



## BRIEFING PAPER

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# European Union (Withdrawal) (No. 3) Bill 2017-19

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### Contents:

1. Context
2. The Bill's provisions
3. The EU and Article 50
4. Changes since the Boles Bill
5. Securing Parliamentary time to debate this Bill



# Contents

<b>Summary</b>	<b>3</b>
<b>1. Context</b>	<b>4</b>
1.1 Rejection of the deal by the Commons	4
1.2 Statement made 21 January 2019	4
A second statement to follow	5
1.3 Motion tabled 21 January 2019	5
A second motion to follow	5
1.4 Where does this Bill fit into this Brexit process?	6
1.5 Does the House of Lords have a role in this plan?	7
<b>2. The Bill's provisions</b>	<b>8</b>
2.1 Clause 1	8
A new Government deadline	8
Prime Minister to move a motion	8
Consequences of a resolution	9
Extension without a resolution	9
Changes to "exit day" in domestic law	9
2.2 Clause 2	10
<b>3. The EU and Article 50</b>	<b>11</b>
3.1 Extension and EU law	11
3.2 The European Union's position on extension	11
<b>4. Changes since the Boles Bill</b>	<b>15</b>
4.1 The Boles Bill – a two-stage process	15
4.2 The Cooper Bill – a one-stage process	15
4.3 Reaction to the original Boles proposal	16
<b>5. Securing Parliamentary time to debate this Bill</b>	<b>17</b>
5.1 Presented Bills	17
5.2 Cooper amendment to the neutral motion	17
5.3 House of Lords	18
5.4 Royal Assent	18

# Summary

## Context

The Commons declined to approve the Government's negotiated withdrawal agreement and framework for the future relationship on Tuesday 15 January 2019. That same day, Nick Boles presented a Bill, the [European Union \(Withdrawal\) \(No. 2\) Bill 2017-19](#) (the *Boles Bill*). Those supporting that Bill have since revised their legislative proposals, and on Monday 21 January 2019 Yvette Cooper presented the [European Union \(Withdrawal\) \(No. 3\) Bill 2017-19](#) (the *Cooper Bill*). **This briefing paper relates to the Cooper Bill.**

## What is this Bill, and will it be debated?

This Bill is a [Private Member's bill](#), not having been introduced by the Government. Within the categories of Private Member's bills, it is neither a Ballot bill nor a Ten Minute Rule bill. The *Cooper Bill* being a Presentation bill, limited opportunities exist for MPs to secure time for debate. Unlike a Ballot bill, it would not even be given priority for a Second Reading debate.

Should changes to the rules of the House be made, it is possible that this Bill could be allocated time for a debate on a Second Reading.

## Relationship to the EU (Withdrawal) Act 2018

[Section 13](#) of the [EU \(Withdrawal\) Act 2018](#) (the *Withdrawal Act*) serves two purposes. First, it sets out Parliament's role in ratifying a withdrawal agreement. Secondly, however, it sets out what role Parliament has if the Government fails to negotiate an agreement with the EU, or if the Commons decides to reject the deal the Government brings back.

The [Cooper Bill](#) supplements those two functions of the 2018 Act. If the Prime Minister has failed to secure an approval motion for her deal by 26 February 2019, the House of Commons would then have a role in extending the [Article 50 TEU](#) process.

## What would the Cooper Bill do?

The [Cooper Bill](#) would restrict the Prime Minister's discretion about whether and when to seek an extension to the two-year negotiating period under [Article 50\(3\) TEU](#). On 26 February 2019 she would have to give the Commons the opportunity to insist that the Prime Minister seeks an extension. She would then be legally obliged to seek that extension if that is what the Commons says that it wants.

The process of asking the House of Commons would begin with the Prime Minister moving a statutory motion on 26 February 2019. It would say:

That this House directs the Prime Minister to seek an extension of the period of two years specified in Article 50(3) of the Treaty on European Union to a period ending on 31 December 2019.

If the House adopts a resolution under this Bill instructing the Prime Minister to seek an extension to [Article 50](#), legally she must then request it. If a resolution says anything beyond that, the Prime Minister must "seek to give effect to" its terms.

## Why is it just an instruction to "seek" an extension?

The two-year period under Article 50(3) cannot be extended unilaterally. Even if the Prime Minister "requests" an extension, it can only happen by way of a "unanimous decision" of the European Council. **Although this Bill contemplates an extension to 31 December 2019, any extension, and any new date of withdrawal, would need to be agreed to by the Governments of all 27 other Member States of the EU.**

# 1. Context

## Summary

The Commons rejected the Government's negotiated deal with the EU on **Tuesday 15 January 2019**. Parliament is in the process of fulfilling its statutory role under the [Withdrawal Act](#) to scrutinise and influence the Government's next steps.

The Prime Minister made a [written](#) and [oral](#) statement on **Monday 21 January 2019** setting out how the Government "intends to proceed" in relation to the Article 50 process. A second statement is expected on or before **Thursday 24 January**.

