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# Parliamentary approval of a Brexit deal with the EU



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## Introduction

The UK and the EU are currently negotiating two agreements.

The first of these is an agreement for the UK to withdraw from the EU, which will be incorporated into a Withdrawal Treaty. Before this Treaty can be ratified by the UK it will have to be approved by Parliament, as will its consequences in domestic law.

Secondly, the UK and the EU are also negotiating the framework for a new partnership after the transition period ends. This will be a political declaration to be adopted by both parties which, although not legally binding on either side, will form the basis of detailed future partnership negotiations after the UK leaves. This political declaration will also require Parliamentary approval.

This briefing provides guidance on the Parliamentary procedure for the approval of the withdrawal agreement and the political declaration on the future partnership. It also considers what would happen if the House of Commons rejected the outcome of the negotiations. Given the volatile nature of British politics at present, and the time constraints in the negotiations laid down by Article 50, it is hard to predict with any certainty how matters will work out.

## Legislative & constitutional requirements

### The European Union (Withdrawal) Act 2018

Section 13 of this Act lays down the procedure to be followed in both Houses of Parliament for the ratification of the withdrawal agreement and the framework for the future relationship.<sup>1</sup> This is a four-stage process, beginning with a Minister laying the text of a statement reporting that “political agreement has been reached”, alongside the “negotiated withdrawal agreement” and the “framework for the future relationship”, before Parliament.

The Act then sets out the second stage, which requires that “the negotiated withdrawal agreement and the framework for the future relationship have been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown.”<sup>2</sup>

This vote has become known as the “meaningful vote” after the commitment made in December 2017 by the Prime Minister that Parliament would be given “a meaningful vote”

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<sup>1</sup> Words quoted from 13(1): see *European Union (Withdrawal) Act 2018*, c. 16, s. 13

<sup>2</sup> *Ibid.*, s. 13(1)(b)

on the outcome of the Brexit negotiations; it was later incorporated into the *European Union (Withdrawal) Act 2018*.

The third stage is a requirement that the House of Lords either pass a resolution to take note of the withdrawal agreement and the framework for the future relationship or fail to conclude its debate after five sitting days (which has the same effect) (13(1)(c)).

As the final part of this ratification procedure, an Act of Parliament must be passed to implement the provisions of the withdrawal agreement (13(1)(d)) in domestic law, including any necessary consequential amendments to the *European Union (Withdrawal) Act*, some of whose provisions may be at variance with the Withdrawal Treaty.

The Act also lays down various requirements as to the timing of these Parliamentary debates on the withdrawal agreement and future framework. First, it requires Ministers to try to ensure that the House of Commons has the chance to consider the motion before the European Parliament makes its decision on whether or not to approve the agreements with the UK (13(2)).

Secondly, the Act lays down how a situation in which no agreement has been reached with the EU will be dealt with. It states that 21 January 2019 is the latest date by which the Prime Minister must make a statement that no agreement has been reached with the EU on a withdrawal agreement or a future framework (13 (7)). Ministers then have 14 days to make a further statement on how the Government intends to proceed and Parliament must debate “a motion in neutral terms” (explained below) on that within seven days.

The Act does not stipulate whether the motion in the “meaningful vote” debate can be amended or not. This has become a contentious issue amongst MPs.

### Treaty approval

As mentioned above, the withdrawal agreement between the UK and the EU will be an international treaty and as such will need to be ratified by Parliament in accordance with Section 20 of the *Constitutional Reform and Governance Act 2010*. This requires a treaty to be laid before Parliament for 21 sitting days; if it has not been resolved against by Parliament by then, it can be ratified. However, both the provision in the *European Union (Withdrawal) Act 2018* and the Supreme Court’s judgment in the Miller case require an Act of Parliament to be passed to implement the provisions of the withdrawal agreement in UK law.

