Dr Sam Fowles—written evidence (PST0013)

1. At present, Parliament’s role in treaty-making, as (largely) defined by Part 2 of the Constitutional Reform and Governance Act 2010 (“CRAGA”) is based on outdated principles and not fit for purpose. The present scheme was developed at a time when foreign policy had a relatively limited impact on the domestic rights of citizens. As a result of globalisation, that is no longer the case.

2. In these submissions I argue that Parliament’s role in treaty-making should be updated based on the principle that the level of scrutiny to which a treaty is subjected should be based on the level of impact that treaty will have on domestic rights (“the Accountability Principle”). In relation to the ten questions posed by the Committee:

   (1) Parliament’s current scrutiny procedures are outdated and ineffective because they allow the government too much space for unaccountable action;

   (2) Brexit poses two key challenges: it will (a) likely increase the volume of treaty-making and therefore the exposure of individual rights to treaties, and (b) decrease democratic control over treaty-making.

   (3) Parliament’s role in treaty-making should therefore be substantially expanded to include scrutiny at four stages: (a) the negotiating mandate, (b) monitoring the progress of negotiations, (c) before ratification, and (d) implementation.

   (4) The Supreme Court’s decision in Miller highlights the principle that legal rights flowing from statute should not be abrogated without an Act of Parliament. Where a treaty will impact on some domestic legal rights, therefore, a statute is required.

   (5) Treaties should be subject to different levels of scrutiny based on their impact on domestic law rights.
(6) A parliamentary treaties scrutiny committee can play an important role in determining the level of scrutiny to which treaties should be subject, ensuring that, where necessary, treaties are subject to detailed scrutiny, and ensuring the scrutiny process is sufficiently dynamic to allow the executive the flexibility necessary to effectively negotiate treaties;

(7) A regular reporting requirement during negotiations is essential for effective scrutiny;

(8) Stakeholders and the public should be engaged and consulted on treaties. Uninformed consultation, however, is of limited value and consultations should therefore be conducted in the light of impact assessments.

(9) The EU model of treaty-making offers some useful lessons but must be adapted to be suitable for the UK.

(10) The devolved institutions should be consulted where a treaty will impact on an area of devolved competence.

3. A full description of my proposed model for Parliament’s role in treaty-making is attached at Appendix A. Sample clauses setting out (respectively) a treaty impact assessment process and the best approach to consultations are attached at appendices B and C.

Question 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?

4. The current process for parliamentary scrutiny of treaties, as set out in Part 2 of the Constitutional Reform and Governance Act 2010 ("CRAGA") is not fit for purpose. The CRAGA mechanism formalises the Ponsonby Rule, a convention by which the government undertook to lay the text of treaties before Parliament in advance of ratification.¹ The Ponsonby Rule takes its name from a statement made by Arthur

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¹ R (Miller) v Secretary of State for Exiting the European Union [2017] SC 5, [2018] AC 61 at §58
Ponsonby (Foreign Secretary in the first Labour Government) in 1924. The practice of laying treaties before Parliament, however, dates from the late 19th Century.²

5. The convention formalised in CRAGA thus evolved during an era in which foreign affairs and home affairs were substantively separate. The terms of an international treaty generally did not impact on the lives and rights of individuals in a manner equivalent to domestic policy. It was reasonable, therefore, that treaty making was not subject to scrutiny equivalent to that of domestic policy. That is no longer the case. As a result of globalisation and the evolution of international treaties, the rights of individuals are substantively impacted by the terms of treaties.³

6. An example of this is the Comprehensive Economic and Trade Agreement ("CETA") between the EU and Canada (to which the UK is a party by virtue of its membership of the EU). Chapter Eight of CETA sets out a number of rights which are held by international investors against the state in which they invest. Broadly speaking, these rights entitle investors to financial compensation if the state (including local government) takes an action that harms their interests. It permits investors to enforce these rights through Investor State Dispute Settlement ("ISDS"), effectively a private court system which follows rules of procedure that are generally favourable to investors.⁴ The impact of this on domestic individual rights is twofold: in the first instance it degrades democratic control of national and local government by creating a new group to which the government becomes accountable (and giving that group mechanisms of accountability that offer a more immediate incentive to compliance than democratic representatives); and in the second instance it can impact directly on the rights of domestic individuals by giving international investors the right to sue an emanation of the state if it makes a decision that upholds the rights of citizens to the detriment of the rights of international investors.

