



BRIEFING PAPER

Number 08502, 19 February 2019

European Union (Withdrawal) (No. 4) Bill 2017-19

By Graeme Cowie

Contents:

1. Where we are in Parliament's Brexit process
2. Parliament's role in Article 50
3. How does this Bill change Parliament's role?
4. The Bill's provisions
5. Securing Parliamentary time to debate this Bill



Contents

Summary	3
1. Where we are in Parliament’s Brexit process	5
1.1 What role has Parliament had so far?	5
1.2 Statutory debate 29 January	6
1.3 Non-statutory debate 14 February	6
1.4 Another debate expected 27 February	7
2. Parliament’s role in Article 50	8
2.1 How Article 50 works	8
2.2 Role of the Government in seeking an extension	8
2.3 No formal role for Parliament in “seeking” extension	9
2.4 Parliament’s role in giving domestic effect to an agreed extension	10
3. How does this Bill change Parliament’s role?	11
3.1 A formal role in “seeking” extension	11
3.2 Two choices for the Government	11
Track 1 – Seek approval for a “no-deal” exit	11
Track 2 – Seek approval for an extension request	12
What if the European Council says “no” or proposes an alternative date?	12
Would the House of Lords have a role?	12
4. The Bill’s provisions	13
4.1 Clause 1	13
A new Government deadline	13
4.2 Clause 2	14
Government to move one of two motions	14
A “no-deal” approval motion	14
An extension request approval motion	14
Consequences of an extension request resolution	14
The European Council’s response	15
Prime Minister’s power to seek an extension not otherwise affected	15
4.3 Clause 3	15
A “codicil” to the EU (Withdrawal) Act 2018	15
Commencement on enactment	15
Territorial application	15
Short title	15
5. Securing Parliamentary time to debate this Bill	16
5.1 Presentation Bills	16
5.2 Previous attempt to get Parliamentary time for the No. 3 Bill	16
5.3 Might this be tried again for the No. 4 Bill?	16
5.4 Getting the Bill through the House of Lords	17

Summary

Context

Yvette Cooper presented the [European Union \(Withdrawal\) \(No. 4\) Bill](#) (*No. 4 Bill*) (a [Private Member's bill](#)) on Wednesday 13 February 2019.

This Bill would create a mechanism by which the House of Commons exerts greater control over the process of extending [Article 50\(3\) TEU](#)'s two-year negotiating period.

By the automatic operation of EU law, the UK leaves the EU on 29 March 2019 regardless of whether a deal has been ratified. The purpose of the Bill is to reduce the risk of the UK leaving the EU without a deal, or at least to delay that outcome beyond 29 March 2019 if that is what MPs want and the European Council is prepared to agree to it.

Previous Bills and time for debate

Two previous Bills have been presented by the same group of cross-party MPs earlier this year. The Library produced briefing papers on both of those Bills:

- [European Union \(Withdrawal\) \(No. 2\) Bill 2017-19](#), 19/8476, 18 January 2019
- [European Union \(Withdrawal\) \(No. 3\) Bill 2017-19](#), 19/8480, 23 January 2019

Neither of these Bills were debated in the Commons. An unsuccessful attempt was made by Yvette Cooper on Tuesday 29 January to secure time for debate for the [No. 3 Bill](#) on Tuesday 5 February. Her amendment (to a Government motion under [section 13](#) of the [EU \(Withdrawal\) Act 2018](#)) [was defeated by 321 votes to 298](#).¹

Being a presentation [Private Member's bill](#), there are limited opportunities for this proposal to be debated (and thus to become law). This is because Government business normally takes precedence under the Standing Orders of the House of Commons.

If, however, MPs were to agree to adapt the rules of the House, time might be secured for a Second Reading and subsequent stages for this Bill in the Commons. Even if it completed its Commons Stages, the Bill would still have to complete its passage through the Lords. It effectively has a veto power over this Bill given the proposal's time-sensitivity.

What would the No. 4 Bill do?

The *No. 4 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](#).

A new statutory deadline – Wednesday 13 March 2019

At first instance, the Bill gives the Government until the House rises on Tuesday 12 March 2019 to secure a Commons approval resolution for a deal.² Until then, the Prime Minister would retain full discretion about whether, when and until when to seek an extension.

The Government to choose between two motions

Thereafter, the Government must choose between one of two courses of action.