Ministers have announced their intention to bring forward an EU (Withdrawal Agreement) Bill to be approved by Parliament. They have suggested that the ratification procedure under the *Constitutional Reform and Governance Act 2010* could proceed in parallel with the passage of this Bill but the Bill would have to become law before the treaty could be ratified.<sup>3</sup>

### The European Union (Withdrawal Agreement) Bill

The main purposes of this Bill will be to:

- protect the rights of EU citizens in the UK after Brexit;

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<sup>3</sup> See HM Government, *Legislating for the Withdrawal Agreement between the United Kingdom and the European Union*, Cm 9674, 24 July 2018, p. 37, para 152

- give the financial authority to enable the Government to continue to make payments to the EU;
- give statutory authority to the European Court of Justice in the UK as required in the withdrawal agreement;
- provide the legislative framework for the UK's relationship with the EU during the transition period.<sup>4</sup>

The Government has said that this Bill will be brought forward if Parliament passes the motion under the *European Union (Withdrawal) Act* to approve the withdrawal agreement and the future framework. The Bill will be amendable but should any amendment be passed that is in conflict with the withdrawal agreement with the EU, then that could make ratification of that agreement impossible.

A key point about this Bill is that for it to pass the Commons a money resolution will also be needed. A money resolution is necessary because the Bill will require the payment of monies out of public funds to the EU (estimated at £35-£39 billion over a number of years); such a decision requires the explicit consent of the Commons because it must approve all national public spending.<sup>5</sup> A money resolution is generally passed by the Commons on the same day that it gives a Bill its Second Reading (that is, it agrees in principle that the Bill should be considered by the House). It is possible for MPs to support the Second Reading of a Bill but to oppose its linked money resolution. If such a manoeuvre resulted in defeat for the money resolution, the Government would not be able to ratify the withdrawal agreement.

### **Other legislative provisions: Northern Ireland and customs duties**

The *Taxation (Cross-border) Trade Act 2018* was amended in two ways in the Commons at the request of Brexit-supporting Conservative and DUP backbench MPs and against initial Government objections. The first amendment was in response to Government proposals for the UK to operate a trade arrangement with the EU under which the UK authorities would collect duties on imports intended for the EU that were entering Europe via the UK. Section 54 of the Act now prohibits such an arrangement unless the EU was to act reciprocally, which it has said it will not do.<sup>6</sup>

Section 55 was in response to the EU's proposals for a "backstop" arrangement to ensure that the Ireland/Northern Ireland border remains open after Brexit. These proposals would keep Northern Ireland in the Single Market and could have the effect of making Northern Ireland a separate customs territory from Great Britain. Section 55 makes it unlawful for Northern Ireland to be in such a separate customs territory from Great Britain.

Both of these provisions could be repealed by the European Union (Withdrawal Agreement) Bill if that was necessary, assuming the Government had the necessary votes in the House of Commons.

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<sup>4</sup> *Supra* n. 3

<sup>5</sup> The House of Lords' consent is not required because the Commons has sole control of public spending.

<sup>6</sup> 'Brexit: Barnier rules out key UK customs proposal', *BBC News*, 26 July 2018

## **Rejection by the House of Commons of the agreement**

In the event of the House of Commons rejecting the motion to approve the withdrawal agreement and the future framework, Section 13(4) of the *European Union (Withdrawal) Act* applies. This part of the Act requires a Minister to make a statement in writing within 21 days of the vote on how the Government proposes to proceed. Section 13(6) provides for a debate in the House of Commons on “a motion in neutral terms” stating that the “House of Commons has considered the matter of the statement” within seven days of the Minister’s statement. A similar debate would take place in the House of Lords.

The use of the words “a motion in neutral terms” in the Act was the subject of intense debate during its passage through Parliament.

A “motion in neutral terms” cannot be amended under the Standing Orders of the House of Commons. This would mean that, for example, it would not be possible to move an amendment to this motion that would require Ministers to seek to delay the UK’s departure from the EU beyond 29 March 2019. Ministers have also said that the decision as to whether or not such a motion in neutral terms is amendable is one for the Speaker and not for the Government.<sup>7</sup> It is also the case that the Commons could vote to disapply Standing Orders and allow an amendment to the motion be debated and voted on.<sup>8</sup>

In the event of Parliament rejecting the deal, the provisions of Article 50 allow for three possible responses:

- doing nothing – in which case the UK would leave the EU on 29 March 2019 without a withdrawal agreement;
- requesting an extension of the two-year time period for negotiations in Article 50 before 29 March 2019 (which requires the unanimous agreement of the UK and the other 27 EU Member States); or
- withdrawing the UK’s notification to leave under Article 50 (which is a unilateral decision for the UK).

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<sup>7</sup> HC Deb 21 June 2018, vol 561, col 13WS

<sup>8</sup> See Jack Simson Caird, ‘Grieve 2: An amendable motion?’, House of Commons Library, 19 June 2018



## Senior European Experts

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