⁴ Ibid
7. The foundation of the UK constitution is democratic control over government. In practice this is exercised through legislatures, primarily Parliament, and the courts. In the era of the Ponsonby Convention, when the mechanics of foreign policy had relatively little impact on domestic individual rights, it was arguably justifiable for the executive to exercise a greater degree of licence. The executive was accountable to Parliament for the “big picture” of its foreign policy and, occasionally (and through political pressure) for issues of particular interest or importance. That system is now outdated. It is no longer merely the “big picture” of foreign policy that impacts on the domestic rights of individuals. An effective democracy requires that the executive be accountable to the electorate (through representative institutions and the courts) for both the “big picture” of foreign policy, and the specific policy choices it makes. This includes international treaties.

**Question 2: What challenges does Brexit pose for Parliament’s consideration of treaties?**

8. Brexit poses two key issues for Parliament’s consideration of treaties:

   (11) Brexit will increase the volume of treaty-making and therefore the exposure of individual rights to treaties; and

   (12) Brexit will decrease democratic control over treaty-making (as the law currently stands).

**Increase in volume of treaty-making and exposure of individual rights**

9. The EU has agreed 878 bilateral treaties with third states and is a party to 268 multilateral agreements. These numbers include, however, treaties that have expired or have been superseded in whole or in part. It is likely, therefore, that the relevant number is between 700 and 800. Nevertheless, this is an exceptionally high number of agreements that will require replacement, many as a matter of urgency (in addition to any trade agreement with the EU itself). Many of the agreements that require re-negotiation will impact on domestic individual rights.
10. It is also likely that the numbers of sectors that are impacted by treaties will increase after Brexit. International treaties that impact on various sectors, such as investment or certain aspects of trade, fall within the competence of the EU. This means that any agreement which impacts on those sectors is already given effect though EU law. After Brexit, competence will fall to the UK government or (potentially) devolved governments. This means that new sectors will be exposed to international treaties.

*Decrease democratic control over treaty making*

11. In sectors in which the EU currently negotiates treaties on behalf of the UK, the treaty-making procedure is subject to scrutiny throughout the process, inter alia:

   (b) Before negotiations begin, the EU conducts impact assessments and public consultations. The Commission (which conducts negotiations) must first seek approval from the Council (a representative body). The negotiating mandate must be published before negotiations begin;

   (c) Throughout the process of negotiations, the Commission must keep the Council and Parliament updated on progress and seek the approval of the Council for new proposals.

   (d) Before ratifying the treaty, it must be approved by the Council, Parliament, and (in some cases) each individual member state parliament; and

   (e) Any implementing instruments must be passed through the EU’s existing legislative processes.

12. After Brexit these four stages of scrutiny will be cut down to two: approval of the final text and the legislation required to implement it. Even these two stages will not offer the same standard of accountability as the equivalent EU stages. Under the EU process
positive consent is required from both Council and Parliament (and, in some cases, Member State parliaments). By contrast, under CRAGA, the government may ratify a treaty without a vote in Parliament so long as there is no motion of objection.

**Question 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?**

13. The starting point for determining Parliament’s role in treaty-making should be that the level of democratic scrutiny must match the level of impact on domestic individual rights (“the Accountability Principle”). Where a treaty will have an equivalent or near equivalent impact on domestic rights, it should be subject to an equivalent or near equivalent level of democratic scrutiny.

14. In practice it is not possible to use exactly the same scrutiny mechanisms for treaties as are used for domestic legislation. A treaty is an agreement between the UK and one or more other states whereas domestic legislation is a matter solely for the UK. A balance must therefore be struck between the necessity of scrutiny and the necessity of working with the UK’s treaty partners. This balance should, at all times, be informed by the Accountability Principle.

