

THE PONSONBY RULE

Introduction

The power to make treaties is a Prerogative power vested in the Crown. It is exercised on the advice of the Secretary of State for Foreign and Commonwealth Affairs, who, in turn, consults with other Departments of Government whose responsibilities would be engaged in executing the provisions of particular treaties. There is no constitutional requirement for Parliament to approve a treaty, although sometimes legislation is needed before the Government can ratify a treaty.

Since 1924 all treaties subject to ratification (with limited exceptions) have been laid before Parliament for 21 sitting days in accordance with the Ponsonby Rule before ratification (or its equivalent) is effected. The laying is done by means of a Command Paper published in one of the following FCO series: Country, Miscellaneous or European Communities. Since 1997 treaties laid before Parliament in accordance with the Ponsonby Rule have been laid together with an Explanatory Memorandum (EM). When a treaty has entered into force for the United Kingdom (whether on signature or following ratification etc.), it is published in the Treaty Series of Command Papers.

The Ponsonby Rule of 1924

Since March 1892, it had been the practice to present to Parliament the texts of treaties binding the United Kingdom. This was done in a numbered series of Command Papers known as the Treaty Series. But treaties were published in that series only after they had entered into force for the United Kingdom, so that at that stage no Parliamentary approval, tacit or express, could be sought or given.

On 1 April 1924, during the Second Reading Debate on the Treaty of Peace (Turkey) Bill, Mr Arthur Ponsonby (Under-Secretary of State for Foreign Affairs in Ramsay MacDonald's first Labour Government) made the following statement: "It is the intention of His Majesty's Government to lay on the table of both Houses of Parliament every treaty, when signed, for a period of 21 days, after which the treaty will be ratified and published and circulated in the Treaty Series. In the case of important treaties, the Government will, of course, take an opportunity of submitting them to the House for discussion within this period. But, as the Government cannot take upon itself to decide what may be considered important or unimportant, if there is a formal demand for discussion forwarded through the usual channels from the Opposition or any other party, time will be found for the discussion of the Treaty in question." He warned that: "Resolutions expressing Parliamentary approval of every Treaty before ratification would be a very cumbersome form of procedure and would burden the House with a lot of unnecessary business. The absence of disapproval may be accepted as sanction, and publicity and opportunity for discussion and criticism are the really material and valuable elements which henceforth will be introduced" [H.C. Deb. (1924) 171, c. 1999-2005].

The statement responded to the demands of some of the Government's supporters for a Parliamentary practice that would render impossible the 'secret Treaties and secret clauses of Treaties' of the kind which were then generally supposed to have helped bring about the First World War. Since then, the practice of secret treaties has been largely abolished by changes in diplomatic practice, reinforced in turn by specific obligations in the Covenant of the League of Nations and then in the United Nations Charter requiring

all treaties to be deposited with the United Nations once they have entered into force, which then publishes them in the United Nations Treaty Series (UNTS) published periodically by the UN Secretariat. Moreover, many States, including the United Kingdom, have published Treaty Series of their own. The Ponsonby Rule was withdrawn during the subsequent Baldwin Government, but was reinstated in 1929 and gradually hardened into a practice observed by all successive Governments.

Application of the Ponsonby Rule

The Ponsonby Rule requires that every treaty signed by the United Kingdom subject to ratification should be laid before Parliament for 21 sitting days (although they need not be continuous). The FCO interprets the Ponsonby Rule as applying to acceptance, approval and accession as well as to ratification. "Acceptance" and "approval" have the same legal effect as ratification, and "accession" arises when the United Kingdom Government consents to be bound by a treaty of which it was not an original signatory. The Ponsonby Rule does not apply to treaties that enter into force on signature.

In its Response of July 1982 to the 6th Report of the Joint Committee on Statutory Instruments (Session 1981-82), the Government confirmed that "International agreements [i.e. treaties] (including agreements amending international agreements) that are subject to ratification are, under the Ponsonby Rule, laid before Parliament before they are ratified." However, "Sometimes an international agreement is amended, and the amendment, which may or may not be in the form of an international agreement, though it is not subject to ratification, does require the making of a statutory instrument for its implementation. In such a case, the Government accepts that the text of the agreement or amendment should be made available to Parliament, preferably when the statutory instrument is laid but in any case before it enters into force unless urgent or other important considerations make this impracticable" [Cmnd. 8600]. Therefore, in practice the Ponsonby Rule has also been applied to (a) amendments to multilateral treaties which are themselves subject to ratification and (b) amendments which, although subject to the silent procedure, require legislation.

