



House of Commons
House of Lords

Joint Committee on
Human Rights

**Human Rights
Protections in
International
Agreements:
Government Response
to the Committee's
Seventeenth Report of
Session 2017–19**

**Sixth Special Report of Session
2017–19**

*Ordered by the House of Commons
to be printed 15 May 2019*

HC 2199
Published on 17 May 2019
by authority of the House of Commons

Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

Current membership

House of Commons

[Ms Harriet Harman QC MP](#) (*Labour, Camberwell and Peckham*) (Chair)

[Fiona Bruce MP](#) (*Conservative, Congleton*)

[Ms Karen Buck MP](#) (*Labour, Westminster North*)

[Joanna Cherry QC MP](#) (*Scottish National Party, Edinburgh South West*)

[Jeremy Lefroy MP](#) (*Conservative, Stafford*)

[Scott Mann MP](#) (*Conservative, North Cornwall*)

House of Lords

[Baroness Hamwee](#) (*Liberal Democrat*)

[Baroness Lawrence of Clarendon](#) (*Labour*)

[Baroness Nicholson of Winterbourne](#) (*Conservative*)

[Baroness Prosser](#) (*Labour*)

[Lord Trimble](#) (*Conservative*)

[Lord Woolf](#) (*Crossbench*)

Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publication

© Parliamentary Copyright House of Commons 2019. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/copyright.

Committee reports are published on the Committee's website at www.parliament.uk/jchr by Order of the two Houses.

Evidence relating to this report is published on the relevant [inquiry page](#) of the Committee's website.

Committee staff

The current staff of the Committee are Eve Samson (Commons Clerk), Simon Cran-McGreehin (Lords Clerk), Eleanor Hourigan (Counsel), Samantha Godec (Deputy Counsel), Katherine Hill (Committee Specialist), Shabana Gulma (Specialist Assistant), Miguel Boo Fraga (Senior Committee Assistant), Claire Coast-Smith (Lords Committee Assistant), and Lucy Dargahi (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 2467; the Committee's email address is jchr@parliament.uk

You can follow the Committee on Twitter using [@HumanRightsCtte](https://twitter.com/HumanRightsCtte).

Sixth Special Report

The Joint Committee on Human Rights published its Seventeenth Report of Session 2017–19, *Human Rights Protections in International Agreements* (HC 1833/HL Paper 310) on 12 March 2019. The Government’s response was received on 9 May 2019 and is appended to this report.

Appendix: Government response

Introduction

The Government has carefully considered the Committee’s report and the issues it raises. The Government’s formal response to the Committee’s recommendations and conclusions is set out below. The Committee’s findings are in bold and the Government’s responses are in plain text. For ease of reference, paragraph numbering follows the ‘Conclusions and Recommendations’ of the Committee’s report (pp. 33–35).

The UK has a longstanding history of upholding human rights and is a strong advocate for human rights internationally. This will not change following the UK’s exit from the EU. International agreements will continue to be negotiated and implemented in a way which is compatible with the UK’s international obligations and domestic human rights protections.

Although, as noted by the Committee, international agreements can impact on human rights, this is subject to the checks and balances of the UK’s constitutional system. Within the UK system, a treaty does not and cannot alter domestic human rights protections. Where a treaty requires changes to domestic legislation, the necessary changes will be scrutinised by Parliament before the treaty can be brought into force. The domestic implementation of a treaty will be subject to protections contained in domestic legislation, including the Human Rights Act 1998. This provides the context for the Government’s responses below.

1. We were concerned to note that the Minister for Human Rights had not been involved in the negotiation or preparation of the UK-Israel Agreement and did not know what human rights protections were (or were not) in the UK-Israel Agreement which was announced on the same day as our evidence session. We consider that the human rights Minister and his team should know about such agreements so as to be satisfied about the human rights protections contained in such agreements. (Paragraph 10)

This Agreement was a replication of the pre-existing EU-Israel Agreement. The overall policy on transitioned trade agreements was agreed across Government, with the Minister for Human Rights and the Foreign Secretary fully engaged. As such the objective of the agreement was to continue the effect of the existing agreement. Whilst the UK-Israel agreement (including provisions relating to human rights) was entirely consistent with that policy, the Minister will be provided with a regular update on progress towards transitioning agreements and specific information regarding their human rights content for his input.