Firstly, it could seek MPs' explicit consent for leaving the EU without a deal. To do this, it must table a motion on Wednesday 13 March to be moved for debate on Thursday 14 March. If this motion is approved **without amendment**, nothing further would happen under this Bill. The Prime Minister would retain full discretion about whether and when to

¹ [HC Deb 29 January 2019 Vol 653 cc770-774](#)

² i.e. a resolution under [s. 13\(1\)\(b\) of the European Union \(Withdrawal\) Act 2018](#) approving the negotiated withdrawal agreement and the framework for the future relationship

bring a deal back and/or to seek to extend [Article 50](#) before the UK leaves the EU by automatic operation of EU law on 29 March 2019 at 11pm GMT.

If, however, the motion is amended or rejected, or the Prime Minister chooses not to ask the House to approve a “no-deal exit”, she must table a different type of motion. This must seek Commons approval for a proposal to ask the European Council for an extension to [Article 50](#). The motion must set out the Prime Minister’s preferred extension date. If the Prime Minister goes straight to this motion, it must be moved for debate on Thursday 14 March. If she first seeks MPs’ approval for no-deal, however, this second debate would take place on Monday 18 March.

An amendable, legally binding, motion to seek an Article 50 extension

Should the Commons approve a resolution for the Prime Minister to seek an extension to [Article 50](#), she would then be required, legally, to seek that extension. The Commons would be able, if it wished, to insist that the Prime Minister seeks an extension to a different date from the one she originally proposed.

Although resolutions of the House of Commons typically carry significant political weight, they do not normally have legally enforceable consequences.³ A resolution adopted under the provisions of this Bill would therefore have a different status from an ordinary resolution of the House of Commons. The Prime Minister would be in clear breach of domestic law if she simply refused to ask for the extension MPs had instructed her to seek.

A role for the Commons if the European Council proposes an alternative date

The Act also provides a further role for the Commons in the event that the European Council does not agree to the Prime Minister’s request but proposes an alternative date. In those circumstances, the Prime Minister would have to seek further Commons approval before agreeing to that revised date and thereby giving effect to it in EU law.

Why does the Bill only let Parliament instruct the Prime Minister to “seek” an extension?

The two-year period under [Article 50\(3\)](#) cannot be extended unilaterally. Even if the UK “requests” an extension, it can only happen by way of a “unanimous decision” of the European Council. **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.**

Library paper on extending Article 50

The Library recently published a briefing, [Extending Article 50: could Brexit be delayed?](#) which explores in detail:

- the process in EU law for extending the two-year period;
- the views of the UK Government, Opposition parties and the EU;
- the scenarios in which an extension might be sought;
- how long an extension might be needed in those scenarios;
- the implications of extension for the European Parliament and its May elections.⁴

³ Notable exceptions to this include resolutions made under the [Constitutional Reform and Governance Act 2010](#) (in relation to the ratification of treaties), the [Fixed-term Parliaments Act 2011](#) (in relation to early dissolution of a Parliament), and the [EU \(Withdrawal\) Act 2018](#) (in relation to the ratification of a withdrawal agreement). See also Public Administration and Constitutional Affairs Committee, [Status of Resolutions of the House of Commons](#), HC1587, 7 January 2019

⁴ Commons Library Briefing Paper, [Extending Article 50: could Brexit be delayed?](#), 19/8496, 12 February 2019

1. Where we are in Parliament's Brexit process

Summary

In the absence of Commons approval for a deal (and following an explicit rejection of a specific deal on [15 January](#)) the Government held two Commons debates. These debates gave MPs a say on the proposed "next steps" the Government had set out in prior statements.

One of these debates (from [29 January 2019](#), was a statutory requirement under the [EU \(Withdrawal\) Act 2018](#). Two amendments were adopted in the final resolution: one "[rejecting](#)" a no-deal exit and another calling for "[alternative arrangements](#)" to replace the Northern Ireland backstop.

Since then, further discussions have taken place between the UK Government and EU leaders, and the Government [has formed an Alternative Arrangements Working Group](#).⁵ However, the Government has not brought back to Parliament a negotiated withdrawal agreement and a framework for the future relationship for consideration and approval.

The second debate, which took place on [14 February 2019](#), was non-statutory. It was the result of a political commitment made by the Prime Minister to return to Parliament. No resolution was adopted after the House declined to support the Government's motion "[welcoming](#)" its statement.⁶

As things stand, the Prime Minister has made a further commitment: [to make another statement on 26 February](#) if a deal still has not been brought back. There would then be a debate on another (non-statutory) amendable motion on 27 February, for MPs to express a view on what should happen next.

