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# Treaties

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The Vienna Convention on the Law of Treaties (in force since 1980) defines a treaty as:

‘an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation’

Only a minority of such agreements have “treaty” in their title. Other common names include “convention”, “protocol” and “agreement”.

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## Introduction

The Vienna Convention on the Law of Treaties (in force since 1980) defines a treaty as:

‘an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation’

Only a minority of such agreements have “treaty” in their title. Other common names include “convention”, “protocol” and “agreement”.

This Factsheet looks at the roles of Parliament and the Executive in treaty making, how and when treaties are ratified and information on how to find copies of treaties.

## Parliament and Treaties

According to constitutional practice in the United Kingdom, Parliament has no formal role in treaty-making, as the power to do so is vested in the executive, acting on behalf of the Crown. Where a treaty requires a change in UK legislation or the grant of public money, Parliament may vote in the normal way to make or deny the required provision; in other circumstances it can only overcome the will of the executive to conclude a particular treaty by expressing disapproval and relying on political pressure to change the mind of ministers, or, in the extreme case, by withdrawing its confidence from them.

The lack of formal parliamentary involvement in treaty-making differentiates the British Parliament from most other national legislatures. With few exceptions, most written constitutions stipulate that parliamentary approval of treaties is required before ratification for at least some categories of treaty. (The constitution of the United States provides that treaties are made by ‘the President by and with the advice and consent of two-thirds of the Senators’).

The difference between UK and practice elsewhere is actually smaller than it appears and there are a number of conventions which ensure the scrutiny of treaties by Parliament:

- Treaties with direct financial implications require the assent of Parliament because they affect revenue. The most common type are bilateral agreements to avoid double taxation. The texts are laid in the form of draft Orders in Council and are occasionally debated.
- Many treaties require a change to domestic legislation which will be subject to the usual parliamentary procedures.
- Treaties which stipulate Parliamentary approval - where an agreement is of a political nature and is known to be controversial, one or both of the governments involved may wish to safeguard its position by writing an express requirement for parliamentary approval into the text.
- Treaties which require ratification are subject to the Ponsonby procedure (see below)
- Other treaties and international agreements may be subject to some degree of parliamentary scrutiny if a Member raises the issue through a Parliamentary Question or early Day Motion, for example.

### **The Ponsonby Rule**

During the last century, a practice was established whereby any treaty subject to ratification is laid before Parliament for at least 21 sitting days before ratification is carried out, ratification being by executive power. This practice began as an undertaking given in 1924 by Arthur Ponsonby, the Under-Secretary of State for Foreign Affairs in the first government of Ramsay Macdonald.

Ponsonby's undertaking, given in the course of the Second Reading of the *Treaty of Peace (Turkey) Bill* on 1 April 1924<sup>1</sup>, was actually in two parts: to lay every treaty, when signed, for a period of 21 sitting days before ratification and publication in the Treaty Series; and to inform the House of all other 'agreements, commitments and understandings which may in any way bind the nation to specific action in certain circumstances'. The Ponsonby Rule was withdrawn during the subsequent Baldwin government, but it was reinstated in 1929 and gradually hardened into a constitutional practice, observed in principle by all governments, except in special cases, for instance in an emergency.

The Foreign and Common Office (FCO) interprets the rule as applying to accession, approval and acceptance, as well as to ratification. (Accession arises when the British Government accedes to a treaty of which it was not an original signatory while the treaty was open for signature.) There is no presumption that Parliament will debate every treaty laid under the Ponsonby Rule, but once Parliament has been presented with the text of an important or controversial treaty it is difficult in practice for the Leader of the House to resist a debate on it. Indeed Ponsonby's original announcement included the promise that, 'if there is a formal demand for discussion forwarded through the usual channels from the opposition or any other party, time will be found for the discussion of the treaty in question'. On occasions when the opposition front bench does not make a formal request for a debate, it is possible for backbenchers to secure a debate in private members' time. Consequently, despite the lack of a formal mechanism, most controversial treaties which require ratification are as likely to be debated in the House of Commons as in other comparable parliaments.