The UK's exit from the European Union (EU) means that the Government has made, and will continue to make, decisions about the content of treaties which the UK will enter into to govern existing and future partnerships. The Government is currently working to transition arrangements, including free trade agreements (FTAs), to become effective when existing agreements cease to apply. Where decisions involve important human rights considerations, the Minister for Human Rights, Foreign Secretary and officials from the Foreign and Commonwealth Office (FCO) will continue to be involved and consulted on these decisions.

2. The Government must ensure that human rights expertise is embedded into the negotiating teams working on all international agreements. (Paragraph 11)

The Government ensures that the necessary expertise is available to negotiating teams working on all international agreements. The nature and level of expertise that is necessary will depend on the nature and content of the treaty.

In relation to the impact that a treaty might have on human rights protections, it is possible to outline three broad categories:

- Treaties about human rights (such as the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW));
- Treaties whose operation can clearly affect human rights, for example, extradition treaties and Mutual Legal Assistance (MLA) treaties;
- The broad range of other treaties the UK might enter that have no direct bearing on human rights (which is in fact the vast majority of treaties) – for example, double taxation agreements or agreements which facilitate modes of transport across national borders.

For treaties falling into the first category, the treaty will usually be negotiated by a delegation comprising human rights experts. The delegation will also consult with human rights policy experts and lawyers in London as necessary. For the second category, negotiations will be led by experts in the particular area who will understand the relevant human rights issues and will call on human rights experts to advise as necessary. In the third category, the expertise needed will be determined by the subject matter of the treaty. In all cases, the Government will be advised by lawyers who will identify and advise on any human rights implications, and relevant policy expertise will be drawn on as and when necessary. The Government acknowledges that, following exit from the EU, it will negotiate treaties in areas previously negotiated by the EU – notably trade agreements. The Government will ensure it has access to the necessary expertise to ensure that the provisions are compatible with the UK's international human rights obligations and domestic human rights protections.

The FCO, Ministry of Justice and wider government employ experts on human rights in teams dedicated exclusively to the promotion and protection of human rights. The Government also employs human rights specialists from outside the civil service who bring additional knowledge, expertise and contacts that are valuable to its policy and programme making. Training on human rights is also accessible to all FCO staff in

London and overseas (including those negotiating international agreements) through online learning, face-to-face workshops, peer-to-peer learning, masterclasses and informal learning in the workplace.

3. The Government must undertake adequate human rights analysis of all international agreements as part of its internal sign-off process. For simpler agreements there should be a memorandum. For more complex agreements (such as complex trade agreements) a human rights impact assessment might be more appropriate. (Paragraph 12)

Where there are significant human rights issues in an agreement they will be highlighted to Ministers during the course of negotiations. Once negotiations are concluded, officials will seek Ministerial approval in order for the agreement to be signed. This will be a further opportunity to highlight for Ministers human rights issues identified by the negotiators or their advisers.

If the Agreement is to be laid before Parliament, the Explanatory Memorandum must first be signed off by senior officials and by Ministers. As set out in the response to Recommendation 14 below, the Government commits to ensuring that all Explanatory Memoranda accompanying treaties laid before Parliament under the Constitutional Reform and Governance Act 2010 (CRaG) contain a separate section which sets out any issues relating to the compatibility of the treaty's provisions with the UK's international human rights obligations. As noted above, the terms of a treaty cannot amend domestic human rights protections contained in the Human Rights Act 1998. In the unlikely event that implementation would require any such legislative change this would also be set out in the Explanatory Memorandum, and the Government would engage with the Committee accordingly.