A debate is then expected to take place on **Tuesday 29 January** on a motion to the effect that the House "has considered" the two statements. That motion will be amendable, meaning MPs can call for certain courses of action to be taken in light of those statements.

The [Cooper Bill](#) seeks to give the House of Commons a statutory role in this EU exit process beyond 29 January: to "supplement" the existing [Withdrawal Act](#). It will allow the Commons to "direct" the Prime Minister to seek an extension to Article 50(3)'s two-year negotiating period if she has not secured Commons approval for her deal by **Tuesday 26 February**.

## 1.1 Rejection of the deal by the Commons

On Tuesday 15 January 2019, the House of Commons declined to adopt a resolution for the purposes of [section 13\(1\)\(b\)](#) of the [Withdrawal Act](#). Simply put: it rejected the Government's EU exit deal.

This subjected the Government to a legal obligation under [section 13\(4\)](#) to make a statement. It had to set out how the Government "intends to proceed" in relation to the negotiations under [Article 50](#) with the EU.

Once it had made that statement, the Government would then be under a legal obligation to move a motion "in neutral terms" to the effect that the House had "considered" the statement.<sup>1</sup>

This motion is a mechanism by which the Commons can debate the implications of the Government's contingency plans and seek (politically and procedurally) to influence the Government's next steps.

## 1.2 Statement made 21 January 2019

On Monday 21 January 2019, the Prime Minister made a [written statement](#) and an [oral statement](#) before the House of Commons.<sup>2</sup>

Both statements set out the substance of how the Prime Minister intended to proceed. However, the written statement also provided further detail as to the Government's intentions regarding process under the [Withdrawal Act](#).

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<sup>1</sup> [s. 13\(6\) Withdrawal Act](#)

<sup>2</sup> [HC Deb 21 January 2019 Vol 653 cc25-28](#)

Now that the Government has made a statement on its contingency plans, the expectation is that a debate will take place on a “neutral motion” on Tuesday 29 January 2019.<sup>3</sup>

## A second statement to follow

The [written statement](#) explained that the Government would be making a **second written statement** on or before Thursday 24 January 2019. This statement would be made under [section 13\(11\)](#) of the [2018 Act](#).

[Section 13\(11\)](#) requires a statement to be made within five days if, by Monday 21 January 2019 there is:

no agreement in principle in negotiations under Article 50(2) of the Treaty on European Union on the substance of the arrangements for the United Kingdom’s withdrawal from the EU, and the framework for the future relationship between the EU and the United Kingdom after withdrawal.<sup>4</sup>

The Government said in its [written statement](#):

We are following this course of action to avoid any legal uncertainty as to whether the Government has complied fully with the terms of the European Union (Withdrawal) Act 2018. Section 13(11) of the Act states that the Government must make the statement and motion mentioned above if, at the end of 21 January 2019, “there is no agreement in principle in negotiations under Article 50(2)”. While the negotiations have yielded an agreement, that agreement has not been approved by Parliament.

Notwithstanding this action, making this statement does not prejudice any further actions the Government may choose to take under section 13(1) of the European Union (Withdrawal) Act 2018 at a later date.

## 1.3 Motion tabled 21 January 2019

To comply with the [Business of the House Order of 9 January 2019](#),<sup>5</sup> the Government also “tabled a motion” under [section 13](#) of the [Withdrawal Act](#) on Monday 21 January 2019. [That tabled motion says](#):

That this House, in accordance with the provisions of section 13(6)(a) of the European Union (Withdrawal) Act 2018, has considered the Written Statement titled “Statement under Section 13(4) of the European Union (Withdrawal) Act 2018” and made on 21 January 2019.

## A second motion to follow

However, the Commons is not expected to debate this specific motion on 29 January. The [written statement](#) of 21 January says:

Later this week the Government will also take the steps set out in section 13(11) of the European Union (Withdrawal) Act 2018. This will require motions pursuant to section 13(11)(b) to be tabled in both Houses.

It is the Government’s intention, in accordance with the procedure allowed under section 13(13)(b) and (c), for those later

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<sup>3</sup> As announced by Andrea Leadsom in the Business Statement of Thursday 17 January. See [HC Deb 17 January 2019 Vol 652 cc1319](#)

<sup>4</sup> [s. 13\(10\) Withdrawal Act](#)

<sup>5</sup> [HC Deb 9 January 2019 Vol 652 cc385-390](#)

section 13(11)(b) motions to be combined with the motion tabled today under section 13(6). The scheduled debates in the House of Lords and the House of Commons, on 28 and 29 January respectively, will therefore be on motions relating to the statements made under both s.13(4) and s.13(11)(a).

