

COMPILATION OF CONSTITUTIONAL AND LEGISLATIVE PROVISIONS ON TREATY PRACTICE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND¹

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¹ We are grateful for the kind assistance of Nevil Hagon, Head of the Treaty Section of the Foreign & Commonwealth Office, and his staff, in compiling this information.

IMPORTANT NOTES

This document forms part of the “**Compilation of Constitutional and Legislative Provisions on Treaty Practice of Selected States and International Organisations**” (**Compilation of Provisions on Treaty Practice**) which has been published as an online resource by the British Institute of International and Comparative Law (the Institute) and the Centre for International Law, National University of Singapore (CIL). The full Compilation is available at www.biicl.org and www.cil.nus.edu.sg

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This document was last amended in December 2012.

Note: The United Kingdom does not have a codified constitution. Some practices relating to ratification and implementation of international treaties have the status of constitutional conventions, some of which have recently been placed on a statutory footing.

1. Constitutional Reform and Governance Act 2010

(as amended in 2011 and 2012)

[Extracts of relevant provisions]

Part 2 – Ratification of treaties

20 Treaties to be laid before Parliament before ratification

- (1)** Subject to what follows, a treaty is not to be ratified unless—
- (a)** a Minister of the Crown has laid before Parliament a copy of the treaty,
 - (b)** the treaty has been published in a way that a Minister of the Crown thinks appropriate, and
 - (c)** period A has expired without either House having resolved, within period A, that the treaty should not be ratified.
- (2)** Period A is the period of 21 sitting days beginning with the first sitting day after the date on which the requirement in subsection (1)(a) is met.
- (3)** Subsections (4) to (6) apply if the House of Commons resolved as mentioned in subsection (1)(c) (whether or not the House of Lords also did so).
- (4)** The treaty may be ratified if—
- (a)** a Minister of the Crown has laid before Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why, and
 - (b)** period B has expired without the House of Commons having resolved, within period B, that the treaty should not be ratified.

- (5) Period B is the period of 21 sitting days beginning with the first sitting day after the date on which the requirement in subsection (4)(a) is met.
- (6) A statement may be laid under subsection (4)(a) in relation to the treaty on more than one occasion.
- (7) Subsection (8) applies if—
 - (a) the House of Lords resolved as mentioned in subsection (1)(c), but
 - (b) the House of Commons did not.
- (8) The treaty may be ratified if a Minister of the Crown has laid before Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why.
- (9) “Sitting day” means a day on which both Houses of Parliament sit.

21 Extension of 21 sitting day period

- (1) A Minister of the Crown may, in relation to a treaty, extend the period mentioned in section 20(1)(c) by 21 sitting days or less.
- (2) The Minister does that by laying before Parliament a statement—
 - (a) indicating that the period is to be extended, and
 - (b) setting out the length of the extension.
- (3) The statement must be laid before the period would have expired without the extension.
- (4) The Minister must publish the statement in a way the Minister thinks appropriate.
- (5) The period may be extended more than once.

22 Section 20 not to apply in exceptional cases

- (1) Section 20 does not apply to a treaty if a Minister of the Crown is of the opinion that, exceptionally, the treaty should be ratified without the requirements of that section having been met.

- (2)** But a treaty may not be ratified by virtue of subsection (1) after either House has resolved, as mentioned in section 20(1)(c), that the treaty should not be ratified.
- (3)** If a Minister determines that a treaty is to be ratified by virtue of subsection (1), the Minister must, either before or as soon as practicable after the treaty is ratified—
- (a)** lay before Parliament a copy of the treaty,
 - (b)** arrange for the treaty to be published in a way that the Minister thinks appropriate, and
 - (c)** lay before Parliament a statement indicating that the Minister is of the opinion mentioned in subsection (1) and explaining why.

23 Section 20 not to apply to certain descriptions of treaties

- (1)** Section 20 does not apply to—
- (a)** ... [repealed]
 - (b)** a treaty covered by section 5 of the European Union (Amendment) Act 2008 (treaty amending Treaty establishing European Atomic Energy Community not to be ratified unless approved by Act of Parliament);
 - (c)** a treaty that is subject to a requirement imposed by Part 1 of the European Union Act 2011 (restrictions on treaties and decisions relating to EU).
- (2)** Section 20 does not apply to a treaty in relation to which an Order in Council may be made under one or more of the following—
- (a)** section 158 of the Inheritance Tax Act 1984 (double taxation conventions);
 - (b)** section 2 of the Taxation (International and Other Provisions) Act 2010 (double taxation arrangements);
 - (c)** section 173 of the Finance Act 2006 (international tax enforcement arrangements).