4. The FCO highlights the Government's normal practice in relation to different types of treaties; we consider it would be useful to ensure this practice is standardised and any departure from best practice is properly scrutinised by Parliament. (Paragraph 15)

As noted below, the Government adopts standard practices in relation to the treaties described in the response to Recommendation 10 below. The negotiation of treaties is a consensual process between the parties. In some cases, flexibility will be needed to enable the Government to depart from standard clauses in order to conclude an agreement which is in the UK's best interest. In all cases, however, the Treaty will be negotiated and implemented in a manner which is compatible with the Government's human rights obligations. Where the Treaty is laid before Parliament pursuant to the Constitutional Reform and Governance Act 2010, the compatibility of the treaty provisions with the UK's international human rights obligations will be set out in the Explanatory Memorandum, as described in the Government's response to Recommendation 14 below.

5. Human rights must be protected in investment agreements and any litigation arising from those agreements. There are clear human rights and rule of law concerns with arbitration as a means of Investor-State dispute settlement. Investor rights should not be privileged over human rights. Any system established for dispute settlement must be fair, accessible and cost-efficient. (Paragraph 29)

The UK has over 90 bilateral investment agreements in place with other countries which include Investor-State Dispute Settlement (ISDS) provisions. There has never been a successful ISDS claim brought against the UK, nor has the threat of potential claims affected the Government's legislative programme. The Government is not aware of any ISDS claims made by UK investors that have led directly to or contributed towards a negative impact on human rights.

The Government supports the use of arbitration as a means of investor-state dispute settlement (ISDS), which provides an impartial process in which both parties can have confidence. Arbitration is a widely used means of resolving disputes that arise between parties, including under international law and domestic law, such as contract law. Those acting as arbitrators are normally highly qualified legal practitioners and adhere to high ethical standards to ensure independence and impartiality during proceedings. To reinforce this, the UK supports recent reforms to ISDS which seek to improve arbitration processes further to ensure fair outcomes of claims, high ethical standards for arbitrators and increased transparency of ISDS hearings.

The Government is currently reviewing its trade and investment policy and considering a wide range of options in the design of future bilateral trade and investment agreements, including dispute settlement mechanisms. In doing so, it will seek to ensure that provisions balance the interests of the various parties involved, take account of international best practice, and reaffirm the right of the Government to regulate in the public interest.

6. Current trade agreements binding on the UK through the EU contain specific clauses to promote and protect human rights, including suspension clauses to suspend an agreement if core human rights standards are not met. The habitual inclusion of standard clauses for human rights protections such as suspension clauses, and exemption clauses to prevent an agreement being misused to override human rights protections, should not slip following Brexit. Moreover, lessons should be learned from the EU experience as to how best to use and enforce such clauses. (Paragraph 40)

7. It is clear that there are many human rights concerns that arise in different agreements and many different model clauses. Moreover, no standard clause is effective without an adequate enforcement mechanism. However, this does not mean that standard human rights protections cannot be effective. *Standard human rights protections should be included in all agreements, with exact clauses tailored depending on the subject-matter of the agreement.* (Paragraph 41)

8. *Exemptions clauses should also be included in all agreements, providing that nothing in the agreement prevents a party to the agreement from taking measures to protect or promote public morals (including human rights standards).* (Paragraph 42)

9. *Suspension clauses should be included in all framework agreements – and included in trade agreements where not otherwise covered by a framework agreement. Such suspension clauses should highlight the importance of respect for human rights, including the Universal Declaration of Human Rights and other international agreements binding on the parties, and should provide for suspension of the agreement in case of a significant breach of these standards.* (Paragraph 43)

The Government believes that a one-size-fits-all approach to international agreements, including standard human rights clauses, would be inappropriate. There is enormous variety in the nature and content of treaties, as noted by the Committee, as well as in the political and diplomatic circumstances in which they are negotiated. Negotiators will need flexibility to respond to changing demands and contexts in order to secure an agreement which is in the best interests of the UK.

As noted above, the Government is committed to upholding human rights and advocating human rights internationally. The means by which this can be achieved in the context of the UK's international agreements will vary according to the subject matter and context of each agreement.

In the case of trade agreements, the EU approach is to link human rights clauses to trade agreements, including standard provisions which allow an agreement to be suspended in the event of serious human rights violations. However in practice, these provisions have not been relied on by the EU to suspend a free trade agreement, given the potential wide-ranging implications and impacts (although the EU has suspended unilateral trade preference to developing countries), and their effectiveness is difficult to prove. Insisting on a standard suspensive clause may prevent an agreement from being concluded, could create instability in treaty relations and could encroach on Executive powers in foreign and trade policy. It could also lead to inconsistency in the UK's treatment of different states.