Moreover, since January 1998 it has been the FCO's consistent practice to apply the Ponsonby Rule to treaties which are not subject to formal ratification (or acceptance or approval) but simply to the mutual notification of the completion of constitutional and other procedures by each Party. (However, the Ponsonby Rule does not apply to treaties subject to unilateral notification of completion of procedures, where there are no procedures or legislation required on the UK side and notification is only by the other side.)

Exceptions to the Ponsonby Rule

On 6 May 1981 the Lord Privy Seal announced in a written answer to a parliamentary question that: "In order to effect economies in the publication of Command Papers, it has been decided that the texts of bilateral double taxation agreements should no longer be tabled in Parliament as White papers in the Country Series of Command Papers. They will however continue to be published in the Treaty Series of Command Papers after entry into force. These new arrangements will necessitate a limited departure from the strict terms of what has become known as the Ponsonby Rule - namely, the practice whereby the texts of all international agreements concluded subject to ratification are laid before Parliament for a period of 21 sitting days after signature and before

ratification. The purpose of the Ponsonby Rule is to afford Parliament the opportunity of considering commitments which the Government of the day are proposing to enter into. In the case of bilateral double taxation agreements, that purpose is already served by the statutory requirement that the draft of any Order in Council providing for double taxation relief shall be laid before the House of Commons for approval by affirmative resolution, it being the invariable practice that the text of any bilateral double taxation agreement falling within the scope of the Ponsonby Rule should be scheduled to the draft Order designed to implement the agreement. It will accordingly be seen that the new arrangements are wholly consistent with the spirit of the Ponsonby Rule." [H.C. Deb. (1981) 4, WA 82].

With the growth of practice over the years, the Ponsonby Rule has been understood to allow for exceptions from its operation in special cases, when other means of consulting or informing Parliament can be used instead. Alternative procedures are:

- adopting a Motion;
- passing a Bill;
- making an announcement in a debate;
- adopting a resolution or a Motion as part of the Affirmative Resolution procedure for making an Order in Council;
- answering a Parliamentary Question;
- consulting leaders of the Opposition and other parliamentary parties.

However, in practice departures from the Ponsonby Rule are rare.

Explanatory Memoranda

Following an undertaking by Ministers on 16 December 1996 [H.C. Deb. (1996) 287, WA 94302; H.L. Deb. (1996) 576, WA 101], all treaties signed after 1 January 1997 and laid before Parliament under the Ponsonby Rule are now accompanied by an Explanatory Memorandum (EM). It contains a description of the subject matter of the treaty and an account of the reasons why it is proposed that the United Kingdom should become a party to the treaty. It further highlights the benefits for the United Kingdom from participation in the treaty as well as any burdens which would result. Guidelines on Explanatory Memoranda for Treaties are published on the Treaties page of the FCO web site at <http://www.fco.gov.uk/directory/treaty.asp>

The FCO sends two copies of a Command Paper with its accompanying EM to the Clerk in Charge, Votes and Proceedings Office at the House of Commons for laying. A further copy of the Command Paper and 25 copies of its accompanying EM are sent to the Vote Office at the House of Commons for distribution to Members. Arrangements for the House of Lords are as follows: Two copies of a Command Paper and its accompanying EM are sent to the Clerk of the Parliaments at the House of Lords. One set is stamped for the attention of the 'Printed Paper Office', which also receives 2 copies of the EM direct for distribution to Members. In addition, EMs are published on the Treaties page of the FCO web site.

In its Response of 31 October 2000 to the House of Commons Procedure Committee's Second Report of Session 1999-2000, Parliamentary Scrutiny of Treaties (HC 210), the Government stated that: "The FCO will ensure that a copy of each Command Paper and

accompanying Explanatory Memorandum (EM) for treaties laid before Parliament under the Ponsonby Rule is sent to what the FCO judges to be the relevant departmental select committee. It would then be for the lead committee to decide whether the Command Paper and EM might be more relevant to another committee or relevant to more than one committee and to pass it on accordingly." This practice was implemented at the start of November 2000.

Extension of the Ponsonby Period

The Government Response to the Procedure Committee further stated that: "In accordance with the Ponsonby Rule time for consideration of a treaty by a select committee should normally be within 21 sitting days, but in cases where a committee wished to conduct an inquiry that was likely to take more than 21 days, it is open to a committee to ask for an extension. The Government would aim to respond positively to such requests provided circumstances permit and cases are justified."

**Foreign and Commonwealth Office
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