



HOUSE OF LORDS

Select Committee on the Constitution

14th Report of Session 2024–26

Diego Garcia Military Base and British Indian Ocean Territory Bill

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Select Committee on the Constitution

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Declaration of interests

Information about interests of Committee Members can be found in the last Appendix to this report.

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Committee staff

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Fourteenth Report

DIEGO GARCIA MILITARY BASE AND BRITISH INDIAN OCEAN TERRITORY BILL

1. The Diego Garcia Military Base and British Indian Ocean Territory Bill was introduced to the House of Lords on 21 October. Committee stage began on 18 November.
2. The Bill makes provision to implement the Agreement between the Government of the Republic of Mauritius and the United Kingdom Government concerning the Chagos Archipelago including Diego Garcia ('the Agreement'), signed on 22 May 2025. The Agreement provides for a transfer of sovereignty to Mauritius, with the UK exercising rights on Diego Garcia during an initial 99-year period, which can be extended by agreement.
3. **The Bill gives rise to two issues of constitutional significance. This report draws these to the attention of the House.**

Parliamentary scrutiny of treaties

4. On 22 May, the Agreement was laid before both Houses of Parliament, as required by Part 2 of the Constitutional Reform and Governance Act 2010. Under that Act both Houses have 21 sitting days in which to scrutinise the Treaty—and to pass a resolution to oppose the Treaty's ratification if desired—before it can be ratified by the Government. Both the Foreign Affairs Committee and the International Agreements Committee examined the Agreement during this period.¹
5. The period of 21 sitting days ended without a resolution to oppose ratification being passed, so the Government is now able to ratify the Agreement. However, the Government has not yet done so, reflecting established practice that a government will not ratify a treaty unless and until it is able to implement that treaty in domestic law. This will be possible upon enactment of the Bill.
6. Despite two early day motions being tabled, the Agreement was not debated in the House of Commons.² On 30 June 2025, the House of Lords debated two motions together on the UK-Mauritius Agreement. The first motion, tabled by Lord Callanan, Shadow Minister, called on the Government not to ratify the Agreement and that motion was disagreed to on division. The second motion, a standard take note motion from the International Agreements Committee, was agreed to.³
7. The International Agreements Committee recently published a report, *Treaty Scrutiny in Westminster: Addressing the Accountability Gap*, which makes the case for reform of the treaty scrutiny process. It argues, among other things,

1 Foreign Affairs Committee, *The Chagos Agreement*, 23 June 2025, [QQ 1–80](#) (Stephen Doughty MP, Peter Candler); International Agreements Committee, [UK-Mauritius Agreement on the Chagos Archipelago including Diego Garcia](#) (9th Report, Session 2024–25, HL Paper 146)

2 Early day motions carry no entitlement to a House of Commons debate or vote within the Constitutional Reform and Governance Act 2010 scrutiny period.

3 HL Deb, 30 June 2025, cols 469–539

that there is a “powerful case for specific legislative reforms, in particular to provide for the parliamentary approval of significant treaties” and “a strong case for legislating to address the time allotted for parliamentary scrutiny of important treaties”.⁴

8. **We draw the attention of the House to the International Agreements Committee’s recent report on treaty scrutiny.**

Orders in Council

9. Clause 5 provides a power both to implement the Agreement and to make consequential provision in relation to the Act through Orders in Council, which are a form of legislation made in the name of the Monarch “by and with the advice and consent” of the Privy Council.
10. Orders in Council can either be statutory (issued under a ‘parent’ Act of Parliament and usually involving parliamentary approval) or prerogative (made on ministerial advice, without any statutory authority, by the Monarch by virtue of the residual Crown power).
11. Orders in Council for the British Indian Ocean Territory, as is typical for Overseas Territories, have historically been made by virtue of the prerogative.⁵ Clause 5 seeks to preserve the use of the prerogative to make Orders in Council as a result of the Agreement.
12. Clause 5(4) provides that the new statutory power conferred by clause 5 does not limit His Majesty’s powers under the prerogative, and clause 5(6) also confirms that the future exercise of prerogative powers do not stem from legislation. The Government states that subclauses (4) and (6) “together will provide that the statutory power conferred by clause 5 does not limit any of His Majesty’s powers under his prerogative”. It adds that “the intention is to maintain a clear distinction between prerogative and statutory orders”.⁶
13. Clause 5 further provides that if the Orders in Council produced under clause 5(1) amend, repeal or revoke any Act of Parliament or statutory instrument, then they must be laid before Parliament as statutory orders and will be subject to the negative procedure. In any other situation, the Orders in Council are not subject to any parliamentary procedure. We note that this is common in relation to Orders in Council made by way of the prerogative power, particularly in relation to treaties, and that accordingly the powers under clause 5 are exercisable with limited parliamentary scrutiny.
14. **We draw this to the attention of the House as a matter of interest during the passage of the Bill.**

4 International Agreements Committee, *Treaty Scrutiny in Westminster: Addressing the Accountability Gap* (10th Report, Session 2024–26, HL Paper 168), para 70

5 *R (On the Application of Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2008] UKHL 61

6 *Explanatory Notes to the Diego Garcia Military Base and British Indian Ocean Territory Bill* [Bill 285 (2024-25)-EN], para 32

APPENDIX : INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the Diego Garcia Military Base and British Indian Ocean Territory Bill report, Members and Legal Advisers declared no interests.