15. Broadly speaking, parliamentary scrutiny must be integral to the treaty-making process at four stages:

   (1) Setting the negotiating mandate;

   (2) Monitoring the progress of negotiations;

   (3) Before ratification; and

   (4) Implementation.

16. Parliament’s involvement may not be of the same kind at each stage and may require Parliament’s existing practices to evolve. It is
likely that requiring a full Act of Parliament at each stage of scrutiny will be an unnecessarily onerous burden.

17. It is also necessary to be aware of the impact of the provisions of a treaty on the constitutional role of Parliament. Some treaties include clauses which provide for certain of its terms to continue to have effect after a state has left the treaty. Fundamental to the role of Parliament is the principle of continuing sovereignty. Under this principle, no Parliament can bind a future Parliament. Where a treaty includes, for example, investment protection provisions that have the effect of binding Parliament, and also includes provisions that ensure that the investment protection provisions will continue to have effect for a certain period after a state leaves the treaty, the Parliament that ratified the treaty will have, in substance, bound a future Parliament. If the sovereignty of parliament is to be preserved as an integral part of the UK constitution then it is necessary to ensure that, when negotiating treaties, these principles are upheld.

**Question 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?**

18. *Miller* reaffirmed the principle that rights created by statute cannot be abrogated save by subsequent statute. The court also reaffirmed that rights could not be abrogated “indirectly” by an action of the executive. The important step taken in *Miller* was to apply these, well established, principles to an issue of (ostensibly) foreign policy. In the context of the facts before the court, this led to the conclusion that, (a) leaving the EU would impact on rights that flow from statute, so (b) the government did not have the power to issue a notice under Article 50(1) of the Treaty on the Functioning of the EU without an Act of Parliament.

19. The ratio of *Miller* is potentially applicable to other foreign policy actions. Traditionally courts have been reluctant to subject foreign policy actions to judicial review, giving the government a wide latitude for action on the grounds that foreign policy involves the exercise of prerogative powers and the exercise of executive discretion should not

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6 *R(Jackson) v Attorney General* [2005] UKHL 56
be subject to review save on the (very low) standard of Wednesbury unreasonableness. Miller has the potential to alter the stance of the court in this way because it recognises that foreign policy decisions impact on domestic law rights. This is particularly pertinent in the case of treaties. Where a treaty will have a substantive impact on domestic law rights it is arguable, according to the ration of Miller, that it cannot be ratified save by statutory authority. In practice this would mean, for example, where a treaty required a change in a domestic law right then it must be ratified by statute. This will likely extend to rights that formerly flowed from EU law but, after Brexit, will flow from statute by virtue of sections 2-4 of the European Withdrawal Act 2018. In practice, for example, this would mean that any trade agreement that required the UK to change its food safety standards could not be ratified save by statute.

20. It is necessary to take a proactive approach to determining how to address the issues raised by Miller. If no action is taken and the first time the impact of Miller is properly tested is in a judicial review (likely after a treaty has been ratified), the UK will be placed in a “catch-22” situation. According to international law the UK will be bound by the provisions of the treaty that it has ratified. At the same time, however, the government will have acted illegally according to domestic law. This means that any action taken by the government to implement the offending treaty will be potentially reviewable, yet the UK will also be liable to sanction in international law for its failure to implement the treaty as agreed. Parliament should therefore act proactively to reform the process by which treaties are ratified, and the treaty-making process is scrutinised, so as to prevent this situation occurring.

Question 5: Should different types of treaties be subject to different levels of scrutiny? If so, how should these be differentiated?

21. Applying the Accountability Principle requires that treaties be subject to different levels of scrutiny. This may be achieved in one of two ways: (1) treaties are categorised and subjected to scrutiny based on the category into which they fall, or (2) a decision is made based on the individual characteristics of each treaty. The first option has the advantage of legal clarity and could be policed effectively by the courts.