- (2A)** Section 20 does not apply to a treaty in relation to which an order may be made under paragraph 66 of Schedule 19 to the Finance Act 2011 (bank levy: arrangements affording double taxation relief).
- (2B)** Section 20 does not apply to any treaty referred to in section 218(1) of the Finance Act 2012.
- (3)** Section 20 does not apply to a treaty concluded (under authority given by the government of the United Kingdom) by the government of a British overseas territory, of any of the Channel Islands or of the Isle of Man.
- (4)** Section 20 does not apply to a treaty a copy of which is presented to Parliament by command of Her Majesty before that section comes into force.

24 Explanatory memoranda

In laying a treaty before Parliament under this Part, a Minister shall accompany the treaty with an explanatory memorandum explaining the provisions of the treaty, the reasons for Her Majesty's Government seeking ratification of the treaty, and such other matters as the Minister considers appropriate.

25 Meaning of “treaty” and “ratification”

- (1)** In this Part “treaty” means a written agreement—
 - (a)** between States or between States and international organisations, and
 - (b)** binding under international law.
- (2)** But “treaty” does not include a regulation, rule, measure, decision or similar instrument made under a treaty (other than one that amends or replaces the treaty (in whole or in part)).
- (3)** In this Part a reference to ratification of a treaty is a reference to an act of a kind specified in subsection (4) which establishes as a matter of international law the United Kingdom's consent to be bound by the treaty.
- (4)** The acts are—
 - (a)** deposit or delivery of an instrument of ratification, accession, approval or acceptance;

(b) deposit or delivery of a notification of completion of domestic procedures.

Notes:

- The full text of Part 2 of the Constitutional Reform and Governance Act 2010 can be accessed on the Government's legislation website at:

<http://www.legislation.gov.uk/ukpga/2010/25/part/2>

- Section 23 of the Constitutional Reform and Governance Act 2010 has been amended by the Finance Act 2011, the European Union Act 2011 and the Finance Act 2012. At the time of access to the Government's legislation website in December 2012, amendments to section 23 had not yet been incorporated into the text of the Act by the legislation.gov.uk editorial team. The amendments have been incorporated into the extracts shown in this compilation by the British Institute of International & Comparative Law.
- Consolidated texts of the Constitutional Reform and Governance Act 2010 as amended are available in commercial databases providing a subscription service, such as Westlaw and Lexis.
- Explanatory Notes relating to the Act (as originally enacted) are available on the Government's legislation website at:
<http://www.legislation.gov.uk/ukpga/2010/25/notes/contents>

2. Legislation relating to European Union treaties

A European Union (Amendment) Act 2008 (as amended by the European Union Act 2011)

[Extract consisting of the one relevant provision, namely, Section 5]

5 Amendment of Euratom Treaty

- (1) A treaty which satisfies the following conditions may not be ratified unless approved by Act of Parliament.
- (2) Condition 1 is that the treaty amends the Treaty establishing the European Atomic Energy Community (signed at Rome on 25th March 1957).
- (3) Condition 2 is that the treaty results from the application of Article 48(2) to (5) of the Treaty on European Union (as amended by the Treaty of Lisbon) (Ordinary Revision Procedure for amendment of founding Treaties, including amendments affecting EU competence).

Notes:

- The full text of the European Union (Amendment) Act 2008 is available on the official UK legislation website at:

<http://www.legislation.gov.uk/ukpga/2008/7/contents>
- At the time of access to the Government's legislation website in December 2012, amendments to section 5 of the 2008 Act made by the European Union Act 2011 had not yet been incorporated in the text of the Act by the [legislation.gov.uk](http://www.legislation.gov.uk) editorial team, but they are listed on the website. The amendments have been incorporated into the extract shown in this compilation by the British Institute of International & Comparative Law.
- Consolidated texts of the European Union (Amendment) Act 2008 as amended are available in commercial databases providing a subscription service, such as Westlaw UK and Lexis.