The Government intends to combine what would have been two debates, on two separate statements on its proposed next steps into one debate on both statements. A new motion will therefore have to be tabled later this week. The [written statement](#) explains that the motion to be moved for debate on Tuesday 29 January 2019 will say:

That this House, in accordance with the provisions of section 13(6)(a) and 13(11)(b)(i) and 13(13)(b) of the European Union (Withdrawal) Act 2018, has considered the Written Statement titled "Statement under Section 13(4) of the European Union (Withdrawal) Act 2018" and made on 21 January 2019, and the Written Statement titled "Statement under Section 13(11)(a) of the European Union (Withdrawal) Act 2018" and made on [date on or before 24 January].

Any proposed amendments would have to be tabled to this new motion in order to be selectable by the Speaker for any debate on 29 January.

## 1.4 Where does this Bill fit into this Brexit process?

The [EU \(Withdrawal\) Act 2018](#) has already given Parliament influence over the Brexit process by setting the Government a series of statutory "deadlines". If the Commons rejected a deal the Government brought back, or if the Government had not secured "agreement in principle" with the EU by a certain point, the Government then had to account to Parliament for its intended contingency plan(s).

The *Cooper Bill* builds-upon that original structure of accountability to Parliament. At first instance, it imposes a new statutory deadline of Tuesday 26 February 2019. The Government has until then to secure an approval resolution from the House of Commons for a deal: to satisfy [section 13\(1\)\(b\)](#) of the [2018 Act](#).<sup>6</sup>

If the Commons has not passed an approval resolution by then, the Prime Minister must then move a motion in the House of Commons.

That motion would provide an opportunity for the House to "direct" the Prime Minister to seek an extension to the two-year negotiating period provided for by [Article 50\(3\)](#) of the [Treaty on European Union](#).

Nothing currently prevents the Commons from passing a resolution "directing" the Prime Minister to request an extension to [Article 50](#). The critical difference is that the *Cooper Bill* would place the Prime Minister under an explicit legal duty to honour such an instruction.

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<sup>6</sup> A resolution adopted on a motion moved by a Minister of the Crown approving the negotiated withdrawal agreement and the framework for the future relationship.

## 1.5 Does the House of Lords have a role in this plan?

For this Bill to become law, as with any other Bill, the consent of both Houses of Parliament is required. For practical purposes, the provisions in the [Parliament Act 1911](#) (as amended) cannot be used to override the requirement for Lords consent.<sup>7</sup>

Whereas the original [EU \(Withdrawal\) Act 2018](#) gave a (minor) role to the House of Lords in the Brexit process, this Bill does not propose to give the upper House any formal say or debate on whether the Prime Minister should ask for an extension to [Article 50](#).<sup>8</sup>

The main opportunity for the Lords to influence this process, if at all, is therefore in scrutiny of the [Cooper Bill](#) itself, if and when it completes its consideration in the Commons.

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<sup>7</sup> Normally the Lords only has a one-year “power of delay” over the passage of primary legislation, but the time sensitivity of this legislation means in practice it (constitutionally) has a veto over this Bill. See Commons Library Briefing Paper, [The Parliament Acts](#), SN00675, 25 February 2016

<sup>8</sup> By contrast, the Lords must have the opportunity to debate any deal and consent to the [EU \(Withdrawal Agreement\) Bill](#) before the Government can ratify a Withdrawal Agreement ([s. 13\(1\)\(c-d\) Withdrawal Act](#)) and must have a debate to “take note” of any statements made in the event a deal is rejected or not reached.

## 2. The Bill's provisions

### Summary

The structure of this Bill is as follows:

**Clause 1(1)** gives the Government until Tuesday 26 February 2019 to get Commons approval for a deal.

In the absence of approval, **clause 1(2)** requires the Prime Minister to move a motion to allow the House, if it chooses, to instruct her to seek an extension to [Article 50](#) until 31 December 2019.

If the original motion is approved, **clause 1(3)** requires the Prime Minister to ask for an extension in those terms. If an amended motion only provides for a different date, **clause 1(4)** requires the Prime Minister to seek an extension to that date.

If the motion is amended in other ways before being approved, **clause 1(5)** requires the Prime Minister to "seek to give effect to" its terms.

**Clause 1(6)** makes clear that the Prime Minister is not prevented from seeking an extension of her own volition in the absence of a "direction" by the Commons to seek one.

**Clause 1(7-10)** provide for "exit day" in domestic law to be changed automatically if an extension to 31 December 2019 is agreed, and to require an expeditious change to be made by affirmative regulations if a different extension date is agreed.

**Clause 2** makes clear that this Bill is effectively "bolted-on" to the [Withdrawal Act 2018](#) and requires no commencement regulations to come fully into force.

### 2.1 Clause 1

#### A new Government deadline

**Subsection 1(1)** creates a new statutory deadline for the Government. If the House of Commons does not pass an approval resolution for the purposes of [section 13\(1\)\(b\)](#) of the [Withdrawal Act](#) before Tuesday 26 February 2019, the Prime Minister must then "move a motion" in the form set out in subsection (2).

In practice this means that the House would have to vote on an approval motion no later than Monday 25 February 2019.