1.1 What role has Parliament had so far?

The Prime Minister brought back a "deal" in late November 2018, comprising a negotiated withdrawal agreement (a treaty) and a framework for the future relationship (a joint political declaration). The treaty cannot be ratified unless the Commons has adopted a resolution approving both documents and Parliament has passed the *EU (Withdrawal Agreement) Bill* to implement that treaty in domestic law.⁷

On 15 January 2019, the House of Commons declined to adopt a resolution for the purposes of [section 13\(1\)\(b\)](#) of the [EU \(Withdrawal\) Act 2018](#). Simply put: it rejected the Government's EU exit deal.

Since then, two debates have taken place in the House of Commons specifically in connection with the Government's "next steps". One of these was legally required by [section 13](#) of the [EU \(Withdrawal\) Act 2018](#), whereas the other was the product of a political commitment made by the Prime Minister at the dispatch box.

In both cases, the Government first set out in one or more statements what its intentions were for the next stage of the Brexit process, then tabled an amendable motion to allow MPs to express a view on the Government's proposed plan of action.⁸

⁵ BBC News, [Brexit: Talks on backstop 'alternative arrangements' begin](#), 4 February 2019

⁶ [HC Deb 14 February 2019 Vol 654 cc1155-1158](#)

⁷ [section 13\(1\) Withdrawal Act](#)

⁸ [Statement under Section 13\(4\) of the European Union \(Withdrawal\) Act 2018](#), HCWS1258, 21 January 2019; [Statement under Section 13\(11\)\(a\) of the European](#)

1.2 Statutory debate 29 January

The statutory “next steps” debate took place on [29 January 2019](#). The debate was on a “neutral motion” tabled by the Government. This motion was amendable (despite being neutral) because the [Business of the House Order of 4 December 2018](#) had disappplied [Standing Order No. 24B](#) from any motion tabled under [section 13](#) of the [2018 Act](#).

The debate resulted in the House adopting an amended motion as a resolution. Seven amendments had been selected, but only two of those amendments were approved by the House.

The first of the two amendments, in the name of Caroline Spelman, [was approved by 318 votes to 310](#). It “rejected” the UK leaving without a deal. This had no legal effect on [Article 50](#) but tested the strength of the view in the House that such an outcome was undesirable.

The second adopted amendment, in the name of Graham Brady [was approved by 317 votes to 301](#). It indicated that, if the Prime Minister secured sufficient changes to a key part of the Withdrawal Agreement (the Northern Ireland backstop), MPs would vote in favour of her deal.

One of the rejected amendments, in the name of Yvette Cooper, would have provided time for the [European Union \(Withdrawal\) \(No. 3\) Bill](#) (the previous iteration of the current Bill) to be debated. MPs [rejected Cooper’s amendment by 321 votes to 298](#).

1.3 Non-statutory debate 14 February

In the course of the debate on 29 January, the Prime Minister [made a further political commitment](#): if she was not in a position to bring back a deal for approval by Wednesday 13 February, she would make a statement to the House and then allow it to debate an “amendable motion” on Thursday 14 February.⁹ Although this commitment closely “imitated” the next steps debate set out in the 2018 Act, it was not a legal requirement.

The Prime Minister made a statement from the dispatch box on [Tuesday 12 February](#) setting out what steps she had taken since the previous debate and outlining what she proposed to do going forward.¹⁰ A motion was tabled the same day “welcoming” the Prime Minister’s statement, “re-iterating” support for the House’s resolution of 29 January, and “noting” that “discussions” on the Northern Ireland backstop were “ongoing” with the EU.

On Thursday 14 February, MPs declined to adopt the Government’s motion as a resolution ([by 303 votes to 258](#)), having first rejected amendments moved by the Leaders of the Official Opposition and the Scottish National Party.¹¹

Parliament’s key Brexit milestones in 2019

15 January – the “Meaningful Vote” defeated.

21 and 24 January – Statements made under the *EU (Withdrawal) Act* about “next steps”.

29 January – Debate on next steps. Spelman and Brady amendments approved. Original Cooper amendment defeated.

12 February – Prime Minister’s statement

14 February – Government motion on “next steps” defeated.

[Union \(Withdrawal\) Act 2018](#), HCWS1271, 24 January 2019; and [HC Deb 12 February 2019 Vol 654 cc731-734](#)

⁹ [HC Deb 29 January 2019 Vol 653 cc671](#)

¹⁰ [HC Deb 12 February 2019 Vol 654 cc731-734](#)

¹¹ [HC Deb 14 February 2019 Vol 654 cc1147-1158](#)

This Government defeat had no immediate legal consequences and was (in any case) part of a non-statutory set of proceedings.

