

**Public Administration and Constitutional Affairs Committee  
Scrutiny of International Treaties and other International Agreements in the 21<sup>st</sup>-century  
inquiry**

**Introduction**

1. This joint submission to PACAC's inquiry on The Scrutiny of International Treaties and other International Agreements in the 21st century updates our previous evidence. Recent developments in this area further erode rights and increase the barriers to parliamentary accountability instead of facilitating democratic scrutiny. We argue that this urgently necessitates new approaches to scrutinising the UK's international instruments.
2. We focus on four issues:
  - the implications of abolishing the Commons International Trade Committee;
  - use and oversight of Memoranda of Understanding such as the UK-Rwanda MoU;
  - amendments to international agreements such as trade agreements or the Windsor Framework; and
  - using scrutiny of implementing legislation as a proxy for debating treaties and treaty amendments.
3. We conclude with some revised recommendations to make the scrutiny of treaties and other international arrangements in the House of Commons more effective in upholding rights and holding the government to account. In particular:
  - all Departmental select committees should include treaty scrutiny in their core tasks;
  - the Commons should establish a new treaty sifting committee;
  - the Government should not use Memoranda of Understanding to enter into significant arrangements which affect individual rights, since such arrangements can be used to evade parliamentary scrutiny, or else such Memoranda should become subject to scrutiny;

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- there should be a new requirement for Commons consent to important international instruments.

### **Implications of abolishing the Commons International Trade Select Committee**

4. On 22 March 2023, the Leader of the House indicated that, following the machinery of Government changes which included the abolition of the Department for International Trade, the Government also intended to abolish the International Trade Select Committee (ITC) and replace it with a merged Business and Trade Committee (BAT). Instead of being a new committee, with new members and election for a new chair, the BAT Committee would simply be a rebadging of the existing Business, Energy and Industrial Strategy Committee with its existing members and chair staying in place.
5. This change was confirmed by the House of Commons on 27 March [without a vote](#).
6. This is a retrograde step for the Commons' fledgling treaty scrutiny. It will adversely affect people and businesses whose rights are affected by trade treaties in matters from data flows to healthcare to environmental protection. Abolishing the ITC is likely to hollow out the few existing government commitments on treaty scrutiny in the House of Commons, end the ITC's existing inquiries into important trade treaties, and mean that vital experience, expertise and networks are lost. It significantly alters the treaty scrutiny landscape in the Commons, meaning that prior recommendations are now inappropriate.
7. Firstly, this committee change could result in the Government's limited [commitments](#) to increased scrutiny of free trade agreements in the Commons being dropped, as many of those commitments refer specifically to the ITC. Placing commitments only in correspondence with specific committees is not appropriate given that the Government can effectively abolish those committees simply by closing or merging departments.
8. Secondly, all the ITC's current work is likely to be dropped or downgraded. This includes inquiries on new trade treaties with India and the Gulf Cooperation Council that will have important rights implications and trade-offs that constituents care about, as well as on the future UK-EU trading relationship and other UK trade negotiations. The UK's imminent accession to Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) would have been next on the ITC's agenda: this will be a complex and politically contentious ratification process, and the Committee has been building expertise and taking evidence on CPTPP for almost eighteen months so that it could be properly equipped to scrutinise the accession process.