#### Prime Minister to move a motion

**Subsection 1(2)** sets out the form of the motion the Prime Minister must move on Tuesday 26 February. The exact wording is:

That this House directs the Prime Minister to seek an extension of the period of two years specified in Article 50(3) of the Treaty on European Union to a period ending on 31 December 2019.

This motion would be amendable unless a Business of the House Order specifically provided otherwise.

A debate on this motion would be a "proceeding under an Act." Under [Standing Order No. 16](#) this means the debate on this motion would last 90 minutes, unless a Business of the House Order specifically provided otherwise.



## Consequences of a resolution

### Subsections (3-4) – a “simple” direction to seek an extension

These provisions set out the consequences of the Commons adopting a resolution to instruct the Prime Minister to seek an [Article 50](#) extension.

If the original motion is approved as a resolution without amendment, the Prime Minister must “as soon as practicable” ask the European Council for [Article 50\(3\)](#)’s deadline to be extended from 29 March 2019 to 31 December 2019.

However, if the approved resolution stipulates a different date than 31 December 2019 (but is otherwise identical) the Prime Minister must instead ask the European Council to extend the deadline to the date in the resolution.

### Subsection (5) – a “complex” resolution adopted

This provision sets out what must happen if the approved resolution departs from the original motion beyond a mere change of date. If this happens the Prime Minister must “seek to give effect to” its terms.

## Extension without a resolution

It follows from the foregoing provisions that if no resolution is adopted, the Prime Minister is under no legal obligation to seek an extension to [Article 50](#). However, **subsection (6)** clarifies that the Prime Minister can still “voluntarily” seek an extension in those circumstances.

## Changes to “exit day” in domestic law

**Subsections (7-10)** are consequential in nature. They change the definition of “exit day”<sup>9</sup> to 31 December 2019 in the event that the European Council unanimously agrees to an extension of the 2-year negotiating period under [Article 50\(3\)](#).

If any agreed extension between the UK Government and the EU were to be on a date other than 31 December 2019, this Bill would not change “exit day” in domestic legislation automatically. The Government would instead have to lay “as soon as practicable” draft regulations under [section 20\(4\)](#) of the [2018 Act](#). It would then need to secure the approval of both Houses to designate a different date for “exit day”.<sup>10</sup>

### Why would “exit day” need to be changed?

The legal definition of “exit day” has no direct bearing on whether and when the UK leaves the European Union. Those are questions of EU law, governed by [Article 50](#), and not domestic law. However, the 2018 Act and “exit day” deal with the domestic *consequences* of the Treaties ceasing to apply to the UK. “Exit day” is the “switch-over” date between giving effect to EU law under the [European Communities Act 1972](#) and replacing that scheme with domestic “retained EU law”.<sup>11</sup>

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<sup>9</sup> “Exit day” is defined in [s. 20\(1\) of the Withdrawal Act](#), but can be varied by affirmative regulations under [s. 20\(4\)](#).

<sup>10</sup> [s. 20\(4\) Withdrawal Act](#)

<sup>11</sup> See Commons Library Briefing Paper, [The status of ‘retained EU law’](#), 18/8375, 31 July 2018

If the UK remained a Member State of the EU beyond 29 March 2019, it would need a domestic legal mechanism to honour its international obligations. This is why the [2018 Act](#) provides a mechanism for changing “exit day” to “to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to the United Kingdom”.<sup>12</sup>

## 2.2 Clause 2

The second clause makes clear that this Bill, on enactment, is to be regarded as something “bolted-on” to the original [EU \(Withdrawal\) Act 2018](#). **Subsection 1** makes clear that any definitions in [section 20](#) of the [2018 Act](#) (the interpretation section) are to be treated as having the same definition for this Bill. For example, “exit day” is defined in that section, so means the same thing for this Bill as it does for that Act.

**Subsection 2** provides that the Bill would come into force, in full, on Royal Assent. Once an Act, the provisions would not need a Minister to make any commencement regulations. It also clarifies that the provisions for automatically changing the definition of “exit day” only come into force if and when the European Council agrees to an extension until 31 December 2019.

**Subsection 3** makes clear that, for the avoidance of doubt, this is a UK-wide Act which extends to the jurisdictions of England and Wales, Scotland and Northern Ireland. This is unsurprising: the nature of the provisions concern the UK’s relationship with the EU.

**Subsection 4** gives the Bill, on enactment, the short title of the *European Union (Withdrawal) Act 2019*.

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<sup>12</sup> [s. 20\(4\) Withdrawal Act](#)

## 3. The EU and Article 50

### Summary

This Bill, ultimately, would let Parliament instruct the Government to seek an extension to [Article 50\(3\)](#) beyond 29 March 2019 in the absence of a deal.

What this Bill cannot do is secure an extension to [Article 50](#) or demand an extension until a particular date. Any extension requires a unanimous decision of the European Council: the consent of all 27 other Member States.

There have been newspaper reports in recent weeks that the EU would contemplate a short extension of [Article 50](#) until July, to allow for revisions to be made to the current deal if it was clear that a Parliamentary majority could be secured in favour of a modified arrangement.