1.4 Another debate expected 27 February

As part of her statement on 12 February, the Prime Minister [made a further commitment to the House of Commons](#). It is now anticipated that one of two things will happen by 26 February. Either:

- the Prime Minister will have brought back a deal to be considered for approval by the Commons; or
- a statement will be made on 26 February and the House will debate a further amendable motion the following day.¹²

As with the statement and debate on 12 and 14 February respectively, this is not part of the statutory process provided for Parliament in the 2018 Act.

What's next for Parliament?

The Prime Minister has promised either:

to have brought back a deal for the Commons to approve by 26 February

or

to table an amendable motion for debate on 27 February.

¹² [HC Deb 12 February 2019 Vol 654 cc734](#)

2. Parliament's role in Article 50

Summary

This Bill is a response to the absence of an EU exit deal commanding the support of the House of Commons. By the automatic operation of EU law, the UK leaves the EU, by default, on 29 March 2019 at 11pm GMT irrespective of whether a withdrawal agreement treaty has been ratified.

The [stated concern](#) of those advocating this Bill is their wish to avoid the outcome of the UK leaving the EU without a deal: a so-called “no-deal” exit.¹³ At the very least, they want to prevent it happening on 29 March 2019. However, such an objective can only be achieved (in legal terms) by:

- ratifying a deal negotiated by the UK Government;
- revoking the UK's notification and staying in the EU; or
- securing an extension to [Article 50\(3\)](#)'s two-year negotiating period.

The UK Government has repeatedly stated its policy preference for the first and against the other two of these outcomes.¹⁴ In practice, an extension request can only be sought if it becomes Government policy or the Government is otherwise legally compelled to ask for it. Parliament cannot seek an extension on the UK's behalf: the executive, not the legislature, conducts foreign affairs for the UK.

2.1 How Article 50 works

The legal default position is that the UK leaves the European Union (with or without a deal) on **29 March 2019 at 11pm GMT**. This date represents the expiry of a two-year negotiating period provided for in [Article 50\(3\) TEU](#). Parliament authorised the Prime Minister to start this process by passing the [EU \(Notification of Withdrawal\) Act 2017](#).

This legal default can only be changed in three ways. Either:

- a ratified withdrawal agreement could specify that the UK leaves on a different date;
- the UK could unilaterally revoke its notification, ending the [Article 50](#) process and remaining indefinitely in the EU;¹⁵ or
- the European Council and the UK Government could unanimously agree to “extend” the two-year negotiating period.

This Bill is principally concerned with the third of these three scenarios.

2.2 Role of the Government in seeking an extension

As a matter of EU law, the question of whether [Article 50](#) should be extended is one for the European Council in agreement with the departing Member State. The UK is represented by HM Government in matters concerning the European Council, since foreign affairs and the negotiation of treaties fall under the Royal Prerogative.

Three outcomes can avoid no-deal Brexit

Unless the Commons approves a deal and Parliament passes an implementing Bill, the default outcome is that UK leaves the EU **without a deal** on 29 March 2019.

This could only otherwise change if the UK **unilaterally revokes Article 50** or if it **unanimously agrees** with the European Council to **extend Article 50**.

¹³ BBC Andrew Marr Show, [Interview with Yvette Cooper](#), 27 January 2019

¹⁴ [HC Deb 21 January 2019 Vol 653 c25](#); [HC Deb 14 February 2019 Vol 654 c1071](#)

¹⁵ This would likely require primary legislation to avoid legal uncertainty. See Gavin Philipson and Alison Young, [Wightman: What Would Be the UK's Constitutional Requirements to Revoke Article 50?](#), *UK Constitutional Law Association*, 10 December 2018

In practice this means it is the Prime Minister who would request or agree to any extension under [Article 50](#) for the purposes of EU law.