Other trade partners take different approaches. For example Australia, New Zealand, and Canada do not routinely include suspensive human rights clauses in their trade agreements, relying on other policy tools (such as human rights dialogues) to promote human rights.

Whether standard human rights conditionality in the UK's trade agreements will create an effective lever, given the range of existing diplomatic and coercive levers which the Government is able to deploy, requires careful consideration. The approach will need to be flexible in the form of any human rights commitments taken with partners, in order to ensure that the Government delivers the best outcome for the UK, maximising the benefits of trade while ensuring that the UK stays true to its core values. Trade is a key component of global growth and prosperity, which supports social cohesion and in turn political stability. The Government would not want an overly rigid and standardised approach to become an obstacle to prosperity when dealing with like-minded partners. The Government is considering all options that maintain its commitment to promoting UK values while ensuring that there is flexibility to pursue the UK's trade objectives.

Exemption Clauses

In the context of trade agreements, an exemption clause preserves the signatories' ability to take necessary measures in defined policy areas that might otherwise conflict with their trade-related obligations.

Both the General Agreement on Trade and Tariffs (GATT) and the General Agreement on Trade in Services (GATS) World Trade Organisation agreements contain General Exception articles, which provide protections for the signatories to take such measures in a list of areas, including for the protection of public morals and the protection of human, animal and plant life or health.

In light of these provisions at the multilateral level, it is standard practice for free trade agreements to also contain General Exception provisions, which reinforce the commitments made at the WTO and ensure that parties retain the flexibility to take measures to protect or promote public morals, including human rights. These provisions are typically worded in a way that guards against the parties invoking these provisions to circumvent their obligations under the free trade agreement unjustifiably. This ensures that both parties are able to conduct their trading relationship with the stability they need.

More generally, where a draft treaty provision could impact on the Government's ability to comply with its domestic or international human rights obligations, the Government will, drawing on human rights expertise as necessary, ensure that provisions are drafted so as to operate in a manner which is compatible with the UK's international human rights obligations and domestic human rights protections. The inclusion of a standard exemption clause in all treaties would be both unnecessary and likely to create instability in UK treaty relationships. This would be detrimental for business, prosperity and development.

10. *Specialised human rights protections clauses should be included to protect human rights in specific sectoral agreements. This should include specific clauses in extradition agreements, mutual legal assistance agreements, data sharing agreements, and agreements where labour rights or modern slavery could be at risk. The Government should consult on a set of standard clauses to be included in all relevant agreements. (Paragraph 44)*

The Government agrees that the specific sectoral agreements cited by the Committee raise important human rights concerns which will be considered when negotiating such agreements. Human rights protections cannot be assessed purely by looking at the provisions of those agreements: individuals' rights are protected under domestic law through the domestic courts, as well as under the European Convention on Human Rights (ECHR) through the European Court of Human Rights (ECtHR).

Further detail is set out below in relation to specific sectors and themes:

Extradition Agreements

The legislative framework established by the 2003 Extradition Act provides human rights protection for requested persons. Under this Act, extradition will not take place if it would be incompatible with a person's human rights. The determination of human rights compatibility is made by the courts (except in Scotland where it is made both by the courts and by Scottish Ministers). The Act also bars extradition where a person could be, will be, or has been, sentenced to death, unless the Secretary of State (usually the Home Secretary) receives a written assurance that the sentence will not be imposed, or, if imposed, will not be carried out. If there is no assurance, or the assurance is inadequate, the Home Secretary must not order extradition.

Additional protections are included in the Act in respect of characteristics such as race, gender, sexual orientation and political opinions. If a request is made for the purposes of prosecuting or punishing an individual for a characteristic such as this, or if he or she would be prejudiced at trial for one of these reasons, extradition is barred.