### **Involvement of Select Committees**

In October 2000, the Government accepted certain recommendations made by the Procedure Committee in its second report of 1999-2000, *Parliamentary Scrutiny of Treaties*.<sup>2</sup> This had the effect of giving departmental select committees a greater role in the scrutiny of treaties. The Government undertook to provide a copy of any treaty laid before Parliament under the Ponsonby Rule, with an Explanatory Memorandum, to what it regarded as the most appropriate departmental select committee, so that the committee could carry out an inquiry if it so wished. The committee could choose to pass it on to another committee or committees if it thought this appropriate. The normal time for scrutiny by the committee(s) would still be 21 days, although "the Government would aim to respond positively" to requests for an extension. This is now "routine practice". The extent of the scrutiny which might follow will inevitably depend on the Committee's other priorities and demands on its time.

The Procedure Committee also recommended that the Government undertake to accept a recommendation made by the relevant select committee and supported by the Liaison Committee for debate on the floor of the House of a treaty requiring ratification and having major political, military or diplomatic implications.

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<sup>1</sup> HC Deb c171, 1 April 1924,

<sup>2</sup> Procedure Committee Second report of 1999-2000, *Parliamentary Scrutiny of Treaties*, HC 210. <http://www.publications.parliament.uk/pa/cm/199900/cmselect/cmproced/210/21002.htm>

The Joint Committee on Human Rights (JCHR) has decided to report to Parliament on “all human rights treaties, or amendments to such treaties.”<sup>3</sup> The Government has undertaken to send copies of any Treaties with ‘significant’ human rights issues to the JCHR.

#### **Other methods of scrutiny**

Other methods of Parliamentary scrutiny may be used, in cases of emergency, to conform to the spirit, if not the letter, of the Ponsonby Rule, for example if:

- a Bill is passed
- a Motion is adopted
- an announcement is made in the House
- an Order in Council is subject to affirmative procedure
- a Parliamentary Question is answered
- during a recess the leaders of the opposition parties are consulted

#### **Extra-parliamentary scrutiny**

Sometimes the Government organises a public consultation exercise on a treaty prior to ratification. The first example was the public discussion of a draft International Criminal Court Bill in 2000, which led to the International Criminal Court Act 2001 and ratification of the 1998 Rome Statute for the International Criminal Court.

In 2008 the Government issued a general consultation paper and then consulted on the Draft Cultural Property Armed Forces Bill<sup>4</sup> in connection with the ratification of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

The Government has also consulted during negotiations of a treaty for example; between April and September 2002 it consulted the public on amending the 1972 Biological and Toxin Weapons Convention<sup>5</sup>

#### **Treaties not subject to ratification**

The British Government, like other governments, frequently concludes treaties with other governments that are not subject to ratification. Ratification was the norm in treaty-making when it was necessary to ensure that the ministers or diplomats who had negotiated the treaty had not exceeded their instructions and that the government in question was prepared to be bound by the text which they had signed. Modern communications have made it possible for negotiators to remain constantly in touch with their governments. As a result the modern view of international law is that treaties need ratification only if a specific requirement for it is written into the treaty because national legislation is needed to implement the treaty or there is a strong political content.

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<sup>3</sup> Joint Committee on Human Rights, First report of 2004-05, HL Paper 8, HC 106, 8 December 2004  
<http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/8/8.pdf>

<sup>4</sup> Draft Cultural Property (Armed Conflicts) Bill Session 2007-08, Cm 7298, January 2008:  
<http://www.culture.gov.uk/images/publications/culturalpropertyarmedconflictsdraftbill.pdf>

<sup>5</sup> Strengthening the Biological and Toxin Weapons Convention: Countering the Threat from Biological Weapons, Cm 5484, April 2002:  
<http://collections.europarchive.org/tna/20080205132101/www.fco.gov.uk/Files/kfile/btwc290402,0.pdf>

### **Explanatory Memoranda**

Since January 1997 Explanatory Memoranda have been published with all treaties laid before Parliament under the Ponsonby Rule, the aim of which is to improve Parliamentary scrutiny of treaties. Explanatory Memoranda are made available to Members of Parliament and Members of the House of Lords through the Vote Office and Printed Paper Office. The Explanatory Memoranda describes the contents of the treaty, explaining the reasoning behind the proposal for the UK's participation in the treaty and the arguments for and against the UK becoming party to such an agreement.