If the UK intends to hold a General Election, a further referendum, or to significantly re-open the negotiations in favour of a different relationship from the one the Government has negotiated, it is likely (in practice) that a longer extension would be required.

Beyond any political objections that may be raised by other Member States to a longer extension, it would present several practical institutional challenges for the EU. The next set of European Parliament elections take place in late May 2019, and the UK's participation (or otherwise) in those elections would need to be settled. The next European Commission will assume office in November 2019.

### 3.1 Extension and EU law

#### What the Treaty says

[Article 50\(3\)](#) of the [Treaty on European Union](#) provides that:

The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification [of intent to withdraw is made], unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

#### What this means in practice

The legal default position is that the UK leaves the EU, with or without a deal, on 29 March 2019. This is because the Prime Minister made a notification of the UK's intention to withdraw on 29 March 2017. The *EU (Notification of Withdrawal) Act 2017*, passed by Parliament, explicitly authorised her to do so.

In the absence of a deal, a unanimous decision of the European Council must be adopted – **before** 29 March 2019 – to extend this 2-year period. The UK would likely first have to request an extension, and then the Governments of all 27 EU Member States would decide whether to agree to it. The Council would need to agree:

- that there should be an extension; and
- for how long.

### 3.2 The European Union's position on extension

#### Key grounds for an extension

There are, broadly, four contexts in which an extension to [Article 50](#) has been contemplated, namely where the UK:

- needs more time to pass the legislation necessary to ratify the Withdrawal Agreement;
- wishes to negotiate a different arrangement from the one agreed by the Government and the EU in November 2018;
- intends to hold a General Election; or
- wishes to hold a referendum to decide whether it should leave the European Union and/or on what terms.

Whether the EU is prepared to allow for an extension in these circumstances, and if so in each instance for how long, is not certain.

### **By how long is the EU willing to extend Article 50?**

This Bill contemplates the UK requesting an extension to 31 December 2019. This is a somewhat longer period than that which has been (reportedly) under consideration by the European Union in recent weeks. Those reports of extension (until July 2019) appeared to focus on providing the UK more time to ratify the existing withdrawal agreement.<sup>13</sup>

Any extension of longer than three months also presents complications in relation to the European Parliament, whose elections are expected to take place between 23 and 26 May 2019. If the UK continues as a Member State beyond those elections, a position will need to be taken as to whether, and if so how, the UK participates in those elections, returning MEPs in the same way it does just now.<sup>14</sup>

### **How long an extension would each scenario need?**

This is ultimately a question of political judgment, although in each of the four cases outlined above, there are certain legal and institutional constraints which must be borne in mind.

#### **Additional time to ratify the existing deal or something similar**

On 12 January, The Independent [reported](#) that a Cabinet Minister had suggested a short extension of [Article 50](#) would be required even if the Agreement was approved by Parliament, in order to get the necessary legislation to implement the Agreement and other necessary legislation to prepare for Brexit through Parliament before the UK formally leaves. This would likely involve a short extension, perhaps until July 2019.

It is possible to pass legislation very quickly in the UK Parliament if required.<sup>15</sup> However, the legislation to implement the Withdrawal Agreement will be of major constitutional significance. Even if the Withdrawal Agreement itself has majority support in the Commons, both Houses may wish to scrutinise the arrangements for implementing the Agreement closely (and to have the requisite time to do so).

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<sup>13</sup> e.g. Dan Boffey, [EU preparing to delay Brexit until at least July](#), The Guardian, 13 January 2019

<sup>14</sup> See Commons Library Research Paper, [EU assurances to the UK on Brexit](#), 19/8474, 16 January 2019, pp. 26-27

<sup>15</sup> The recent [Northern Ireland \(Executive Formation and Exercise of Functions\) Bill 2017-2019](#) had only one day each for consideration in the Commons and Lords.

The EU may also wish to satisfy itself that the UK has demonstrated through the implementing legislation passed that it will honour its obligations under the Withdrawal Agreement before the European Parliament consents to, and the EU ratifies, the Withdrawal Agreement.

#### **Additional time for a substantial renegotiation**

If the UK were to seek significant changes to the deal the Government has negotiated, it is difficult to see how a short extension of three months would be sufficient to enable those negotiations to happen. This would appear to be particularly so if changes were sought to the Withdrawal Agreement itself as opposed to the Political Declaration.

The European Parliament must consent to the final Withdrawal Agreement. Following its dissolution on 18 April 2019, it reconvenes on 2 July, after elections in late May. The hand-over to the new European Commission similarly only takes place in November 2019.

This restricts (practically and politically) the EU's capacity to engage in substantive renegotiations of the deal. Any extension for those purposes would need to accommodate those additional challenges.

#### **Additional time for a General Election**

How long an extension would be required to allow any General Election to take place would depend on when it is called.