It is the UK's normal practice to discuss human rights during negotiations, and to include a provision in the treaty to underline the UK's position on human rights under domestic law. Flexibility over the exact wording used is necessary to ensure that the Government is able to reach an agreement which is in the UK's best interest. Nothing in a treaty can change the fact that extradition from the UK is barred if it is not compatible with the requested person's human rights or could result in the death penalty being carried out against the requested person.

Mutual Legal Assistance (MLA) Agreements

The UK does not require a treaty basis for undertaking MLA. If the provision of such assistance meets domestic legal requirements relevant to the type of assistance sought (for example, provisions of the Crime (International Co-operation) Act 2003), MLA can be provided to any State, subject to policy considerations.

The UK enters into MLA Agreements where it is considered that they will provide an effective framework for requesting and providing MLA for the purposes of combating crime and ensuring justice for victims. MLA treaties may also strengthen and formalise existing co-operation relationships, as without a treaty, the requested State is under no obligation to assist, even if they are able to do so under their domestic law.

Before providing any justice or security sector assistance, the Government applies the Overseas Security and Justice Assistance (OSJA) Human Rights Guidance.¹ FCO and Home Office advise on the position of a State in relation to human rights compliance and, in accordance with the OSJA Guidance, whether that state would be willing to provide assurances on, for example, the death penalty, should it apply.

It is the UK's normal practice to discuss human rights issues during negotiations and to include a provision in the treaties to underline the UK's position on human rights under its domestic law. As a starting point for entering into MLA treaty negotiations with other states, the UK uses model text which reflects domestic legislation and policy (including refusal on human rights grounds). The UK maintains wide discretion on whether or not to refuse a request for assistance. Flexibility over the wording used is necessary to ensure that the Government is able to reach an agreement which is in the UK's best interest.

Data Sharing

The continued free flow of personal data is an important underpinning feature of the future relationship with the EU for both economic and security purposes. The EU will begin its data adequacy assessment of the UK as soon as possible after the United Kingdom's withdrawal, endeavouring to adopt adequacy decisions by the end of December 2020. The United Kingdom will, in the same timeframe, take steps to ensure the comparable facilitation of transfers of personal data to the Union, if the applicable conditions are met.

The UK's Data Protection Act 2018 strengthened UK standards in line with the EU's General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED), providing a unique starting point for the adequacy assessments. The UK is a global leader in strong data protection standards. Protecting the privacy of individuals will continue to be a priority for the UK. Following the UK's exit from the EU, the EU (Withdrawal) Act

1 <https://www.gov.uk/government/publications/overseas-security-and-justice-assistance-osja-guidance>

2018 (EUWA) will retain the GDPR in UK law. The fundamental principles, obligations and rights with which organisations and data subjects have become familiar will stay the same.

Under the Investigatory Powers Act (IPA) 2016, satisfactory and equivalent handling arrangements must be in place before the Government shares UK material with an overseas authority. These obligations sit alongside those in, for example, the Consolidated Guidance to intelligence officers and service personnel on the detention and interviewing of detainees overseas and on the passing and receipt of intelligence relating to detainees, and the gateway provisions which allow for intelligence sharing in the Intelligence Services Act 1994 and Security Service Act 1989.

Labour Rights and Modern Slavery

The Government is a strong supporter of the United Nations Guiding Principles on Business and Human Rights, and has taken a lead on implementing them at all levels, including in the UK's National Action Plan on Business and Human Rights. The Government has supported the UN Working Group on Business and Human Rights to promote uptake of the UN Guiding Principles and develop guidance and best practice and continues to encourage other countries to adopt National Action Plans, including the provisions of the UN Guiding Principles.

The fight against modern slavery remains one of this Government's foreign policy priorities. The Government continues to lobby governments to ratify the ILO Conventions on Forced Labour. It also encourages States to endorse the Call to Action to end Forced Labour, Modern Slavery and Human Trafficking, launched by the Prime Minister at the United Nations General Assembly in 2017, and to make concrete progress on its commitments.

The Government is exploring all options in the design of future sectoral agreements, including possible provisions relating to labour and modern slavery, taking into account responses received to the four consultations on future FTAs which closed in October 2018, and the most effective means of achieving achieving the Government's objectives in this area.