These memoranda are also published on the FCO's Treaty website at:

<http://www.fco.gov.uk/en/about-us/publications-and-documents/treaty-command-papers-ems/explanatory-memoranda/>

### **Memoranda of Understanding**

Memoranda of Understanding are not treaties and are not governed by international law. Nonetheless, such non-binding agreements are quite common between allied governments, for example, in respect of detailed defence arrangements. British governments have not normally felt under any obligation to submit agreements of this nature to Parliament and whilst it may be announced that the memorandum has been signed the contents may not be revealed.

Explanatory Memoranda are not published for Memoranda of Understanding.

### **European Union Treaties**

All EU treaties require legislation for their implementation in the UK and are therefore subject to parliamentary scrutiny. The Treaty of Rome is given effect in the UK by the *European Communities Act 1972*. Any amendment has to be given effect by UK legislation, thus the enlargements of the EC to include Greece, Spain, Portugal, Austria, Finland and Sweden required amending Acts of Parliament in Britain.

The Treaty on European Union (known as the Maastricht Treaty after the city in the Netherlands where it was signed in 1991) contained changes to the structure of European co-operation with constitutional implications for the UK. These changes were implemented in the UK by amending the *European Communities Act 1972*.

The Maastricht Treaty dealt with inter-governmental co-operation in foreign and security policy, in justice and home affairs, and created the European Union. The European Union is sometimes described as consisting of three pillars, of which the basic European Community treaties form the first, the Common Foreign and Security Policy forms the second, and co-operation in the fields of Justice and Home Affairs forms the third. Legally binding agreements under the third pillar are one example of international agreement submitted to the scrutiny committees of both Houses. The scrutiny committees of both Houses mainly deal with secondary legislation but also look at international agreements.

During the Inter Governmental Conference to conclude the Treaty of Amsterdam the scrutiny committees were sent texts of the draft Treaty to examine. This treaty, which came into effect on 1 May 1999, amended the Rome and Maastricht treaties and extended the powers of the European Parliament. Again primary legislation was required to give effect in UK law to amendments to the Community Treaties.

## Other agreements

There are other agreements that are politically, but not legally, binding. These are strictly not treaties at all but share many characteristics with treaties. The 35-nation Conference on Security and Co-operation in Europe (CSCE) produced a Final Act on 1 August 1975, usually known as the Helsinki Final Act. The Final Act imposed a wide range of obligations upon the signatories and the latter declared ‘their determination to act in accordance with the provisions’. Nevertheless, the text stated quite explicitly that the Final Act was not eligible for registration under Article 102 of the UN Charter; that is, it was not to be governed by international law. (See also Memoranda of Understanding).

## Devolution and Treaties

As an aspect of international relations treaty-making remains within the responsibilities retained by the Government. It is clear that the implementation of treaties will have a direct impact on the devolved bodies. They are therefore consulted beforehand on any treaties which may have implications in their areas of competence. The Westminster Parliament will retain the powers to legislate in the implementation of treaty obligations. However, it is not the wish of the Government or Parliament to use treaty-making as a method to undermine the legislative and administration autonomy of the devolved bodies. Therefore, where treaty provisions require domestic implementation which lies within the remit of the devolved bodies they will retain their legislative and administrative powers to fulfil the obligations.

## Proposals for Change

In recent years there have been a number of calls for Parliamentary scrutiny of treaties to be enhanced<sup>6</sup>.

On 25 March 2008 the Government published a draft *Constitutional Renewal Bill* and white paper<sup>7</sup> which included provisions on the Parliamentary scrutiny of treaties. The draft Bill proposed to place existing customary arrangements on a statutory footing.