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7 Yukos Universal Limited (Isle of Man) v. The Russian Federation, UNCITRAL, PCA Case No. AA 227 at 316-320 applying Article 27 of the Vienna Convention on the Law of Treaties
through judicial review. Given the pace at which international affairs and the nature of treaties evolves, however, any system of categorisation risks being unsatisfactorily “broad brush” and/or quickly becoming obsolete. The second option has the advantage of greater flexibility, but it presents the challenge of ensuring that any decision is, itself, accountable.

22. Whichever approach is selected decisions must be made independently of the government. One of the chief criticisms of the Withdrawal Act and Trade Bill from a constitutional perspective was that they both (unamended) gave the executive excessive control over the mechanism of scrutiny applied thereby effectively allowing the executive to be “judge in its own case” in selecting how it would be scrutinised. If different treaties are to be subject to different levels of scrutiny, then the decision as to the level of scrutiny must be made independently of the executive or the criteria used must be objective.

Question 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?

23. A parliamentary scrutiny committee is, inter alia, the best way to address the issues raised in paragraphs 21-22. As a creature of the legislature, it is independent of the government. As a select committee, it is well placed to subject the treaty-making process to detailed scrutiny. This will obviate the need for objective classes of treaties. Having a select committee act as a filter will also offer the efficiency and flexibility to respond to the dynamic nature of the treaty-making process. This is not to say, however, that scrutiny by the committee should replace scrutiny by one of both houses.

24. The committee should play a role at each stage of scrutiny:

   (f) The negotiating mandate (before negotiations begin):
(1) Consider scoping documents, impact assessments, consultation responses, and the government’s proposed draft mandate;

(2) Make a recommendation to Parliament to approve, approve subject to amendments, or refuse the draft mandate;

(3) Recommend any amendments;

(4) Recommend the amount of time to be given for consideration by both houses.

(g) During negotiations:

(1) Consider regular reports on the progress of negotiations on behalf of Parliament;

(2) Recommend approval, approval subject to amendment, or refusal for any application by the government to depart from the terms of the mandate.

(h) Ratification:

(1) Recommend the procedure for ratification by Parliament (whether a vote is required, or the negative resolution procedure will be sufficient) based on the Accountability Principle;

(2) Recommend that Parliament gives consent to ratification, gives consent subject to conditions, or refuses consent to ratification.

(i) Implementation:
(1) Submit proposed implementation to detailed scrutiny;

(2) Make recommendation to Parliament.

25. Basing the composition of the committee on the existing model of the select committees (with one committee in the House of Commons and another in the House of Lords). The model could equally be effective with a single joint committee.

**Question 7: What information should the government provide to Parliament on its treaty actions? Should there be a regular reporting requirement during negotiations?**

26. Treaty-making is a dynamic process. Effective negotiation requires that negotiators are able to respond to the position of their negotiating partners and, if necessary (particularly where negotiations last for several years) new events. This can pose a challenge for accountability.

27. The scrutiny process should both empower negotiators with the flexibility required to respond to developments in negotiations and empower Parliament to hold negotiators accountable for their decisions. For this reason, regular reporting to Parliament is necessary. This should include, at minimum, a summary of the issues considered, and any agreement reached, at each stage of negotiations.

28. Parliamentary approval of the mandate is essential. Without it the executive can pre-empt effective scrutiny by presenting Parliament with a fait-accompli. If negotiators are able to depart from their mandate at will then there is little point in having a mandate at all. There is certainly no accountability gain from having Parliament approve the mandate. The government must therefore be required to seek the permission of Parliament for any departure from the approved mandate. This may be facilitated in an efficient manner by the scrutiny committee mechanism outlined above.

**Question 8: How might the government and/or Parliament best engage other stakeholders and members of the public during treaty negotiation and scrutiny?**
29. Engagement with stakeholders and members of the public is best achieved by consultation, but consultation has minimal value unless it is informed consultation. The government must, therefore, conduct a scoping exercise with the proposed other party to the treaty then conduct impact assessments based on that scoping exercise. Only once these are published should it invite members of the public or stakeholders to make submissions. A consultation without proper information in advance is essentially asking stakeholders and the public to comment on whatever they believe the treaty will be. This offers little of value in terms of scrutiny and, indeed, will waste both government and parliamentary time considering responses that cannot possibly offer anything of value.

