

HOUSE OF LORDS
HOUSE OF COMMONS
JOINT COMMITTEE ON DRAFT CONSTITUTIONAL RENEWAL BILL

Memorandum by Unlock Democracy

Ratification of Treaties

About Unlock Democracy

Unlock Democracy (incorporating Charter 88) is the UK's leading campaign for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, stronger parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility.

Introduction

It is essential in a democracy that power is made accountable and that the processes by which decisions are taken are as open and transparent as possible. We fully support the government's desire to explore how Royal Prerogative Powers can be transferred to Parliament and made accountable. However it is not enough to simply out existing procedures on a statutory footing and declare that accountability has been achieved. One of the reasons for the current mistrust of politics and politicians is that ordinary people have very little sense of how decisions are taken. There is an opportunity with these reforms to not only make power accountable but also to ensure it seen to be accountable.

Although war powers receive more attention, the decisions to deploy troops are thankfully relatively rare. Treaties are far more likely to impact on the daily lives of people in the UK. So we were delighted when the government announced its intention to increase parliamentary accountability in this area. However we are very disappointed by the mechanism they have chosen and the very limited model of accountability that these proposals embody.

The proposal put forward by the government in the draft Bill would give Parliament the right to object to a treaty, but only if the government decides to provide an opportunity for Parliament to

object. Even if time was made available for a debate and vote, the government would have the power to simply overrule the objection. These proposals would not lead to a transfer of power from the executive to Parliament. Accountability must not be an optional extra, nor should there be a get out clause for the government just in case they don't get the answer they want.

Do you think that Parliamentary scrutiny of treaties could be improved? If so, how?

Unlock Democracy does not believe that simply putting the Ponsonby rule on a statutory footing is sufficient to ensure scrutiny of treaty ratification. As the government consultation itself states the Ponsonby rule very rarely leads to debate.

We believe that the process of treaty ratification should be made accountable not just the end stage of endorsing ratification. This is not to say that Parliament should not be able to vote on treaty ratification just that it is essentially a reactionary power. Negotiations by definition do not always go to plan; Ministers have to be given some leeway but equally Parliament should be able to express a view on what should and shouldn't be included in a treaty before it is negotiated. This is already common practice in the Nordic countries.

In Denmark for example, before any negotiations within the European Council or the Council of Ministers, the government receives an oral mandate from the European Affairs Committee of the Folketing (Danish Parliament) before beginning negotiations. The EAC is made up of 17 MPs, in a proportion that reflects the party makeup of the Folketing. The EAC debates the issues to be discussed by the Council of Ministers and the position of the relevant Danish minister on those issues, and if a majority of the EAC does not oppose those positions, the minister is given a mandate to negotiate. It is very rare that the government position is formally rejected by the EAC as in most cases the government will amend its position in line with committee's concerns. The EAC also considers bills and proposals dealing with the European Union and submits reports with recommendations to the Folketing.[1]

In the case of non-EU negotiations, there is no such mandate, but the relevant minister (usually the Prime Minister or Foreign Secretary) is constitutionally obliged to consult with the Folketing's Foreign Policy Committee on all matters "of major importance to foreign policy" and to keep the FPC informed about more minor matters. The minister makes a presentation and then must remain to respond to any comments or questions the FPC may have. The FPC's views are not binding on the government, but as they tend to reflect the views of the Folketing in general, the government usually takes them on board in the hopes of getting the Folketing to ratify the finished treaty.[2]

If the treaty yields a part of Denmark's sovereignty to a supranational body (including international organisations like the UN or the EU), the treaty must be ratified by 5/6 of the Folketing. If it fails to get the support of 5/6 of the Folketing, then a referendum becomes necessary to ratify the treaty.[3]

There are similar systems in Sweden, Finland and Norway.

Unlock Democracy believes that a system of pre-ratification scrutiny should be established in the UK. A new treaties select committee should be created which draws its members from the relevant existing committees. These would include, but may not be limited, to the Joint Committee on Human Rights, European Scrutiny Committee and the Foreign Affairs Committee. The usual rules on party balance and select committee membership would apply.

One of the key tasks for the committee would be to agree, with the relevant Minister, what level of scrutiny should apply to a particular treaty. Most European Treaties and key treaties such as the 2003 UK-US Extradition Treaty would go through the procedure outlined below. However treaties that were deemed to have less constitutional significance could go through a less stringent procedure and could continue to be laid before Parliament under the Ponsonby rule. The Committee would report to Parliament on why they have decided on a particular level of scrutiny for a particular treaty.

If a treaty is thought by the committee to merit full scrutiny, Ministers would be obliged to give oral evidence to the Treaties Committee outlining the intended negotiating position. The Committee would have the opportunity to outline any concerns it may have and if a common position cannot be reached to mandate the Minister. We do not envisage that this is how the committee would work in practice, and certainly the evidence from the Nordic countries is that even where the committees have the power to mandate this is rarely used.

Once the Treaty has been negotiated the Treaties Committee would prepare a report on the treaty which would be laid before Parliament with the text of the treaty concerned. This report would include an assessment of the implications of the treaty for the UK and where, if at all, the treaty differs from the agreed position. In order to be ratified the treaty would have to be approved by a 2/3 majority in the House of Commons.

The Treaties Committee would have the power to trigger a debate on the treaty, as would backbench MPs. If 10% of MPs sign an EDM in favour of a debate on a Treaty we believe this should trigger a debate. This guarantees both that if there is substantial public support for a debate on a treaty it can be triggered but also that it is possible for smaller parties to trigger a debate rather than relying on the executive.

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[1] EU Information Centre of the Folketing. (2002) The European Affairs Committee of the Folketing: Parliamentary Control of Government Policy in the EU. Copenhagen: EU Information Centre of the Folketing. Available online at: http://www.eu-oplysningen.dk/upload/application/pdf/e45978e6/euu_engelsk.pdf [cited 14 January 2008].

[2] Secretariat of the Foreign Policy Committee. (2002) The Foreign Policy Committee. Copenhagen: The Secretariat of the Foreign Policy Committee, Folketinget. Available online at: http://www.folketinget.dk/pdf/foreign_policy_committee.pdf [cited 14 January 2008].

[3] (1999) "The Constitutional Act of Denmark of June 5, 1953." Copenhagen: Folketing. Available online at: <http://www.folketinget.dk/pdf/constitution.pdf> [cited 14 January 2008].