The UK has a statutory timetable for the dissolution of a Parliament and the holding of a General Election. Parliament must dissolve 25 working days before polling day, and dissolution cannot happen unless one of two processes has happened under the [Fixed-term Parliaments Act 2011](#). The two early General Election triggers are:

- a vote of no confidence in HM Government and the passing of 14 days without the passing of a vote of confidence in HM Government;<sup>16</sup> or
- MPs representing two thirds of the total number of seats in the House of Commons voting for an early General Election.<sup>17</sup>

If, for example, the House passed a motion of no confidence in HM Government on Tuesday 5 February, and (by virtue of the Queen's proclamation fixing the date for the General Election)<sup>18</sup> Parliament dissolved immediately on the expiry of the 14-day period under the [2011 Act](#), a General Election would take place on Thursday 28 March 2019. The no-confidence route involves a window of at least 7 weeks to polling day; the vote for an early dissolution requires at least 5 weeks.

Beyond the holding of any General Election, any extension would need to accommodate time taken for the formation of a government and for it to confirm its intentions with regard to the negotiated withdrawal agreement and the framework for the future relationship.

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<sup>16</sup> [s. 2\(1-2\) Fixed-term Parliaments Act 2011](#)

<sup>17</sup> [s. 2\(3-5\) Fixed-term Parliaments Act 2011](#)

<sup>18</sup> Under [s. 2\(7\) Fixed-term Parliaments Act 2011](#) the Queen appoints the date of the next General Election by proclamation, on the advice of the Prime Minister. Per [s. 3\(1\)](#) of the same Act, Parliament is dissolved 25 days before that date.

It therefore is not clear whether a short [Article 50](#) extension would be sufficient for a General Election scenario.

### **Additional time for a second referendum**

Were an extension to be requested pending the staging of another referendum, this could require an extension until at least June 2019 or possibly later (depending on the question). Parliament would first need to pass primary legislation. There is no set time as to how quickly a Bill can be passed through Parliament. It depends on the length and complexity of the Bill, how many amendments are tabled, whether it has broad cross-party support or whether it is controversial. Similar considerations may apply to any referendum legislation as it would to the *EU (Withdrawal Agreement) Bill* as outlined earlier in this section.

The Electoral Commission has a statutory duty set out in [Political Parties, Elections and Referendums Act 2000 \(PPERA\)](#) to [assess any referendum question](#) proposed in legislation for its 'intelligibility': are the options clear, simple and neutral?

[PPERA](#) provides for a minimum campaign period for referendums of 10 weeks, comprising three stages. The first four weeks is the period for registered campaigners to apply to be the lead campaign groups. Within the next two weeks the Commission assesses applications to be lead campaign groups for each possible outcome and designates those groups. In the final four weeks, the designated lead campaigns can utilise the benefits of designation including a grant of up to £600,000 and higher spending limits than other registered campaigners.

For further analysis of the rules relating to staging another referendum see House of Commons Library Insight, [A second Brexit referendum? The rules explained](#), 19 December 2018.

The [Constitution Unit](#) of University College London produced a report in October 2018 which outlined a possible timetable for another referendum. It estimated that it would take at least 22 weeks to hold a referendum, following Parliament's initial decision. This is required for passing legislation, question testing by the Electoral Commission, and preparing and holding the campaign. An extra six weeks might be needed if a three-option question were used (i.e. the government's deal vs no deal vs remaining in the EU). If Parliament took a decision in late January 2019 to hold another referendum, according to this timetable polling day could occur at the earliest in late June for a two-option question ('deal' versus 'remain') or early August for a three-option vote. Additional time would then be needed if a renegotiation was needed under [Article 50](#).

## 4. Changes since the Boles Bill

### Summary

The original proposal for a Parliamentary mechanism to “direct” the Prime Minister to seek an extension to [Article 50](#) was presented by Nick Boles on Tuesday 15 January 2019. The [European Union \(Withdrawal\) \(No.2\) Bill 2017-19](#) envisaged a two-stage process giving rise to an extension request, whereas the [Cooper Bill](#) only envisages a one-stage process.

The two Bills were proposed by the same cross-party group of MPs. The more recent version of their proposal removed a role for the [Commons Liaison Committee](#) after its Chair doubted its suitability as a vehicle to produce a “plan of action”.

The Library produced [a briefing paper](#) on the [Boles Bill](#), setting out its provisions in closer detail.<sup>19</sup>

### 4.1 The Boles Bill – a two-stage process

The [Boles Bill](#) proposed a two-stage process:

#### Stage One – A Plan of Action

In the event the Government had failed to secure an approval motion for a deal by **11 February 2019**, the Secretary of State would have had to “invite” the [Commons Liaison Committee](#) to prepare and publish a “plan of action” by **5 March 2019**.

#### Stage Two – Three trigger points for an extension request

In three scenarios, the Prime Minister would have been legally compelled to seek an extension to [Article 50](#), namely if:

- the Liaison Committee did not report by 5 March;
- the Commons did not approve its “plan of action” by 7 March; or
- the “plan of action” as approved by the Commons included a recommendation that [Article 50](#) should be extended.

