

Parliamentary scrutiny in the Withdrawal Agreement Bill (WAB)

David Lawrence
The Trade Justice Movement
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Clause 31 of the WAB sets out conditions and processes for Parliamentary oversight of the EU-UK Future Relationship negotiations.

The scrutiny provisions amend the EU Withdrawal Act to give Parliament significantly more oversight over the EU-UK relationship compared to other trade agreements. Furthermore, these provisions are enshrined in primary legislation, unlike the ratification procedure set out in the Government's Command Paper of February 2019.

Key features of the scrutiny provisions include:

1. Report

A Government minister must make a statement to the House of Commons before negotiations begin. It is not clear how detailed this statement is, or whether it constitutes a 'mandate' for negotiations.

There must also be regular reporting to both Houses every three months on progress that has been made.

2. Vote prior to negotiations

Negotiations cannot begin until the Minister's statement has been approved by a motion in the House of Commons. Depending on the content of the statement, this may or may not be equivalent to a vote on the 'mandate' for negotiations.

3. Vote on deal

A Government minister must lay before both houses the treaty that has been agreed, as well as a declaration of political agreement. The treaty can only be ratified if approved by the House of Commons.

Forms of scrutiny which are not covered:

1. Select committees

The WAB does not make provision for committee scrutiny of the negotiations or the provisions in the Future Relationship, for example by establishing a specific committee. However, it is likely that this will be overseen anyway by the European Scrutiny Committee and the Exiting the EU Committee. Furthermore, it is unusual for

Acts of Parliament to establish new committees.

2. Negotiation documents

The WAB does not make provision for the release of negotiation documents. This means that MPs have to rely on the ministerial statements for details on the progress and content of negotiations.

3. Enforceable amendments

The motions laid by the minister are amendable, but these amendments are not legally binding. However they would put political pressure on the Government to seek changes to the deal.

4. Significant role for devolved administrations

Devolved administrations are given a very limited role: they get a report from the minister, but do not have the power to vote on the mandate or the deal. However possible that they get input through committees (unclear if the Joint Ministerial Committee used for EU withdrawal continues for the Future Relationship).

5. Civil society involvement

The WAB does not make provision for civil society input or consultation on the negotiation mandate or provisions within the future relationship. This might be provided through non-legislative means, e.g. through stakeholder engagement in the Department for Exiting the EU, or other departments.

Implications for other trade agreements

As things stand, the process for negotiating and ratifying trade agreements is set out in the Constitutional Reform and Governance Act (2010) (CRAG).

CRAG does not give Parliament any input into treaty negotiations until after the treaty is signed: there are no requirements for reporting and no vote on the mandate. CRAG requires the treaty to be laid before Parliament for 21 sitting days before ratification. However, there is no guaranteed debate or vote. These can be sought through Opposition Days or Emergency Debates.

The scrutiny process in WAB therefore goes far beyond what is offered in CRAG. It also highlights an inconsistency in the Government's approach towards the future relationship with the EU (which the Government insists will be primarily a Free Trade Agreement) and trade agreements with other partners.

Appendix:

Clause 31

Oversight of negotiations for future relationship After section 13B of the European Union (Withdrawal) Act 2018 (approval of extension of implementation period) (for which see section 30 above) insert—