- The full text of the Explanatory Notes relating to the European Union (Amendment) Act 2008 (as originally enacted) is available on the Government’s legislation website at:
<http://www.legislation.gov.uk/ukpga/2008/7/notes/contents>

B European Union Act 2011

[Summary of the relevant provisions]

Part 1: Restrictions on Treaties and Decisions relating to EU

Part 1 of the Act provides that, in future, a referendum would be held before the UK could agree to an amendment of the Treaty on European Union (‘TEU’) or of the Treaty on the Functioning of the European Union (‘TFEU’); or before the UK could agree to certain decisions already provided for by TEU and TFEU if these would transfer power or competence from the UK to the EU. Part 1 also makes provision for the persons who would be entitled to vote in a referendum held as a result of this Act; provides that a separate question would need to be framed for each issue requiring a referendum; and provides that the Electoral Commission will pursue additional awareness-raising activities in relation to any future referendum held in accordance with this Act.

In addition, Part 1 provides that an Act of Parliament would be required before the UK could agree to a number of other specified decisions provided for in TEU and TFEU, either in the European Council or in the Council of the European Union (referred to as ‘the Council’ in the Act and in these Notes); and that certain other decisions would require a motion to be agreed without amendment in both Houses of Parliament before the UK could vote in favour of specified decisions in either the European Council or the Council.

Part 3: General

Section 18 of the Act concerns the status of EU law within the UK’s domestic legal order. The section, which is declaratory, provides that directly applicable and directly effective EU law is given effect in the law of the UK only by virtue of an Act of Parliament...

This reflects the dualist nature of the UK’s constitutional model under which no special status is accorded to treaties; the rights and obligations created by them take effect in domestic law through the legislation enacted to give effect to them.

Notes:

- The above summary is extracted from the *Explanatory Notes* which relate to the European Union Act (c.12) which received Royal Assent on 19 July 2011. The *Explanatory Notes* have been prepared by the Foreign and Commonwealth Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament. (The summary is provided here instead of the statutory provisions, as the latter are long and complex.)
- The full text of the European Union Act 2011 is available on the official UK legislation website at: <http://www.legislation.gov.uk/ukpga/2011/12>
- And the full text of the Explanatory Notes relating to the Act is available on the same website at:
<http://www.legislation.gov.uk/ukpga/2011/12/notes/contents>

3. Other Documentation

A Treaties and MOUs: Guidance on practice and procedures (May 2004 edition)

The Treaty Section of the Foreign and Commonwealth Office has published a detailed guidance booklet on treaty-making practice and procedures (last revised May 2004). The full text may be accessed on the FCO website at: http://www.fco.gov.uk/resources/en/pdf/pdf8/fco_pdf_treatymous

B Devolution Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee, March 2010, Cm 7864

This Memorandum of Understanding defines the relationship between the UK Government in Westminster and the devolved administrations in Scotland, Wales, and Northern Ireland. In particular, Part 2 Section D is the Concordat on International Relations, which sets out the common arrangements agreed between the Government and the devolved administrations. It covers the conduct of international relations and the implementation of international agreements. The full text is available on the website of the Deputy Prime Minister at: <http://www.dpm.cabinetoffice.gov.uk/sites/default/files/resources/devolution-memorandum-of-understanding.pdf>

C Foreign and Commonwealth Office Intranet guidance

The Foreign and Commonwealth Office (FCO) provides detailed operational guidance on treaty practices and procedures to government officials on an internal government website. It is updated section by section, as required, on a regular basis. Parts of it are available at UK Treaties Online on the FCO website at: <http://www.fco.gov.uk/en/publications-and-documents/treaties/practice-procedures/>

4. Official online sources of national treaty status information

A Foreign & Commonwealth Office

The Treaty Section of the Foreign and Commonwealth Office (FCO) maintain pages on the FCO website which provide a range of information about treaties and UK treaty practice at: <http://www.fco.gov.uk/en/publications-and-documents/treaties/>

The UK Treaties Online (UKTO) service provides access to details of over 14,000 treaties involving the UK. It is on the FCO website at:

<http://www.fco.gov.uk/en/publications-and-documents/treaties/uk-treaties-online/>

B Parliament

The website of the UK Parliament (www.parliament.uk) contains, within the section on Statutory Instruments, a list of “Treaties subject to negative resolution procedure”.

It lists the name of each treaty laid before Parliament under section 20 of the Constitutional Reform and Governance Act 2010, the date on which it was laid, and the number of unexpired sitting days for that treaty on the date of issue of the list. The list is updated every Wednesday.

The list is available at:

<http://www.publications.parliament.uk/pa/cm/cmsilist/section-b.htm>