The Government has repeatedly stated that it is not its policy to extend [Article 50](#). In the debate on next steps on 29 January, for example, the Prime Minister said:

The [Yvette Cooper amendment to make time for the [No. 3 Bill](#)] does not rule out no deal; it simply delays the point of decision, and the policy dilemmas, the choices, the trade-offs that we face as a Parliament will not go away if we postpone exit day. Her amendment offers absolutely no positive suggestions to address them. Furthermore I believe that the EU is very unlikely to agree to extend article 50 without a credible plan for how we are going to approve a deal. So whatever the right hon. Lady's intention, I think the practical consequences of her amendment would be not to rule out no deal, but to delay Brexit, and that is not a course of action that this House should support.¹⁶

On the 12 February, the Prime Minister re-iterated this, saying:

Extending article 50 does not solve the issue; it just extends the length of time of consideration. The point would still have to come when Members of this House would have to make a decision and exercise—respect—their responsibilities.¹⁷

2.3 No formal role for Parliament in “seeking” extension

MPs (and Peers) can already express a view about whether the UK's exit should be postponed beyond 29 March 2019 by e.g. adopting resolutions following debates, setting out a view, or even calling on the Government to take a given course of action. However, a resolution of either House does not normally have any legal effect. Whether the Government adopts the substance of the resolution as its policy is ultimately a political question.

MPs therefore have at most an indirect role in settling the question of whether the UK should seek an extension to [Article 50](#), and if so for how long. It remains a discretionary matter for the Prime Minister unless new legislation provides otherwise.

Given the Government's apparent policy against extension, and the fact that the House rejected the Government's deal by a substantial margin on 15 January ([432 votes to 202](#)) the possibility of a “no-deal” exit cannot (yet) be discounted.

Such an outcome could happen, by default, against the recently expressed preference of the House of Commons. MPs said that they “rejected” leaving without a deal when they passed the [Spelman amendment](#) on 29 January 2019. However, this had no bearing on the legal position in the absence of a deal, revocation or an extension.

Role of Government in extension

HM Government represents the UK on the international stage. At the moment, it has full discretion about whether to seek an extension of Article 50(3)'s two-year negotiating period.

The Government has thus far resisted the suggestion that it should ask for an extension to Article 50.

Role of Parliament in seeking an extension

At the moment, Parliament can pass motions seeking to influence Government policy on asking for an extension to Article 50. However, these lack legal force and may be considered “non-binding” by the Government.

This Bill would provide a limited mechanism by which motions could become legally binding on the Government.

¹⁶ [HC Deb 29 January 2019 Vol 653 c675](#)

¹⁷ [HC Deb 12 February 2019 Vol 654 c769](#)

2.4 Parliament's role in giving domestic effect to an agreed extension

Although Parliament has no formal role in any **request** to extend [Article 50](#), it does have a formal role in dealing with the **consequences** of an extension having been agreed.

Parliament has already made arrangements for UK law to function in the immediate aftermath of having left the EU. The [EU \(Withdrawal\) Act 2018](#) commences significant changes to domestic law "on exit day". This day is defined in legislation as 29 March 2019 at 11pm GMT.¹⁸

If the date of exit in EU law changes however, domestic law will need updated to reflect that new reality. A Minister can make regulations to change the date and/or time of "exit day" in that scenario. Those regulations have to undergo the "[affirmative procedure](#)" which means a majority of MPs and Peers must first vote in favour of the change.¹⁹

If either House withheld its consent for those regulations, the UK would risk being unable to honour its EU law obligations between 29 March 2019 and any new exit date agreed at the EU level. For example, the [2018 Act](#) ends the jurisdiction of the Court of Justice of the European Union "on exit day", but as a continuing Member State the UK must allow for references to be made to that court.

Parliament's role in changing "exit day"

The [EU \(Withdrawal\) Act 2018](#) makes sweeping changes to the UK's constitutional arrangements "on exit day" to reflect the fact the UK has left the EU.

If Article 50 is extended, these changes must be delayed. However, "exit day" is fixed by the Act.

Ministers can change "exit day" to deal with this situation, but both Houses of Parliament must approve regulations to change the date to a later one.

If these regulations do not pass, the UK risks breaching its obligations in EU law as a continuing Member State after 29 March 2019.

¹⁸ [s. 20\(1\) EU \(Withdrawal\) Act 2018](#)

¹⁹ [s. 20\(4\) EU \(Withdrawal\) Act 2018](#)

3. How does this Bill change Parliament's role?

Summary

This Bill would, in certain circumstances, give MPs a legal mechanism to compel the Prime Minister to seek an extension beyond 29 March 2019. If, by **13 March** (or a later "trigger day" if the Bill is passed after 12 March) no [section 13\(1\)\(b\)](#) approval motion has been adopted, the Prime Minister must either:

- secure explicit and unconditional Commons approval for a "no-deal" exit; or
- seek Commons approval for the Prime Minister to seek an extension to [Article 50](#).