30. Draft provisions for both impact assessment and public and stakeholder consultation can be found at Appendix B and Appendix C respectively.

**Question 9: What models of treaty scrutiny in other countries are most effective and what might the UK Parliament learn from them?**

31. The most effective model is that employed by the EU. It has the dual advantage of ensuring a relatively (although not sufficiently) high level of democratic scrutiny while, at the same time being sufficiently responsive to the dynamic nature of treaty-making.

32. The EU model is, in outline:

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Preparing
Analysing a deal's likely impact
Consulting the public.
Setting out areas to negotiate
Getting Council authorisation
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**Negotiating**

Holding trade talks
Reporting to the Council, Parliament
Publishing texts online
Finalising

Signing the negotiated text

Legal review and formatting

Signing

Translating the text

Checking by Commission departments

Formally asking for EU signature

Decision-making

Council and Parliament jointly deciding whether to approve

Full or provisional application

Depending on whether responsibility for the deal's content lies solely with EU institutions or jointly with EU states

For 'mixed' agreements only

Ratifying in EU countries, using their own procedures

Conclusion

Signing by partner country(ies)

Publishing in the EU's Official Journal

Entry into force”

33. The EU model provides a number of lessons but cannot be transplanted directly to the UK. Certain stages, such as approval by member states, are unique to the nature of the EU. It also relies heavily on the (indirectly elected) Council to provide scrutiny rather than the (directly elected) Parliament. This is largely the result of the political compromises enshrined in the Lisbon Treaties. The Council is preeminent in EU legislation because the Council is controlled by the

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member states. Given that the member states agreed the Lisbon Treaties, it is unsurprising that they reserved the ultimate say in treaty-making for themselves, albeit at the expense of the (direct) democratic accountability offered by the European Parliament. The UK has no need to make this compromise. The UK Parliament and devolved legislatures are the only legislative bodies in the UK (and the only directly elected national bodies). It is rational, therefore, for Parliament and the devolved legislatures to take on the scrutiny role occupied by both the Council and the European Parliament in the EU model.

**Question 10: What role should the devolved institutions have in negotiating and agreeing treaties?**

34. Applying the Accountability Principle, where a treaty will impact on a devolved area of competence, the relevant devolved legislature should be consulted. If devolved legislatures are not consulted then this will, in effect, reduce the competence of the devolved governments and consolidate power back to Westminster.

35. The most effective point at which to consult the devolved legislatures is set out in the model at Appendix A.

*6 December 2018*
Appendix A

OUTLINE PROCEDURE FOR TREATY-MAKING AND SCRUTINY

Phase 1: Scoping

1. **Scoping talks** - UK conducts scoping discussions with other party(ies) to determine what sectors will be included in negotiations and the overall aims of the treaty.

2. **Impact Assessment** - Based on the outcome of the scoping talks, the government conducts an impact assessment of the proposed treaty. This should take into account that nothing is yet agreed and so, if necessary, consider multiple options. At minimum this should consider:

   (j) The environment including, at minimum:
       (1) The UK’s obligation under the Paris Agreement and international law,
       (2) The provisions of the Climate Change Act 2008,
       (3) The need to protect and preserve the oceans, the rural environment, biodiversity, and improve air quality.

   (k) The economic impact including, at minimum:
       (1) The impacts on vulnerable groups.

   (l) The social impact including, at minimum, the government’s duties under the Equalities Act 2010.

   (m) Human rights including, at minimum:
       (1) The European Convention on Human Rights,
       (2) The UK’s human rights obligations in international law.

   (n) Workers’ rights

   (o) Gender

3. **Public Consultation** – The results of the impact assessments are published, and, in the light of this information, the public is invited to submit responses. Both the impact assessments and the results of the public consultation are laid before Parliament.

