



Parliament's new statutory role in ratifying treaties

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Parliament now has a new statutory role in ratifying treaties. Under part 2 of the *Constitutional Reform and Governance Act 2010* the government must lay most treaties subject to ratification before Parliament for 21 sitting days before it can ratify them. If either House objects, the government must give reasons why it wants to ratify before it can proceed, but the Commons can block ratification indefinitely.

However, there is no statutory requirement for a debate or vote, and parliament cannot amend treaties.

Contents

1	The government ratifies treaties	2
2	Parliament has a new statutory role	2
3	There are no requirements for a debate or vote	3
4	Parliament cannot amend treaties	3
5	Further reading	4

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1 The government ratifies treaties

In the UK, treaties are ratified by the government, acting under the Royal Prerogative.¹ This is because under international law it is the government that is bound by treaties. The Foreign Office (FCO) treaty section has detailed information about how the government ratifies treaties on its website.²

2 Parliament has a new statutory role

Parliament now has a new statutory role in the ratification of treaties. Under part 2 of the *Constitutional Reform and Governance Act 2010*, which came into force on 11 November 2010, the government has a general statutory requirement to publish a treaty that is subject to ratification or its equivalent, and lay it before Parliament for 21 sitting days. This puts aspects of the 'Ponsonby Rule' (a 1924 government undertaking which crystallised into the constitutional practice for parliamentary scrutiny of treaties) on a statutory footing.

The procedure is as follows:

1. During the 21 sitting days, both Houses have the opportunity to pass a resolution that the treaty should not be ratified. If neither does so, the government can go ahead and ratify the treaty.
2. If either the Commons or the Lords votes against ratification, the government cannot immediately ratify the treaty, but must instead lay a statement giving the reasons why it wants to proceed with ratification.
3. If the Commons has voted against ratification, laying this statement triggers a further 21 sitting day period before ratification. The Commons can then vote against ratification during this subsequent 21 sitting days, in which case the government can lay its statement again – and the process can be repeated, potentially blocking a treaty indefinitely.
4. If the House of Lords votes against ratification, but the Commons do not, then a ministerial statement must be laid before Parliament explaining why the treaty should nevertheless be ratified, but the additional 21 sitting day periods are not triggered. The Lords therefore does not have the power to block ratification on its own.

"Sitting days" means days on which both Houses sit.

The 2010 Act provides that the Minister can extend the sitting period by up to 21 sitting days (and votes against ratification will continue to have legal effect in this period).

There are different procedures for "exceptional cases", and for types of treaty that are scrutinised by other means, notably EU treaties, tax treaties and those concluded by overseas territories, the Channel Islands and the Isle of Man.

Before the 2010 Act came into force, parliament had no formal role in the ratification of treaties in the UK. It did scrutinise treaties in several different circumstances, but unless a

¹ Prerogative powers were once exercised by the reigning monarch but are now exercised largely by the government on her behalf, without any parliamentary authority. See Library Standard Note SN/PC/3681, *The Royal Prerogative*, 30 December 2009

² Foreign and Commonwealth Office, *Treaties and MOUs: Guidance on Practice and Procedures*, 2nd edition, April 2000 (revised May 2004). This guidance has not yet been updated to take account of the *Constitutional Reform and Governance Act 2010*.

treaty required a change in UK legislation or the grant of public money, Parliament had little power to overcome the will of the executive to conclude a particular treaty.³

Many treaties require domestic legislation to enable the UK to give effect to its obligations under the treaty. UK practice is to try to make sure the new legislation is in place well before it ratifies the treaty. Any such legislation would have to follow the usual parliamentary procedures for passing legislation.

3 There are no requirements for a debate or vote

The new procedures in the 2010 Act put on a statutory footing parliament's opportunity to scrutinise a treaty. However, the Act does not specify how parliament should do so. It does not state how a debate and vote on ratification of a treaty would be triggered, nor does it require either House to debate the treaty or to scrutinise it in Committee. The previous Government said that this would be left to the "usual channels" and for "people to make a noise".⁴

The government undertook in the Ponsonby Rule to submit "important Treaties" to the House for discussion within the 21 sitting days for which they are laid. A few treaties are debated in this way. It has also undertaken since 2000 to provide the opportunity for the debate of any treaty involving major political, military or diplomatic issues, if the relevant select committee and the Liaison Committee so request. By 2007 it had not received any requests for a debate under this procedure.⁵

If the UK needs to change its domestic legislation in order to ratify a treaty, the debates on that legislation provide another avenue for debating the treaty itself. This happens frequently.

Alternatively, Members can use any of the usual mechanisms for securing a debate, such as (in the Commons) adjournment debates, opposition day debates, Westminster Hall debates, topical questions, Backbench Business Committee debates, EDMs and ten-minute rule bills.

Since November 2000, the FCO has ensured that a copy of each treaty laid before parliament is sent to the relevant departmental Select Committee. The Joint Committee on Human Rights has been particularly active, scrutinising all treaties with a significant human rights aspect and often reporting on them to parliament.

4 Parliament cannot amend treaties

Even under these new procedures, parliament cannot amend a treaty.

Treaty texts are usually agreed, revised and finalised by inter-governmental conferences. Once they have been finalised and opened for signature and ratification, neither individual governments nor parliaments can amend them. A government can however submit declarations and/or reservations to treaties when it signs or ratifies them, stating for example its understanding of particular treaty provisions or that it does not consider itself bound by a certain provision. Also treaties can usually be amended by a subsequent treaty.

³ See *Parliamentary Scrutiny of Treaties: up to 2010*, Library Standard Note SN/IA/4693, 25 September 2009

⁴ Jack Straw, Evidence to the Joint Committee on the Draft Constitutional Renewal Bill, 1 July 2008 (Q750)

⁵ *The Governance of Britain - War Powers and Treaties: Limiting Executive Powers*, CM 7239, 25 October 2007, para 138

However, where the UK needs legislation to bring it into line with a treaty, parliament can amend that legislation as long as it does not hinder the government from fulfilling its obligations under the treaty. For example parliament might insist that the government report to parliament on the implementation of the treaty, even if the treaty itself contains no such requirement.

5 Further reading

Constitutional Reform and Governance Act 2010 (Ratification of Treaties), Written Ministerial Statement, HC Deb 11 November 2010 cc22-23WS

Foreign and Commonwealth Office, *Publication of treaties – introductory note* [accessed 2 February 2011]

Constitutional Reform and Governance Bill, Library Research Paper 09/73, 6 October 2009, pp19-27

Parliamentary scrutiny of treaties: up to 2010, Library Standard Note SN/IA/4693, 25 September 2009

Foreign and Commonwealth Office, *Treaties and MOUs: Guidance on Practice and Procedures*, 2nd edition, April 2000 (revised May 2004)