11. The current system intended to ensure Parliament has information about the human rights implications of proposed agreements is not working. Parliament has not received adequate or timely information from Government about the potential human rights implications of international agreements being negotiated or those subject to CRaG scrutiny. (Paragraph 52)

12. It is clear that the current arrangements under the CRaG Act are not adequate and that much more timely information is required from Government in relation to the negotiation of international agreements and human rights compliance. (Paragraph 65)

13. *We consider that the Government must inform Parliament of all international agreements that it intends to negotiate – at a minimum identifying the other party to the agreement and the subject matter and broad aims of the agreement. This information should also indicate any human rights issues that might be relevant to the negotiation*

as well as any human rights protections that might need to be sought. For international agreements engaging human rights issues, the Government should keep the Committee regularly informed of progress in negotiations. (Paragraph 66)

14. *The Government must provide to Parliament a human rights memorandum for all proposed international Agreements once there is a draft text. This memorandum should be communicated to the Joint Committee on Human Rights. Such a memorandum could be very short for agreements raising few (if any) human rights issues, so need not be burdensome. For those agreements raising more substantive human rights issues, such as complex trade or investment deals, extradition treaties, mutual legal assistance treaties or data sharing arrangements, more detailed human rights analysis would be required. This should help to ensure that the human rights implications of the UK's international obligations are considered fully before the UK becomes bound by those obligations. (Paragraph 67)*

The framework for Parliamentary scrutiny of treaties set out in the Constitutional Reform and Government Act 2010 (CRaG) reflects the long-established constitutional principle that it is for the Executive to negotiate and for Parliament to scrutinise action on the international plane. The CRaG framework enshrines in statute the Ponsonby Rule which provided for treaties subject to ratification to be laid before Parliament prior to ratification. Although the CRaG framework reflects this longstanding constitutional convention, its incorporation into statute was the product of lengthy consultation and dialogue, and the constitutional principle on which it is based exists for important and pragmatic reasons. An effective negotiator needs to be agile, able to assess and respond to the other party's position, knowing where they can make compromises to secure the best overall agreement, and will need to do so shielding their aims and instructions from the other side. Effective negotiations inevitably require a degree of confidentiality.

Within this framework, the Government agrees that adequate information must be provided in order for Parliament to be able to exercise effective scrutiny. The Government will give further consideration to this issue in light of the Constitution Committee's report published on 30 April 2019. Generally, where a treaty is subject to ratification, the appropriate point for the provision of that information is, for many treaties, the point at which terms have been agreed and the treaty is laid before Parliament (the Government's proposals for enhancing the information provided in Explanatory Memoranda are set out below). At this point, the terms will be stable and any human rights implications will be clear. This does not render Parliamentary scrutiny ineffective; and does not mean that Parliament will be presented with a *fait accompli*. Throughout the negotiations, a negotiator will have in mind the need to secure Parliamentary support for any implementing legislation, and to ensure that no objections are raised when the treaty is laid before Parliament. This will influence the terms that are negotiated and, in some cases, require engagement with Parliament, including relevant Committees, at an earlier stage.

The Government accepts, however, that Parliament will have a strong interest in treaties in particular thematic sectors – for example, trade agreements. Their scale and nature mean that the provision of information to Parliament at an earlier stage is vital, both to draw on Parliamentary expertise and to ensure adequate consultation and engagement. Existing EU agreements currently in force have already been through the appropriate processes for EU parliamentary scrutiny, overseen in the UK by the EU Scrutiny Committee and its Lords equivalent. During the passage of the Trade Bill through the Commons, the Government tabled amendments to provide even greater transparency to Parliament

for continuity agreements, including committing to lay a series of reports in Parliament which will explain the Government’s approach to delivering continuity in each of the UK’s existing trade relationships as the UK leaves the EU.

For future free trade agreements struck after the UK leaves the EU, the Government has set out its proposals in a Command Paper,² including its intention to work closely with a Parliamentary Committee to ensure effective scrutiny throughout the process. Further, where the Committee indicated that the agreement should be subject to a debate prior to the commencement of parliamentary scrutiny under CRaG, the Government would consider and seek to meet such requests where those requests are made within a reasonable timeframe and subject to parliamentary timetables.