### 4.2 The Cooper Bill – a one-stage process

#### Similarities

The main similarity between the two Bills is that they both envisaged, by default, that the Commons would instruct the Prime Minister to seek an extension of [Article 50](#) until 31 December 2019. Where they differ is in how the Commons gets to that situation.

#### Differences

##### Parliamentary deadlines

The [Cooper Bill](#) adopts a one-stage process. It gives the Government slightly longer to secure an approval motion (until **26 February 2019** instead of **11 February 2019**). However, it then then requires a decision

<sup>19</sup> Commons Library Briefing Paper, [European Union \(Withdrawal\) \(No. 2\) Bill 2017-19](#), 19/8476, 18 January 2019

to be taken about whether an extension must be sought slightly earlier (**on 26 February 2019** instead of **7 March 2019**).

### Role of the Liaison Committee

Having removed the role of the Liaison Committee from the original proposal, the [Cooper Bill](#) also leaves only **one** “trigger” for requiring the Prime Minister to seek an extension to Article 50, rather than **three**. A direction to the Prime Minister to seek an extension would now only be brought about by a resolution of the House of Commons.

The [Cooper Bill](#) is therefore a more direct mechanism to achieve the same result as its predecessor.

### Other minor differences

The [Cooper Bill](#) has also been drafted so as to make more explicit what must happen if an agreed extension is to a date otherwise than 31 December 2019. The Government must (expeditiously) bring forward draft regulations for approval by both Houses in that scenario.<sup>20</sup>

## 4.3 Reaction to the original Boles proposal Chair of the Liaison Committee

Sarah Wollaston doubted whether the Committee she Chairs (the Liaison Committee) was a suitable vehicle to carry out the function the [Boles Bill](#) envisaged. She said [on Twitter on 14 January 2019](#):

The Boles’ plan appears to have been developed with just 2 other MPs and not discussed in advance with the Committee they propose to implement it... Would also point out that Liaison [Committee] doesn’t draft legislation or conduct pre legislative scrutiny.

On the evening of 16 January 2019, [she added](#) (also on Twitter and following a meeting of the Liaison Committee):

[The] Liaison [Committee] did not support the proposal to greatly extend its powers & remit under the Boles bill. Select Committee chairs will continue to play a key role scrutinising Brexit, [including] contingency plans in their specialist areas.

### Response from Nick Boles

[Nick Boles said on Twitter on 17 January 2019](#):

Apparently the Liaison Committee is not keen to take the role that is proposed for it in the EU Withdrawal No 2 Bill. This was always an optional extra and we will of course take it out.

[He added](#):

The bit that matters is the requirement that the PM requests an extension to Article 50 if she cannot get a compromise deal through the Commons within a few weeks. It is this that will stop No Deal Brexit and we remain totally committed to it.

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<sup>20</sup> clause 1(10)



## 5. Securing Parliamentary time to debate this Bill

### 5.1 Presented Bills

[Private Members' bills](#) have limited opportunities for debate in the House of Commons. This is because Government business takes precedence except where otherwise explicitly provided.

The current Bill is what is known as a "Presentation" bill. Unlike a Ballot bill it is not given any priority or guarantee of a debate on Second Reading.

Even more so than with Private Members' bills generally, a Presentation bill is (normally) unlikely to complete its Commons bill stages without (at least tacit) Government support.

However, there are understood to be attempts to find other ways of guaranteeing this Bill would be given time for debate.

### 5.2 Cooper amendment to the neutral motion

In addition to presenting this bill, Yvette Cooper has [tabled an amendment to the Government's "neutral motion"](#) (itself tabled 21 January 2019). That amendment says:

At end, add "and is conscious of the serious risks arising for the United Kingdom from exit without a withdrawal agreement and political declaration and orders accordingly that—

(1) On 5 February 2019—

(a) Standing Order No. 14(1) (which provides that government business shall have precedence at every sitting save as provided in that order) shall not apply;

(b) a Business of the House Motion in connection with the European Union (Withdrawal) (No. 3) Bill in the name of at least 10 Members, including at least four Members elected to the House as members of at least four different parties and at least two backers of that Bill shall stand as the first item of business;

(c) that motion may be proceeded with until any hour though opposed, shall not be interrupted at the motion [sic.] of interruption, and, if under discussion when business is postponed, under the provisions of any standing order, may be resumed, though opposed, after the interruption of business; and Standing Order No. 41A (Deferred divisions) will not apply;

(d) at the conclusion of debate on that motion, the questions necessary to dispose of proceedings on that motion (including for the purposes of Standing Order No. 36(2) (Questions to be put following closure of debate)) shall include the questions on any amendments selected by the Speaker which may then be moved; and

(e) the second reading of the European Union (Withdrawal) (No. 3) Bill shall stand as the first order of the day; and

(2) In respect of the European Union (Withdrawal) (No. 3) Bill, notices of Amendments, new Clauses and new Schedules to be moved in Committee may be accepted by the Clerks at the Table before the Bill has been read a second time.