9. Thirdly, the Chair and members of the BAT Committee do not appear to have any experience of or expertise on treaty scrutiny. None of the current Members have served on the ITC, so they are likely to be starting from scratch to understand treaties, why they matter, how and when to scrutinise them, and what scrutiny the government has previously committed to. Institutional memory of Commons treaty scrutiny, and connections with Lords counterparts on the International Agreements Committee (IAC) and civil society stakeholders will be significantly reduced, even if experienced specialist ITC staff are moved over to the BAT Committee.
10. Finally, the BAT Committee would have a much larger remit than the ITC, so treaty scrutiny is likely to be squeezed into an even smaller space or de-prioritised altogether. As it was, the ITC often felt it did not have enough capacity to scrutinise treaties properly. This is likely to accentuate the problem that businesses are the dominant voice heard by the government on trade (its [Trade Advisory Groups](#) for example are made up exclusively of business representatives, and the separate [Trade Union Advisory Group](#) appears not to have met since 2021).
11. While we acknowledge that the ITC was far from perfect, it did recognise the [importance of treaty scrutiny](#) and consistently pushed for meaningful information on the full impacts of treaties, enough time for proper scrutiny and evidence-gathering, and debates at a point where they could make a difference. For example, it played a crucial role in challenging the [inadequacy of the treaty scrutiny process](#) for the UK's first from-scratch, post-Brexit free trade agreement, and worked with the IAC to obtain [new commitments](#) from the government on ensuring enough time for scrutiny. It also called out the government for pretending that a debate on [implementing legislation](#) was a substitute for debating a whole treaty (see further below).
12. The change shows that treaty scrutiny mechanisms in the House of Commons are both fragile and contingent. When the ITC was in place there was at least one Commons select committee that spent a substantial part of its time scrutinising one of the most significant categories of treaty and building up experience, expertise and networks. It was therefore argued by some that little more was needed. But now that the ITC has been abolished, new Commons treaty scrutiny structures and arrangements are urgently needed..

### **Use and oversight of Memoranda of Understanding**

13. The question of scrutinising important Memoranda of Understanding (MoUs) and other non-binding international arrangements is already on the Committee's radar. However, the recent UK-Rwanda Asylum Partnership Arrangement - with far-reaching consequences for affected individuals and their rights - highlights the problems with the

Government's current use of MoUs, and the inadequacy of Parliament's scrutiny mechanisms for MoUs.

14. Concluding an arrangement which asserts that it is not binding on either party in international law means that the parties do not intend it to be a treaty governed by the international law of treaties or the rules of state responsibility for internationally wrongful acts. There is no certainty about what would happen if breaches of the arrangement were discovered, even if an effective monitoring mechanism is put in place. Only political consequences can be imposed for a breach, and neither the UK Government nor individuals can rely on its terms in any court.
15. An example of the problems caused by the lack of enforceability of MoUs is the case of [Yunus Rahmatullah](#), who was captured by British forces in Iraq in 2004 and transferred to US detention under a 2003 MoU: his lawyers obtaining a grant of habeas corpus from the Court of Appeal but the UK was unable to convince the US to keep its promise under the MoU to return him on request.
16. Further, by choosing to conclude the Rwanda arrangement as an MoU rather than a treaty, the Government was able to avoid the UK's rules on publication and parliamentary oversight of treaties. This is not an appropriate vehicle for any international instrument that engages individual rights, as it shows a lack of commitment to rights, justice and accountability.
17. In October 2022, the IAC published a critical [report](#), expressing significant concerns about both the arrangement itself and the lack of scrutiny. Questions about the arrangement's compatibility with the European Convention on Human Rights and the Refugee Convention are currently before the courts.
18. The Committee noted that because MoUs are not legally binding, the safeguards set out in the UK-Rwanda MoU for relocated individuals are not legally enforceable—neither the individuals themselves nor the UK Government can ensure the rights of those affected are protected once they have been transferred to Rwanda. It recommended that all international arrangements which have significant human rights implications should be contained in legally enforceable treaties. Where this is not possible, it called on the Government to deposit MoUs for parliamentary scrutiny in the same way as a treaty—that is, allowing for a gap of at least 21 sitting days between the deposit of the MoU before Parliament and its implementation.
19. We believe that this recommendation should be extended. Any international instrument that engages individual rights or has significant economic, environmental or political implications should be published and submitted for scrutiny by Parliament before it

comes into force, whatever its form. This would reflect the third limb of the Ponsonby Rule of 1924 where the Government committed disclose agreements, commitments and undertakings that “involve international obligations of a serious character” to Parliament, whether or not they amounted to a formal treaty. In spite of this commitment, at present, the Government has stated that it does not believe it is under any obligation routinely to disclose MoUs to Parliament.