This proposal does not envisage that the House of Lords would have a say in whether the Prime Minister should seek an extension to [Article 50](#). Unlike the various procedures under the [EU \(Withdrawal\) Act 2018](#), it does not even require any Lords debates to take place. This greater Parliamentary role is therefore confined to giving MPs a greater say.

The Bill itself would, however, require the consent of the House of Lords to become an Act of Parliament. Because of the nature of the subject matter and the timescale on which such a Bill would need to pass, the Lords' "power of delay" is effectively a "power of veto" over this legislation.

3.1 A formal role in "seeking" extension

This Bill proposes to give the House of Commons a role in the process of **seeking** an [Article 50](#) extension. The Prime Minister has until a "trigger date" to secure Commons support for her deal.²⁰ This date is **13 March 2019** or the day after this Bill becomes an Act (whichever is later).

3.2 Two choices for the Government

If the Prime Minister is unable to secure Commons support for her deal by the trigger date, she must then choose between two courses of action.²¹

Track 1 – Seek approval for a "no-deal" exit

The first course of action open to the Prime Minister is to secure explicit and unconditional approval from MPs for a "no-deal" exit. A Government motion would be moved for debate the next non-Friday sitting day, saying:

That this House approves leaving the European Union without a withdrawal agreement and a framework for the future relationship.

If this original motion were to be adopted as a resolution without amendment, the legal and political default remains that the UK leaves the EU without a deal on 29 March 2019 and the Prime Minister retains full discretion over whether to seek an extension to [Article 50](#).

Track 1 in brief

The Prime Minister can avoid having to seek an extension to Article 50 if she gets explicit and unconditional approval from MPs for leaving without a deal.

²⁰ i.e. to pass a Commons resolution for the purposes of [s. 13\(1\)\(b\) of the EU \(Withdrawal\) Act 2018](#).

²¹ N.B. if the Bill becomes law on or after 13 March 2019, the "trigger date" for moving motions under the Act are later. See section 3 of this paper for full details.

Track 2 – Seek approval for an extension request

If the Government’s motion under “Track 1” is either amended or not approved, or the Prime Minister decides not to ask the Commons to approve a “no-deal” exit, it must then move on to “Track 2”.

Under Track 2, the Prime Minister must table a motion for debate the next non-Friday sitting day in the following form:

That this House agrees for the purposes of section 2 of the European Union (Withdrawal) Act 2019 to the Prime Minister seeking an extension of the period specified in Article 50(3) of the Treaty on European Union to a period ending on [date to be set by the Prime Minister]

During any debate on the motion, MPs could amend the motion to change the date from the one preferred by the Prime Minister.

If the Commons approves a “Track 2” resolution, the Prime Minister would then be under a legal obligation to seek an extension. She must request an extension up to the date stipulated in the final resolution.

What if the European Council says “no” or proposes an alternative date?

It is possible the European Council might reject an extension request. The date of exit then would not change. Alternatively following discussions with the UK Government – the Council may propose an alternative, mutually agreeable, date.

If an alternative date is proposed, this Bill would then require the Prime Minister to come back to the Commons and seek approval for that extension with another Track 2 motion.

Would the House of Lords have a role?

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.²²

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](#).²³

The main opportunity for the Lords to influence this process, if at all, is therefore in scrutiny of the *No. 4 Bill* itself, if and when it completes its consideration in the Commons.

Track 2 in brief

The Prime Minister must seek an extension to Article 50 if MPs approve a motion telling her that she must.

The Prime Minister can suggest a preferred extension date, but MPs can insist she asks the European Council for a different date.

What if the European Council says no?

An extension can only happen if the European Council unanimously agrees to it.

If they suggest a different length of extension, the Prime Minister must seek MPs approval for it.

The House of Lords

Under this proposal, the House of Lords would not have a formal say in whether the Prime Minister should seek an extension to Article 50.

²² 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

²³ 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.

4. The Bill's provisions

Summary

The structure of this Bill is as follows:

Clause 1 says that this Bill only has practical effect if the Government reaches Wednesday 13 March without Commons approval for an exit deal. Moreover, if the Government secures an approval motion between 13 March and 29 March, the Bill also ceases to have effect.

Clause 2 sets out the process by which MPs can effectively “instruct” the Prime Minister to seek an extension to [Article 50](#).