On the 20<sup>th</sup> July 2009 the Government laid down before Parliament the ‘Constitutional Reform and Governance Bill’<sup>8</sup>. Part 2 of this Bill<sup>9</sup> (as detailed in the Explanatory Notes)

“Puts Parliamentary scrutiny of treaty ratification on a statutory footing and gives legal effect to a resolution of the House of Commons or Lords that a treaty should not be ratified. This means that should the House of Commons take the view that the Government should not proceed to ratify a treaty, it can resolve against ratification and thus make it unlawful for the Government to ratify the treaty. The House of Lords will not be able to prevent the Government from ratifying a treaty, but if they resolve against ratification the Government will have to produce a further explanatory statement explaining its belief that the agreement should be ratified”

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<sup>6</sup> See House of Commons Library Standard Note: SN/IA/04693 ‘[Parliamentary scrutiny of treaties](http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snia-04693.pdf)’  
<http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snia-04693.pdf>

<sup>7</sup> Available online at Ministry of Justice: <http://www.justice.gov.uk/whatwedo/governance.htm>

<sup>8</sup> Constitutional Reform and Governance Bill 2008-9

<http://www.publications.parliament.uk/pa/cm200809/cmbills/142/2009142.pdf>

<sup>9</sup> Constitutional Reform and Governance Bill 2008-09 Explanatory Notes

<http://www.publications.parliament.uk/pa/cm200809/cmbills/142/en/2009142en.pdf>

## Tracing treaties

### Indexes

The General Indexes to Parliamentary Papers provide the most widely available source for tracking down texts of Treaties, using the heading "Treaties, Conventions etc".

In the 1900-49 index, this heading is broken down into individual countries, in alphabetical order; and General and International, by subject. There is a separate sequence for United Nations treaties, and for the Indexes to the Treaty Series, which are also published as Command Papers.

In the 1950-59 and 1960-69 indexes, the General and International Section is retained under Treaties; others are indexed under the individual countries.

In the 1970-71 Sessional Index and thereafter all treaties are indexed under subjects (general treaties) or country (bilateral agreements).

The Indexes to the Treaty themselves are published annually as Command Papers, and Supplementary Lists giving details of ratifications, accessions, and withdrawals of foreign countries appear on a quarterly basis. The Indexes are extremely useful searching tools, because apart from providing a subject and country index to the Treaties, they list in tabular form the place and date of signature, and date of entry into force in the UK.

A consolidated Index of British Treaties has been published by The Stationery Office (then HMSO). The first three volumes cover 1101-1968 and were published in 1970. A fourth volume which covers 1969-1988 and updates the entries in volumes two and three was published in 1992. References are given to all of the most used published collections of treaties, including, for the modern period, the Parliamentary Papers and the United Nations Treaty Series.

### Treaties on the Internet and further information

Since January 2002, treaty Command Papers have also been published in full on the FCO's Treaty Section website.<sup>10</sup>

The United Nations Charter requires that all treaties be deposited with the Organisation and publishes them in the United Nations Treaty Series. The United Nations Internet treaty database can be found at: <http://untreaty.un.org/>

If you would like further information on the topic of treaties or specific treaties, you can access this through the topics section of the Parliament website. <http://www.parliament.uk/topics/EU-law-and-treatiesArchive.htm>

The Treaty Section of the FCO's Records and Historical Department keeps records of all multilateral and bilateral treaties to which the UK is a party and provides a treaty enquiry service. Their contact details are listed at the end of this Factsheet.

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<sup>10</sup> <http://www.fco.gov.uk/en/about-the-fco/publications/treaty-command-papers-ems/>

## Further reading

Parliamentary Scrutiny of Treaties  
Procedure Committee Second Report 1999-  
2000, HC 210 1999-2000

Parliamentary Scrutiny of Treaties  
Government Response to the Second Report  
of the Committee, HC 990 1999-2000

Standard Note SN/IA/04693 'Parliamentary  
scrutiny of treaties' 25 September 2009  
[http://www.parliament.uk/briefingpapers/  
commons/lib/research/briefings/snia-  
04693.pdf](http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snia-04693.pdf)

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Houses of Parliament  
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Phone 020 7219 3074  
Fax 020 7219 2570  
[archives@parliament.uk](mailto:archives@parliament.uk)

Treaty Enquiry Service  
Legal Advisers Directorate  
Rm W.LG 167  
Foreign & Commonwealth Office  
London  
SW1A 2AH  
Tel: 020 7008 1109.  
Fax: 020 7008 1115.  
Email: [treaty.fco@gtnet.gov.uk](mailto:treaty.fco@gtnet.gov.uk)



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