“13C Negotiations for future relationship

- (1) A Minister of the Crown must, before the end of the period of 30 Commons sitting days beginning with the day on which exit day falls, make a statement on objectives for the future relationship with the EU.
- (2) A Minister of the Crown may, at any time after the initial statement is made, make a revised statement on objectives for the future relationship with the EU.
- (3) A statement on objectives for the future relationship with the EU must be consistent with the political declaration of 17 October 2019 referred to in Article 184 of the withdrawal agreement (negotiations on the future relationship).
- (4) A Minister of the Crown may not engage in negotiations on the future relationship with the EU unless—
 - (a) a statement on objectives for the future relationship with the EU has been approved by the House of Commons on a motion moved by a Minister of the Crown, and
 - (b) a motion for the House of Lords to take note of that statement has been moved in that House by a Minister of the Crown.
- (5) In conducting negotiations on the future relationship with the EU, a Minister of the Crown must seek to achieve the objectives set out in the most recent statement on objectives for the future relationship with the EU to have been—
 - (a) approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown, and
 - (b) the subject of a motion of the kind mentioned in subsection (4)(b).
- (6) After the end of each reporting period, a Minister of the Crown must—
 - (a) lay before each House of Parliament a report on the progress made, by the end of the period, in negotiations on the future relationship with the EU, including—
 - (i) the Minister’s assessment of the extent to which the outcome of those negotiations is likely to reflect the most recent statement on objectives for the future relationship with the EU to have been approved by the

House of Commons, and the subject of a motion in the House of Lords, as mentioned in subsection (4), and

- (ii) if the Minister's assessment is that the future relationship with the EU is, in any respect, not likely to reflect that statement, an explanation of why that is so, and

(b) provide a copy of the report to the Presiding Officer of each of the devolved legislatures and to—

- (i) the Scottish Ministers,
- (ii) the Welsh Ministers, and
- (iii) the First Minister and deputy First Minister in Northern Ireland or the Executive Office in Northern Ireland.

(7) Subsections (8) and (9) apply if, in the opinion of a Minister of the Crown, an agreement in principle has been reached with the EU on a treaty the principal purpose of which is to deal with all or part of the future relationship with the EU.

(8) A Minister of the Crown must lay before each House of Parliament—

- (a) a statement that political agreement has been reached, and
- (b) a copy of the negotiated future relationship treaty.

(9) A treaty in the same form, or to substantially the same effect, as the negotiated future relationship treaty may be ratified only if the negotiated future relationship treaty has been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown and—

- (a) the House of Lords has not resolved, within the period of 14 Lords sitting days beginning with the day on which the negotiated future relationship treaty is laid before that House, that any treaty resulting from it should not be ratified, or
- (b) if the House of Lords has so resolved within that period, a Minister of the Crown has laid before each House of Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why.

(10) Section 20 of the Constitutional Reform and Governance Act 2010 (treaties to be laid before Parliament before ratification) does not apply in relation to a treaty if subsection (9) applies in relation to the ratification of that treaty.

(11) In this section— “devolved legislature” means—

- (a) the Scottish Parliament,
- (b) the National Assembly for Wales, or
- (c) the Northern Ireland Assembly; “future relationship with the EU” means the main arrangements which are designed to govern the security and economic aspects of the long-term relationship between the United Kingdom and the EU

after IP completion day and to replace or modify the arrangements which apply during the implementation period, but does not include the withdrawal agreement; “negotiated future relationship treaty” means a draft of a treaty identified in a statement that political agreement has been reached;

“negotiations” means negotiations the opening of which, on behalf of the EU, has been authorised under Article 218 of the Treaty on the Functioning of the European Union; “reporting period” means—

- (a) the period of three months beginning with the first day on which a statement on objectives for the future relationship with the EU is approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown, and
- (b) each subsequent period of three months;

“statement on objectives for the future relationship with the EU” means a statement—

- (a) made in writing by a Minister of the Crown setting out proposed objectives of Her Majesty’s Government in negotiations on the future relationship with the EU, and
- (b) published in such manner as the Minister making it considers appropriate;

“statement that political agreement has been reached” means a statement made in writing by a Minister of the Crown which—

- (a) states that, in the Minister’s opinion, an agreement in principle has been reached with the EU on a treaty the principal purpose of which is to deal with all or part of the future relationship with the EU, and
- (b) identifies a draft of that treaty which, in the Minister’s opinion, reflects the agreement in principle;

“treaty” has the same meaning as in Part 2 of the Constitutional Reform and Governance Act 2010 (see section 25(1) and (2) of that Act).”