- **Subsection 1** requires the Prime Minister to move one of two motions for debate on Thursday 14 March (or the first non-Friday sitting day after the “trigger day” if later)
- **Subsection 2** sets out the form of any “no-deal approval” motion.
- **Subsections 3-4** sets out the form of any “proposed extension approval” motion.
- **Subsections 5-6** require the Prime Minister to move an “extension approval” motion on Monday 18 March (or the next non-Friday sitting day if later) if a “no-deal approval” motion is rejected or amended.
- **Subsections 7-8** legally requires the Prime Minister to seek any extension MPs approve under a subsection 3 motion.
- **Subsections 9-11** require the Prime Minister to seek Commons approval for any counter-proposal on extension made by the European Council. If the Commons itself makes a counter-offer of a different date, the Prime Minister must again seek an extension on that basis.
- **Subsection 12** makes clear that **clause 2** only affects the circumstances in which the Prime Minister **must** seek an extension. It does not **prevent** her from seeking one in any other circumstances.

Clause 3 says that this Bill is to be understood as a “bolt-on” to the [European Union \(Withdrawal\) Act 2018](#). Any terms or definitions should be understood to mean the same thing in both statutes. It confirms that the Act is UK-wide in its territorial extent, requires no commencement regulations, and is to be known as the *European Union (Withdrawal) Act 2019* once passed.

4.1 Clause 1

A new Government deadline

Subsection 1(1) creates a new statutory deadline for the Government. This deadline is to be known as the “trigger date”.

If the House of Commons does not pass an approval resolution for the purposes of [section 13\(1\)\(b\)](#) of the [Withdrawal Act](#) before the “trigger date”, **clause 2** of this Bill would then come into effect.

Subsection 1(2) then provides that **clause 2** ceases to have effect if, at any time between the “trigger date” and 29 March 2019, the Government goes on to secure an approval motion.

Subsection 1(3) defines the “trigger date” as Wednesday 13 March 2019 or, failing that, the day on which the Act is passed.

Meaning of “the trigger date”

The **later** of:

- Wednesday 13 March 2019
- or
- the day after the day on which the Act is passed

4.2 Clause 2

Government to move one of two motions

Assuming that the Bill is passed on or before Tuesday 12 March 2019, **subsection 2(1)** would require the Prime Minister to move one of two motions for debate on Thursday 14 March 2019. The Prime Minister must seek Commons approval for either:

- a “no-deal” exit; or
- asking the European Council for an [Article 50](#) extension.

A “no-deal” approval motion

Subsection 2(2) sets out the form of words the Prime Minister must use in a motion if she intends to secure explicit consent for a “no-deal” exit. It must say:

That this House approves leaving the European Union without a withdrawal agreement and a framework for the future relationship.

Assuming any “no-deal” motion is moved on Thursday 14 March 2019, **subsections 2(5-6)** would require the Prime Minister to table an extension request approval motion for debate on Monday 18 March if it is rejected or amended by the House of Commons.

An extension request approval motion

Subsection 2(3) sets out the form of words the Prime Minister must use in a motion if she intends to seek approval for a request to extend [Article 50](#). It must take the form of:

That this House agrees for the purposes of section 2 of the European Union (Withdrawal) Act 2019 to the Prime Minister seeking an extension of the period specified in Article 50(3) of the Treaty on European Union to a period ending on [...]

Prime Minister to propose a date for extension

Subsection 2(4) clarifies that the Prime Minister must choose a preferred date to be included in any extension request motion. It would replace the ellipsis in square brackets in the motion text in **subsection 2(3)**.

Consequences of an extension request resolution

If the Prime Minister’s motion is approved unamended

Subsection 2(7) provides that, if the Prime Minister’s extension request motion is approved without amendment, she legally must seek the extension she proposed to ask for.

If the Commons amend the PM’s proposed extension date

Subsection 2(8) provides that, if MPs approve an amended extension request motion, the Prime Minister must seek an extension for the date they demanded, rather than the one she stipulated in the original motion.

A “no-deal” approval motion

A motion asking the House of Commons to approve leaving the EU without a deal.

An extension request approval motion

A motion asking the House of Commons to approve the Prime Minister asking the European Council for an extension to Article 50.

Effect of an extension request approval resolution

If the Commons “approves the Prime Minister seeking an extension” to a particular date she must then seek it from the European Council.

The European Council's response

Subsection 2(9) identifies the possibility of a situation where the European Council does not agree to an extension request made by the Prime Minister, but proposes an alternative date.

