accompanying treaties will need to improve to allow Parliament to conduct effective scrutiny. (Paragraph 122)**

**23. The proposed treaty committee could set guidelines for the Government on the expected contents of explanatory memorandums and other materials such as impact assessments, similar to those developed for statutory instruments by the Secondary Legislation Scrutiny Committee. (Paragraph 123)**

In all cases, treaties laid before Parliament under CRaG must be accompanied by an Explanatory Memorandum. The Government is committed to ensuring the quality of Explanatory Memoranda is improved, including by working with clerks to the committees to ensure the information provided to Parliament is clear, and aids scrutiny of the accompanying treaty.

Within the programme of replicating the EU's international agreements for the UK post EU exit, officials have introduced new quality control measures for Explanatory Memoranda laid with treaties – templates, clearance procedures etc. – to ensure that they are as clear and helpful as possible. Weekly meetings between Government officials and clerks to the Lords European Union Committee have aided this process. There is benefit in Government officials continuing to engage directly with the clerks of the committees, including any new scrutiny committee, as new international agreements are laid before Parliament under CRaG.

In response to the Joint Committee on Human Rights report on Human Rights Protections in International Agreements, the Government confirmed that it has already committed to set out in Explanatory Memoranda whether or not there are any 'significant human rights implications', and to update the template to include a standard heading directing departments to consider the human rights implications of the Treaty, for all Treaties. Here the lead department would set out the compatibility of the treaty provisions with the UK's international human rights obligations, noting that the terms of a treaty cannot amend domestic human rights protections contained in the Human Rights Act 1998. In the unlikely event that implementation would require any such legislative change this would be set out in the Explanatory Memorandum. Where the Department is of the view that there are no significant implications, this must also be stated.

However, there is not a one size fits all answer about how detailed an Explanatory Memorandum should be. It needs to provide enough detail to allow a committee to perform its work, without being so burdensome that it duplicates the treaty. The Government acknowledges that any remaining deficiencies should be remedied - the Government commits officials to engage with clerks from any scrutiny committee to discuss how to further improve Explanatory Memoranda. The Foreign and Commonwealth Office will also strengthen its role in offering guidance to, and ensuring adherence by, Departments to internal guidance and liaising with parliamentary committees to seek feedback on the quality of explanatory material.

**24. As part of its treaty-making after the UK leaves the European Union, the UK Government must engage effectively with the devolved institutions on treaties that involve areas of devolved competence. (Paragraph 140)**

The UK Government remains committed to working closely with the devolved administrations and legislatures as the UK exits the EU.

Notwithstanding the United Kingdom Government's overall responsibility for concluding treaties and other international agreements, and ensuring compliance with the United Kingdom's international obligations, the UK Government is resolute on the principles of good communication, consultation and cooperation with the devolved

administrations as set out in the Memorandum of Understanding (MoU) and supplementary agreements between the UK Government and the devolved administrations agreed in 2013. The Government will continue to involve the devolved administrations in the formulation of the UK's position for international negotiations where these involve devolved matters (including non-devolved matters which impact devolved areas).

In line with these principles, the Government has committed to, and continues to work closely with, the devolved administrations to deliver a future trade policy that works for the whole of the UK. There has been consistent engagement with the devolved administrations on future trade policy at all levels. The Secretary of State for International Trade has recently visited Cardiff and Glasgow and had positive meetings with the Ministers for Trade in both the Welsh and Scottish Governments. Minister Hollingbery also speaks regularly with his counterparts and has given evidence to committees in the Scottish Parliament and National Assembly for Wales.

This ministerial engagement on trade policy is supported at official level by a programme of senior official engagement and trade policy roundtables with the devolved administrations to ensure they can inform the development of trade policy, particularly where that interacts with areas of devolved competence. The Department for International Trade organises a 6-weekly Senior Officials Group meeting with the devolved administrations that rotates around the four nations of the UK.

Department for International Trade officials have offered briefings on the continuity trade agreements on request and where appropriate. DIT now share draft texts of continuity trade agreements with the devolved administrations as soon as the texts are stable, as recommended by the House of Lords European Union Committee as part of its scrutiny of EU exit related agreements. DIT also share with the devolved administrations draft Parliamentary Reports and Explanatory Memoranda of continuity trade agreements ahead of their publication.

