



HOUSE OF LORDS

Constitution Committee inquiry: parliamentary scrutiny of treaties

Call for evidence

The Constitution Committee has launched an inquiry into the parliamentary scrutiny of treaties and invites individuals and organisations to submit evidence.

When the UK leaves the European Union, the Government will seek to rollover and replicate some existing international treaties and begin negotiation on new treaties. These will be both with the EU and with other countries, and on a wide range of topics including aviation, fisheries and nuclear safety, as well as trade.

Parliament currently has few procedures or mechanisms for scrutinising the government's treaty actions, and its role needs to be re-examined to ensure that it is sufficiently robust to deal with potentially many more treaties.

Parliament's treaty role was put on a statutory basis by the Constitutional Reform and Governance Act 2010. The Act formalised some of the Ponsonby Rule, placing a requirement on the Government to lay before Parliament most treaties that it wishes to ratify, along with an Explanatory Memorandum. For the first time, the Act also gave parliamentary disapproval of treaties statutory effect, and gave the House of Commons a power to block ratification. In addition, since 2014 the Secondary Legislation Scrutiny Committee has scrutinised treaties laid before Parliament at the point of ratification, and some select committees also look at some treaty actions in their areas. Further, parts of some treaties need implementing legislation in the UK, allowing Parliament to consider how those elements will be implemented in the UK. But unlike in some other countries, Parliament does not have to approve most treaties, or debate or vote on them, and has no formal opportunity to influence their terms.

Parliamentary scrutiny of treaties at the EU-level is more substantial. The EU Parliament is required to authorise the opening and conclusion of treaty negotiations and the EU's negotiator is required to keep the relevant parliamentary committee fully updated throughout the process. This system of parliamentary oversight of negotiations and treaty agreements will cease to apply after Brexit, resulting in a reduction in the scrutiny of treaties that affect the UK.

For this inquiry, the Committee is interested in: the effectiveness of Parliament's current treaty role; how other countries' parliaments and the EU Parliament conduct treaty scrutiny; and, how and when Parliament should scrutinise government's negotiating of and agreement to treaties after Brexit.

The Committee welcomes written submissions on any aspect of this topic, and particularly on the issues and questions set out below. Submissions need not address all the questions. We welcome contributions from all interested individuals and organisations. Written evidence should be submitted online via the Committee's website: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee>. The deadline for submissions is **5pm on Thursday 6 December 2018**.



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Questions

- 1) How effective is Parliament's current scrutiny of treaties in both holding the Government to account and helping it get the best agreements possible? How useful are the processes and powers under the Constitutional Reform and Governance Act 2010 and do they strike the right balance between Parliament and government?
- 2) What challenges does Brexit pose for Parliament's consideration of treaties?
- 3) What role should Parliament have in the future in scrutinising treaties, from potentially requiring approval for the negotiating mandate through negotiations themselves to treaty agreement, as well as in subsequent treaty actions like amendments, derogations, enforcement and withdrawal? How should this link to Parliament's consideration of treaty-implementing legislation?
- 4) To what extent, if at all, does the judgment of the Supreme Court in the *Miller* case on triggering Article 50 have implications for the government's future treaty actions?
- 5) Should different types of treaties be subject to different levels of scrutiny? If so, how should these be differentiated?
- 6) Is a parliamentary treaties scrutiny committee required to examine government treaty actions post-Brexit? If so, how should it be composed and supported, and what powers should it have? Or would another model be appropriate?
- 7) What information should the government provide to Parliament on its treaty actions? Should there be a regular reporting requirement during negotiations?
- 8) How might the government and/or Parliament best engage other stakeholders and members of the public during treaty negotiation and scrutiny?
- 9) What models of treaty scrutiny in other countries are most effective and what might the UK Parliament learn from them?
- 10) What role should the devolved institutions have in negotiating and agreeing treaties?

ANNEX: GUIDANCE FOR SUBMISSIONS

Written evidence must be submitted online via the committee's inquiry page www.parliament.uk/hlconstitution-parliamentary-scrutiny-of-treaties-submission-form. Please do not submit PDFs (if you do not have access to Microsoft Word you may submit in another editable electronic form). If you cannot submit evidence online, please contact the committee staff.

The deadline for written evidence is 5pm on Thursday 6 December 2018.

Concise submissions are preferred. A submission longer than six pages should include a one-page summary. Paragraphs should be numbered. Submissions should be dated, with a note of the author's name, and of whether the author is making the submission on an individual or a corporate basis. All submissions submitted online will be acknowledged automatically.

Personal contact details supplied to the committee will be removed from submissions before publication but will be retained by the committee staff for specific purposes relating to the committee's work, such as seeking additional information.

Submissions become the property of the committee which will decide whether to accept them as evidence. Evidence may be published by the committee at any stage. It will appear on the committee's website and be deposited in the Parliamentary Archives. Once you have received acknowledgement that your submission has been accepted as evidence you may publicise or publish it yourself, but in doing so you must indicate that it was prepared for the committee. If you publish your evidence separately you should be aware that you will be legally responsible for its content.

You should not comment on individual cases currently before a court of law, or matters in respect of which court proceedings are imminent. If you anticipate such issues arising, you should discuss with the clerk of the committee how this might affect your submission.

Certain individuals and organisations may be invited to appear in person before the committee to give oral evidence. Oral evidence is usually given in public at Westminster and broadcast in audio and online. Persons invited to give oral evidence will be notified separately of the procedure to be followed and the topics likely to be discussed.

Substantive communications to the committee about the inquiry should be addressed through the clerk or the chairman of the committee, whether or not they are intended to constitute formal evidence to the committee.

This is a public call for evidence. Please bring it to the attention of other groups and individuals who may not have received a copy directly.

You may follow the progress of the inquiry at www.parliament.uk/hlconstitution-parliamentary-scrutiny-of-treaties.

To contact the staff of the committee, please email constitution@parliament.uk