Commons to be asked again about a counter-proposal

Subsection 2(10) requires any proposed alternative date to be put to the Commons the next non-Friday sitting day after the proposal is made, on the same basis as the original approval request motion under **subsection 2(3)**.

Subsection 2(11) makes clear that if the Commons makes a counter-offer as to an extension date to the Commission's alternative proposal, the Prime Minister must (once again) seek that extension on the UK's behalf.

Prime Minister's power to seek an extension not otherwise affected

Subsection 2(12) makes clear that nothing in this Bill would prevent the Prime Minister from seeking an extension otherwise than on the instruction of the House of Commons.

It is conceivable, for example, that Government policy might change between now and 13 March 2019, and that an extension might "voluntarily" be sought. Equally, the Prime Minister may wish to seek an extension even if the Commons goes on to approve a deal between the trigger date and exit day.

Such a "technical extension" might reasonably be sought to allow for full and proper scrutiny of the *European Union (Withdrawal Agreement) Bill*. That Bill also must pass if the deal is to be ratified, but it has not yet been introduced.

4.3 Clause 3

A "codicil" to the EU (Withdrawal) Act 2018

Subsection 3(1) makes clear that this Bill should be read alongside the earlier [EU \(Withdrawal\) Act 2018](#). Key definitions would mean the same thing for the purpose of both statutes.

Commencement on enactment

Subsection 3(2) stipulates that no commencement regulations (to be made by Ministers) would be needed for the Bill following Royal Assent: it would come into effect immediately.

Territorial application

Subsection 3(3) makes clear that this Act has full UK-wide territorial extent. This is unsurprising given it concerns the UK's relationship with the EU and therefore affects all three territorial jurisdictions of the UK.

Short title

Subsection 3(4) gives the Bill the short title (on enactment) of the *European Union (Withdrawal) Act 2019*.

Parliament's role if European Council proposes an alternative

If the European Council proposes an alternative date, the Prime Minister must move another extension request approval motion.

If the Commons approves a motion with an amended date, the Prime Minister must (again) seek an extension in line with its resolution.

Commencement on enactment

This Bill will come into effect when it receives Royal Assent. Ministers have no control over whether and when its provisions apply to them.

5. Securing Parliamentary time to debate this Bill

Summary

As a presentation [Private member's bill](#), this proposal has limited prospects of getting the necessary time for debate in the House of Commons. However, it is understood that its advocates will attempt to change the rules of the House to secure time for a Second Reading.

A previous but unsuccessful attempt of this nature was made on [29 January 2019](#) for the [EU \(Withdrawal\) \(No. 3\) Bill](#). The next attempt is likely to take place if and when the Government brings forward an amendable motion for debate on 27 February 2019.

5.1 Presentation 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 Second Reading debate.

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.

Standing Order No. 14(1)

"Save as provided in this order, government business shall have precedence at every sitting."

5.2 Previous attempt to get Parliamentary time for the No. 3 Bill

Yvette Cooper moved an amendment to the Government's "neutral motion" on 29 January 2019. Had the House approved it, it would have disapplied [Standing Order No. 14\(1\)](#) on Tuesday 5 February. That Standing Order gives precedence to Government business.

For that day (and that day alone) precedence would have been given to a [Business of the House motion](#) in connection with the [EU \(Withdrawal\) \(No. 3\) Bill](#). The motion would be debated and voted and, if approved would make arrangements for the Bill itself to be debated.

Provided that the Business of the House motion itself commanded the support of the House, this unprecedented approach would have allowed a Private Member's bill to complete its Commons stages without the tacit support of the Government of the day.

In the event, the Commons rejected Yvette Cooper's amendment.

Exceptions to Government business taking precedence

The Standing Orders give precedence to non-Government business in three scenarios:

- Opposition days
- Backbench business days
- Specified sitting Fridays for consideration of Private Members' bills

5.3 Might this be tried again for the No. 4 Bill?

It is anticipated that Yvette Cooper and others will make a similar attempt to change the rules of the House for the purposes of the [EU \(Withdrawal\) \(No. 4\) Bill](#). If the Government brings forward an "amendable motion" for debate on 27 February (as it has indicated it will) an amendment would be tabled along the same lines as before.

In the third instance, priority is given to Ballot bills. The [No. 4 Bill](#) is not a Ballot bill so does not have any special priority on sitting Fridays.

5.4 Getting the Bill through the House of Lords

Even if procedural adaptations are made in the Commons to allow the [No. 4 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.²⁴

For the [No. 4 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.

²⁴ 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.

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).