This amendment seeks to give the [Cooper Bill](#), and any Business of the House motion moved in respect of it, priority over Government business on Tuesday 5 February 2019.

It would also allow Members to table amendments to the Bill between Tuesday 29 January and Tuesday 5 February for consideration in Committee even though it would not yet have received its Second Reading.

Unless this, or a similar amendment, forms part of any resolution of the House to be adopted on Tuesday 29 January, it is unlikely that the [Cooper Bill](#) would be able to be considered by the House.

### 5.3 House of Lords

Even if procedural adaptations are made in the Commons to allow the [Cooper Bill](#) to receive a Second Reading, Committee Stage, Report Stage and Third Reading, it must still do the same in the House of Lords if it is to become an Act of Parliament.

The House of Commons cannot regulate through its Standing Orders or Business of the House Orders the manner in which the House of Lords conducts its own proceedings.<sup>21</sup>

For the [Cooper Bill](#) to have a realistic prospect of being presented for Royal Assent, therefore, political agreement would need to be reached as to an expeditious timetable for consideration of the Bill by the House of Lords.

### 5.4 Royal Assent

#### Suggestion that Assent could be withheld

[It has been suggested](#) by Sir Stephen Laws QC, former First Parliamentary Counsel, that Royal Assent could (in theory) be withheld for a bill which passed through the Commons and Lords without Government support, on the advice of Ministers.

His stated concern is that, were adaptations made to the Standing Orders of the House (e.g. to remove the requirement for a Government [money resolution](#) on a Bill that would incur public expenditure) it would “wrongly deny” the Government its “constitutional veto” on such a Bill. In those circumstances, he speculates that a Government might “advise the monarch not to grant Royal Assent to the Bill.”<sup>22</sup>

Although not stating that the monarch could or would be required to follow such advice, Laws has suggested that it is undesirable even to risk

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<sup>21</sup> This partly explains the Lords does not have a direct equivalent of “[programme motions](#)”, which are routinely used by Government to set the timetable for debate on Bills in the Commons.

<sup>22</sup> Sir Stephen Laws, [The risks of the “Grieve amendment” to remove precedence for Government Business](#), *Policy Exchange*, January 2019, p. 7

a situation in which the monarch may be brought into politics by being asked not to give Assent to a Bill.

## The contrary constitutional view

Other academic commentary has rejected the suggestion that, in modern times, the Queen could withhold consent for a Bill, whether or not on advice of her Ministers. For instance, Mark Elliott, Professor of Public Law at the University of Cambridge and Legal Advisor to the House of Lords Constitution Committee, [has said the following](#):

The key question then becomes how the Ministerial advice and royal assent conventions interact. The former requires the Queen to exercise relevant legal powers in line with Ministerial advice. The latter, meanwhile, provides that the Queen should grant royal assent to Bills that have secured the approval of Parliament.

What happens, then, if these conventions are placed in tension via the provision of Ministerial advice that royal assent to a Bill ought to be withheld? The answer, in my view, is clear: the royal assent convention applies; the Ministerial advice does not.

It would, however, be a mistake to think of this in terms of the royal assent convention having priority or somehow overriding the Ministerial advice convention. Properly understood, the two conventions need not be considered to be in tension with one another, the better view being that the Ministerial advice convention simply does not apply to the granting of royal assent to Bills. Rather, the royal assent convention independently requires the Queen to grant assent to duly enacted Bills, and the question of ministerial advice does not enter into consideration.

Indeed, the Ministerial advice convention is only needed if, in the first place, there is any uncertainty as to what the Queen ought to do. There is absolutely no uncertainty when it comes to granting royal assent, and so Ministerial advice is beside the point.<sup>23</sup>

## When was Royal Assent last withheld for a Bill?

Royal Assent has not been withheld for a Bill approved by both Houses of Parliament since Queen Anne withheld Assent for the *Scottish Militia Bill* on advice of her ministers in 1708.<sup>24</sup>

During the passage of the Government of Ireland Act 1914, Unionists had advised George V that he should withhold assent from the Bill. The then Liberal Prime Minister, HH Asquith, advised the King against this course of action. In the event, Royal Assent was granted.<sup>25</sup>

Bradley, Ewing and Knight say the following of Royal Assent:

While the Queen may not of her own initiative refuse the royal assent, the position might be different if ministers advised her to do so, although this advice would have to be defended in Parliament and, depending on the circumstances, could be highly controversial.<sup>26</sup>

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<sup>23</sup> Mark Elliott, [Can the Government veto legislation by advising the Queen to withhold royal assent?](#), *Public Law for Everyone*, 21 January 2019

<sup>24</sup> A.W. Bradley, K.D. Ewing and C.J.S. Knight, *Constitutional and Administrative Law*, 17<sup>th</sup> edition, 2018, p. 21

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

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