Phase 2: Negotiating Mandate
4. **Laid before Parliament** - The government lays a draft negotiating mandate before Parliament.

5. **Committee Scrutiny** – The Trade Scrutiny Committee ("TSC") considers the draft mandate in the light of the impact assessments and public consultation and with the Accountability Principle in mind. It makes the following decisions:

   (a) **Approval procedure - Either:**

      (1) The proposed agreement will have a minimal impact on the rights of individuals and the mandate should therefore be approved by the negative procedure; or

      (2) The proposed agreement will have a more than minimal impact on the rights of individuals and should therefore be approved by a motion of the House of Commons and a motion of the House of Lords.

   (b) **Recommendation as to decision** – The motion proposing the mandate should either be:

      (1) Approved;

      (2) Approved subject to (binding) amendments to the mandate;

      (3) Rejected

   (c) **Recommendation as to time** – A recommendation as to the time required for Parliament to debate the motion (bearing in mind that the mandate has already been subject to detailed scrutiny in committee and it is therefore unnecessary for Parliament to repeat the same process).

6. **Parliamentary decision** – Parliament debates and votes depending on the recommendations of the TSC. If Parliament makes amendments to the mandate, then these are binding. If Parliament refuses consent for the mandate, then the executive must draft a new mandate and repeat Phase 2.
Phase 3: Negotiation

7. **Reporting** – The government lays a report before Parliament after each stage of negotiations. This should include the issues discussed and any conclusions reached. The TSC undertake detailed scrutiny of the reports on behalf of Parliament.

8. **Departure from the mandate** – If the government considers it necessary to depart from the mandate approved by Parliament then it must seek the permission of Parliament. The TSC considers the request on behalf of Parliament in the same manner that it considered the draft mandate (see §5 above). Parliament has the same power of consent as described in §6 above.

Phase 4: Ratification

9. **Conclusion of negotiations** – The draft treaty is agreed between the negotiators subject to translation and legal scrubbing and laid before Parliament.

10. **Further impact assessment** – If the draft differs substantially from the original mandate then it must be subject to further impact assessments.

11. **Committee scrutiny** – The TSC subjects the draft treaty to detailed scrutiny. It then decides:

   (a) **Parliamentary procedure** – Whether, based on the Accountability Principle, Parliament should give consent to ratification by the negative resolution procedure or by a positive motion (and debate).

   (b) **Time** – How much time should be allowed for debate on the positive motion.

   (c) **Recommendation** – Whether Parliament should grant consent to the ratification of the treaty, require renegotiation of certain aspects (on terms proposed by Parliament), or refuse consent.
12. **Devolved consent** – Where the treaty impacts on areas of devolved competence the draft must be laid before the devolved legislatures and cannot be ratified unless those legislatures give consent according to their own procedures.

13. **Parliamentary consent** – Subject to the decision of the TSC, Parliament grants consent, requires renegotiation (signalled by amendment to the motion), or refuses consent.

14. **Renegotiation** – Where Parliament requires renegotiation the government must conduct this and lay the new draft treaty before Parliament. The new aspects of the treaty will then be subject to the same scrutiny as the original draft.

15. **Ratification** – The Government ratifies the final agreed treaty.

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**Phase 5: Implementation**

16. **Draft implementation measures** - The government lays draft measures for implementation before Parliament.

17. **Committee scrutiny** – The TSC considers each measure and recommends whether it should be approved by Parliament by the affirmative or negative procedure.

18. **Parliamentary approval** – Parliament approves the measures according to the recommendations of the TSC.

19. Where necessary each stage should be repeated in the House of Lords.
Appendix B

EXAMPLE TREATY IMPACT ASSESSMENT CLAUSE

Treaty Impact Assessment

1. Negotiations relating to an international treaty shall not begin unless a Treaty Impact Assessment has been undertaken.