**25. The UK Government will need to consult the devolved governments about their interests when opening negotiations, not just to respect the competences of those governments but also in acknowledgement of the important role devolved administrations may play in the implementation of new international obligations. It is also likely that other countries participating in negotiations will seek to ensure that any new treaty will be implemented fully throughout the UK. The same logic applies to representatives from the devolved governments forming part of the UK Government's team in relevant negotiations. (Paragraph 141)**

In accordance with the Intergovernmental Relations MoU, the FCO, or as appropriate another lead UK Department, will continue to consult the devolved administrations about the formulation of the UK's position for international negotiations where these

touch on devolved matters (including non-devolved matters which impact upon devolved areas). The Government will continue to share papers, including relevant interdepartmental correspondence, and invite the DAs to meetings on subjects in which they have a devolved policy interest. The Government remains committed to timely consultation where possible.

Specifically on future trade policy, the Government agrees with the Committee that the devolved administrations must have a real and meaningful role in the development of UK trade policy and that is why a new Ministerial Forum for international trade (referenced by the Committee in paragraph 28) is being established.

These new structures will ensure there is meaningful engagement with the devolved administrations at all stages of a negotiation, including prior to developing the mandate and finalising the agreement.

**26. Inter-governmental relations have been under stress in recent years. This reflects in part the different political composition of the governments in Westminster, Edinburgh and Cardiff, and the significant additional strain of Brexit. As we have observed in our legislative scrutiny, this has manifested itself in a number of ways including disputes over legislative consent. (Paragraph 149)**

**27. It is disappointing that the recommendations of our previous reports to address the shortcomings of inter-governmental relations have not been acted on. While some tension is inevitable where competences overlap, particularly in the politically-charged context of Brexit, if problems with the inter-governmental machinery had been addressed at an earlier stage, some of them might have been ameliorated. (Paragraph 150)**

**28. We welcome the review of the Memorandum of Understanding on intergovernmental relations and the operation of Joint Ministerial Committee structures. It is essential that agreement can be reached on its future operation, including its dispute resolution mechanism, in order to strengthen working relationships and provide a basis for cross-government working, including the negotiation and implementation of treaties. To this end, we also welcome the announcement of a new Ministerial Forum for international trade. (Paragraph 151)**

The UK Government shares the Committee's desire to ensure intergovernmental structures, including a dispute resolution mechanism, continue to work effectively. The Minister for the Constitution, Chloe Smith MP, highlighted in her oral evidence of March 2018 to the Committee, that there had been significant improvements to the Joint Ministerial Committee apparatus and that the Government would continue to consider constitutional matters at every level. Officials are working together to ensure that the existing dispute resolution mechanism can be adapted to manage the range of differences and unique circumstances that may arise as the UK leaves the EU,

including those involving third parties. The principles of good communication and consultation will remain key to managing any differences.

At the Joint Ministerial Committee (Plenary) on 14 March 2018, Ministers from the UK Government and devolved administrations agreed to review the existing intergovernmental structures. Officials were tasked to take this forward and have been considering five workstreams: principles, domestic governance, dispute resolution, machinery and international engagement. On 19 December, the Prime Minister together with the First Ministers of Scotland and Wales reviewed progress made so far on these workstreams and agreed areas for ongoing focus.

Whilst international trade policy is reserved, the UK Government is committed to, and continues to, work closely with the devolved administrations to deliver a future trade policy that works for the whole of the UK. The new Ministerial Forum for international trade will ensure there is a regular and formal structure to support discussion and engagement between the UK Government and the devolved administrations on trade agreements.

**29. It is essential that the devolved governments are effectively involved in treaty negotiations. This should ensure that devolved competences are respected and that the devolved legislatures are able to undertake meaningful scrutiny of the treaty actions that will affect them, as the impact in some policy areas could be significant. (Paragraph 156)**

As the Chancellor of the Duchy of Lancaster outlined in his oral evidence to the Committee, the UK Government's position remains that the devolution Acts stipulate that international relations are the responsibility of the UK Government and Parliament, but observing and implementing international obligations in respect of matters which are within the competence of the devolved legislatures is not reserved. As outlined above, the UK Government is committed to ensuring devolved administrations will have a meaningful role in negotiations. It will be for devolved administrations to determine the level of involvement they provide their legislatures.

The UK Government recognises that the devolved administrations are generally responsible for the implementation of international obligations in areas of devolved competence, and will seek to cooperate with them in this. Although the Sewel Convention does not apply to the negotiation of treaties and mandate setting, which are both reserved matters, the UK Government will continue to adhere to Sewel if primary legislation to implement an international agreement is within the competence of the devolved legislatures.