In all cases, treaties laid before Parliament under CRaG must be accompanied by an Explanatory Memorandum. The Government has already committed to set out in this Memorandum any ‘significant human rights implications’. This has never been defined, and the Government acknowledges that it has not resulted in the provision of meaningful information in practice, and agrees that this process can and should be improved.

The Government therefore proposes to update the template Explanatory Memorandum (internal guidance given to government departments developing Explanatory Memoranda) to include a standard heading directing departments to consider the human rights implications of the Treaty, for all Treaties. Here the lead department would set out the compatibility of the treaty provisions with the UK’s international human rights obligations. Where the Department is of the view that there are no significant implications, this must also be stated. As noted above with recommendation 3, in the unlikely event that implementation would require any such legislative change this would also be set out in the Explanatory Memorandum, and the Government would engage with the Committee accordingly.

15. *The Standing Order for the Joint Committee on Human Rights should be amended so that the remit covers “human rights relating to the UK’s international obligations (but excluding consideration of individual cases)” as well as “human rights in the UK (but excluding consideration of individual cases)”.* (Paragraph 68)

The Government acknowledges that the remit of the JCHR is a matter for Parliament. The Government notes that when set up, the examination of ‘human rights overseas’ was explicitly outside the remit of the Committee.³ The Committee has been careful to avoid overlap with the work of other Committees by focussing on analysing legislation and policy from a clearly defined legal perspective of conformity with human rights law (both domestic and international).⁴

The Committee’s role has however included consideration of the Government’s international human rights obligations (for example by considering reports to UN treaty bodies). The Government agrees that it is helpful to make this explicit in its remit. The Government assumes that any consideration of compliance by other countries with their own human rights obligations will continue to fall within the remit of the Foreign Affairs Committee.

2 CP 63 “Processes for making free trade agreements after the United Kingdom has left the European Union”, February 2019.

3 Hansard, 14 December 1998, Column 604.

4 Joint Committee on Human Rights: The Work of the Committee in the 2001–05 Parliament, paragraphs 33–35.

16. *There should be a formal role, specifically covering human rights, for the devolved administrations and parliaments in the formulations of trade policy, the negotiations process and the scrutiny of agreements prior to ratification. (Paragraph 69)*

As a matter of law, international relations are the responsibility of the UK Government and the UK Parliament. However, devolved governments have a strong and legitimate interest where those agreements intersect with areas of devolved competence. This is particularly the case in relation to the Government's future trade policy.

It is a matter for each devolved legislature to work with their respective governments to determine their own scrutiny arrangements, including any consideration of human rights issues as referred to in the recommendation. The Government is aware of the International Trade Committee's recommendations in relation to the involvement of devolved administrations in future free trade agreements. There is no question that the devolved administrations must have a real and meaningful role in the development of trade policy and that is why the Government will be putting in place a new inter-governmental Ministerial Forum for international trade. This will ensure there is a regular and formal structure to support discussion and engagement between the UK Government and the devolved administrations on trade agreements.

The Government is also currently discussing with the devolved administrations their role in future agreements, with a view to agreeing a new concordat on international trade, within the framework of the Memorandum of Understanding between the UK Government and the devolved administrations. It is entirely appropriate that the Government uses this mechanism to ensure that there is strong and ongoing engagement with the devolved governments.

The Government is committed to working closely with the devolved administrations to deliver a future trade policy that works for the whole of the UK. The Government's proposals for agreeing how the Government and devolved administrations will work together on trade policy are set out in its Command Paper.⁵

17. *We have received many useful ideas for enhancing the parliamentary scrutiny of international agreements, which we commend to other Committees considering how the systems as a whole should change. We look forward to colleagues' views on how best to construct a parliamentary process to sift all international agreements and highlight those which require further consideration. Any such process should be properly resourced. (Paragraph 70)*

The Government notes this recommendation and welcomes the Committee's intention to complement the work being undertaken by other Committees, in particular the Constitution Committee. Consideration of the system within which scrutiny takes place raises important considerations which reflect the distinct roles assigned to the Executive and the Legislature within the UK's constitution. Within this system, the Government notes that the structures within which Parliament conducts its scrutiny work are, rightly, a matter for Parliament itself, and agrees that any such process should be properly resourced.