## **Amendments to International Agreements**

20. The issue of amendments to international agreements is also already on the Committee's agenda. However, the conclusion and implementation of the [Windsor Framework](#) highlights the defectiveness of the current arrangements.
21. Whatever one's views on Brexit and the Northern Ireland Protocol, the Windsor Framework was a significant agreement between the UK and the European Union. But, because it was not considered to be a new treaty, it did not require ratification and so was not subject to the provisions of the Constitutional Reform and Governance Act 2010. This meant that Parliament did not even receive the usual 21 sitting day period to scrutinise the new deal. Any scrutiny the agreement received was essentially optional and subject to the Government's discretion. It is easy to see how such a situation could be abused.
22. The issue is not unique to the UK's agreements with the EU. Many international agreements, including FTAs, allow for amendments to be made by mutual consent of the parties under a Joint Committee process. This is a normal mechanism in modern trade agreements. Unless these changes require the passage of domestic legislation, there are no guarantees that they will even be notified to Parliament in a timely fashion.
23. Section 25(2) of CRAG 2010 sets out when an amendment to an international agreement is subject to ratification (and therefore to the CRAG process). The provision is high on incomprehensible and open to a number of interpretations. We argue that it is in need of reform and support the recommendation made by the IAC at paragraph 71 of its report [Working practices: one year on](#).

## **Scrutiny of implementing legislation**

24. Twice recently the Government has argued that debating implementing legislation – however limited in scope and substance – provides an adequate proxy for debating new treaty commitments.
25. First, the Government [refused](#) to make time to debate the UK-Australia FTA in the House of Commons during the statutory scrutiny period under CRAG in June-July 2022, despite previous promises. The Minister cited the fact that the agreement would be implemented through primary legislation – the Trade (Australia and New Zealand) Bill – which would be 'fully scrutinised and approved by Parliament'.
26. However, debating the Bill was no substitute for debating the treaty itself. It was merely a skeleton Bill granting the Government broad delegated powers, it covered only a very

small element of the FTA, and it was not debated in the Commons until well after the CRAG period. As a [Public Law Project briefing on the Bill](#) stated, the Commons was being asked to pass bare-bones legislation implementing an agreement that it was not given the opportunity to debate.

27. Second, on 16 March 2023, the Government announced that it would regard the House of Commons' vote on a Statutory Instrument implementing the 'Stormont Brake' element of the Windsor Framework, held on 22 March, as the promised vote on the whole deal. As the [Hansard Society pointed out](#), even this debate was rushed, and SI procedures are generally inadequate and in need of reform.

### **Recommendations**

28. To embed and develop the increasingly important work relating to the scrutiny of international agreements, the Commons needs to change. For example, **all Commons committees should include treaty scrutiny in their core tasks.**
29. Like the Lords, the Commons should have a dedicated treaty scrutiny committee. However, we suggest that, rather than seeking to replicate the model which exists in the House of Lords, or merging the IAC into a joint treaty committee, **the Commons should look to establish a Treaty Sifting Committee**, which could identify international agreements and MoUs which are politically or legally important and assist the relevant departmental select committees with scrutinising them. Such a Committee could be relatively small, with a similar staffing contingent to the IAC. The establishment of such a committee would ensure that treaty scrutiny work could be developed and joined up across the Commons (and with the Lords and devolved legislatures).
30. **The Government should not use MoUs to enter into significant arrangements, particularly those which affect individual rights, since these arrangements can come into force immediately and with no scrutiny by Parliament.**
31. Further, a [Government-Parliament concordat on treaty scrutiny](#), **setting out respective roles and responsibilities, should replace the existing exchange of letters with individual committees.** This Concordat should reinstate the third limb of the Ponsonby Rule and enable Parliament to scrutinise politically important MoUs in the same way that it can scrutinise treaties. The Government should also use this opportunity to clarify the circumstances in which amendments to international agreements are subject to ratification and therefore notified to Parliament and made subject to scrutiny.
32. Ultimately, for more parliamentarians to really see the value of treaty scrutiny, the system needs to change so that the **consent of the House of Commons is required for**

**the most important treaties and treaty amendments.** This would give greater focus and power to committees' treaty scrutiny, and prevent the Government from relying on inadequate scrutiny of limited implementing legislation in place of debating the full treaty itself. It would mean that, whatever the structure, Parliament could give a stronger voice to everyone affected by treaties and meaningfully hold the government to account. There is no escaping the fact that this would require some changes to be made to the statutory framework, most sensibly by amending the Constitutional Reform and Governance Act 2010.

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