2. A Treaty Impact Assessment means a process consisting of:
   a. Preparation of a trade impact assessment report by the appropriate authority according to sub-section 3,
   b. The carrying out of consultations as referred to in sub-section 5,
   c. The examination by an independent body, as provided in sub-section 6, of the information presented in the trade impact assessment report and any supplementary information provided, where necessary, by the appropriate authority and any relevant information received through consultations in sub-section 5,
   d. The reasoned conclusion, in non-technical language, of the independent body of the effects of the proposed international trade agreement, taking into account the results of the examination referred to in (c); and
   e. The publication and presentation to Parliament of the independent body’s reasoned conclusion made under (d).

3. A treaty impact assessment report shall include, at minimum:
   a. Consideration of the impacts of the proposed international trade agreement, by reference to the key criteria in sub-section 4, on the UK,
   b. Consideration of the impacts of the proposed international trade agreement, by reference to the key criteria in sub-section 4, on any relevant developing state.

4. For the purposes of section 2(a), the “key criteria” are:
   a. The environment including, at minimum:
      i. The UK’s obligation under the Paris Agreement and international law,
      ii. The provisions of the Climate Change Act 2008,
      iii. The need to protect and preserve the oceans, the rural environment, biodiversity, and improve air quality.
   b. The economic impact including, at minimum:
      i. The impacts on vulnerable groups.
c. The social impact including, at minimum, the government’s duties under the Equalities Act 2010.
d. Human rights including, at minimum:
   i. The European Convention on Human Rights,
   ii. The UK’s human rights obligations in international law.
e. Workers’ rights
f. Gender

5. The Secretary of State shall by regulations make provision for consultations under 2(b) of this section, including, in particular:
   a. Ensuring that government agencies and institutions are made aware of the consultation and the report of the relevant authority under 2(a) of this section, and are able to contribute to the consultation,
   b. Ensuring that non-government agencies and organisation are made aware of the consultation and the report of the relevant authority under 2(a) of this section, and are able to contribute to the consultation,
   c. Ensuring that the public are made aware of the consultation and the report of the relevant authority under 2(a) of this section and are able to contribute to the consultation.

6. The Secretary of State shall, by regulations, make provision for the appointment and funding of the body referred to in 2(c) ensuring that it is:
   a. Entirely independent from both the appropriate authority, and central, regional, and local government, and devolved authority,
   b. Competent to carry out the assessment required by 2(c),
   c. Adequately funded to carry out the assessment required by 2(c) including, if necessary, payment of any fees.

7. A developing state is “relevant” for the purpose of sub-section 3(b) if it will be impacted by the proposed international trade agreement.

Explanatory Statement
This provision ensures that negotiations cannot begin for an international trade agreement until a full and independent impact assessment of the proposed agreement has been undertaken.
Appendix B

EXAMPLE CONSULTATION CLAUSE

Public Consultation

1. Negotiations relating to an international treaty shall not begin until:
   a. The conclusion of an impact assessment for the proposed treaty has been laid before Parliament, and
   b. A public consultation, informed by the conclusion of the Treaty Impact Assessment, has been completed.
2. The Secretary of State shall take account of the results of the public consultation in sub-section 1(b).
3. The public consultation in section 1(b) shall pay particular regard to the Key Criteria.
4. For the purposes of (3) the Key Criteria are:
   a. The environment including, at minimum:
      i. The UK’s obligation under the Paris Agreement and international law,
      ii. The provisions of the Climate Change Act 2008,
      iii. The need to protect and preserve the oceans, the rural environment, biodiversity, and improve air quality.
   b. The economic impact including, at minimum:
      i. The impacts on vulnerable groups.
   c. The social impact including, at minimum, the government’s duties under the Equalities Act 2010.
   d. Human rights including, at minimum:
      i. The European Convention on Human Rights,
      ii. The UK’s human rights obligations in international law.
   e. Workers’ rights
   f. Gender
5. The public consultation in (1)(b) shall begin at least 90 days before the commencement of negotiations for the relevant international trade agreement.

Explanatory Statement
This amendment ensures that negotiations towards an international trade agreement cannot begin/the power to implement an international trade agreement cannot be exercised until that agreement has been subject to informed public consultation.