5 Supra note 2.

18. *We note that the Foreign Affairs Committee is currently inquiring into China and the International Rules Based System. We hope that the Committee will address this issue and that the evidence we have received will provide further background for their consideration of the Sino-British Joint Declaration. (Paragraph 75)*

19. **The Government should report regularly to Parliament on the implementation of international agreements containing human rights protections, so that we can monitor compliance with human rights standards. When an agreement is initially scrutinised by Parliament, Government and Parliament should agree an appropriate reporting timetable (which may only be once a Parliament in some cases). The Government should undertake a review of the measures available to it to take action where such human rights protections are not respected in practice. Where such human rights protections are not so respected, as reported to the Committee with reference to the Sino-British Declaration, the Government should then take such measures as are appropriate. This should help to ensure that human rights protections contained in agreements are respected in practice and measures taken if this is not the case. (Paragraph 77)**

Many human rights treaties require the Government to report regularly on its implementation of those agreements. For example, the UK provides periodic reports on the implementation of various United Nations human rights instruments, which are publicly available.⁶ These are scrutinised by the Committee where it wishes to do so.

Reporting to Parliament, in all cases, on the implementation of international agreements containing human rights protections would require significant additional resource, and might not facilitate effective scrutiny in areas of serious concern which will be of interest to Parliament. In such cases, the Government will respond to requests for further information or specific arrangements. For example and as noted by the Committee, since 1997 the Government has reported to Parliament at six-monthly intervals on the implementation of the Sino-British Joint Declaration on the Question of Hong Kong. The Government has made it clear that it attaches great importance to the Joint Declaration and its faithful implementation, and monitors implementation closely.

20. **Increased transparency in international agreements is sorely needed. The information publicly provided to Parliament under our proposals should help towards addressing these concerns, and in facilitating these discussions with civil society. (Paragraph 78)**

The transparent operation of Government is vital for ensuring the accountability of, public support for, and confidence in the institutions of government, and the Government seeks to operate transparently wherever possible. The Government will seek to provide information to Parliament in a manner which best facilitates scrutiny. The Government will give further consideration to this issue in light of the Constitution Committee's report published on 30 April 2019. However, as set out above, in certain cases there will be limitations to the information that can be provided while international agreements are being negotiated, where information relating to negotiating positions is likely to be sensitive. Debating those positions during live negotiations potentially undermines the negotiator – harming the wider national interest.

6 The UK's reports are published mainly on the UN website: <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/GBIndex.aspx>; some UK reports are also published on GOV.UK, for example at <https://www.gov.uk/government/collections/human-rights-periodic-reports-to-the-united-nations>

In the case of trade negotiations, the Government has recognised the high level of public interest, and recognises that transparency is critical to ensuring public support. The Government's Command Paper⁷ sets out proposals for ensuring an appropriate level of transparency, while preserving the Government's ability to secure the best outcomes for the UK.

21. *The UK should maintain adequate systems and procedures to prevent exports from the UK from being used in human rights violations and there should be adequate parliamentary oversight and involvement in those processes. (Paragraph 84)*

22. *The Government should consult this Committee and CAEC before making any changes to the rules relating to international trade and human rights, including export controls on certain goods such as those currently flowing from Council Regulations (EC) No 1236/2004 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, and the Consolidated EU and National Arms Exports Licensing Criteria. (Paragraph 85)*

The Government agrees that it is important to ensure that military and other controlled goods are not exported in circumstances where there is a clear risk that the items might be used for internal repression. The Government welcomes continued Parliamentary scrutiny of the Government's policy and practice in this area. In circumstances where the Government brings forward proposals to change export control rules and regulations, it will consider whether it is appropriate to consult in accordance with the Cabinet Office Consultation Principles.⁸

7 Supra note 2.

8 <https://www.gov.uk/government/publications/consultation-principles-guidance>