



## BRIEFING PAPER

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# Parliament and the three extensions of Article 50

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## Summary

This paper explains the legal and political background to the three extensions of the UK's EU-exit process under [Article 50](#) of the [Treaty on European Union](#) (TEU). It sets out the UK Parliament's role in the seeking and agreeing to those extension decisions of the European Council.

### Overview

When a Member State seeks to leave the EU, a process is initiated under [Article 50 TEU](#). Once a Member State has **decided** to withdraw, and then **notified the European Council** of its intention, the process formally begins. At first instance, the departing Member State and the EU have up to two-years (from the point of notification) to conclude a withdrawal agreement. The EU Treaties then cease to apply:

- on the entry into force of a withdrawal agreement;
- on the expiry of the two-year negotiating period (in the absence of a ratified withdrawal agreement); or
- at a later date if the European Council unanimously decides (in agreement with the departing Member State) to extend the period.

The UK notified the European Council of its intention to leave the EU on 29 March 2019.

### Previous extensions of Article 50

Since then, three extension decisions have been taken by the European Council (on all three occasions with the agreement of the UK Government). The first two of these decisions were taken while Theresa May was the UK Prime Minister.

- Firstly, [on 22 March 2019](#), a decision was taken, which had the effect of extending the deadline until 12 April 2019.
- Secondly, [on 11 April 2019](#), a further decision was taken, which had the effect of extending the deadline until 31 October 2019.

### The third extension of Article 50

On 19 October 2019 the current Prime Minister, Boris Johnson, [sent a letter to the President of the European Council](#) requesting an extension of [Article 50](#) until 31 January 2020. He did so despite publicly opposing an extension beyond 31 October 2019.

The Prime Minister had no choice but to send this letter because it was required by an Act of Parliament, the [European Union \(Withdrawal\) \(No. 2\) Act 2019](#).<sup>1</sup> The Act stated that the Prime Minister had to send the letter if, by 19 October 2019 the Government had not secured a resolution of the Commons either approving:

- the withdrawal agreement with the European Union; or
- leaving the European Union without an agreement.

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<sup>1</sup> Also known as "the Benn Act" as it was introduced as a Private member's bill by Hilary Benn MP.



## 4 Parliament and the three extensions of Article 50

On 28 October 2019, the European Council announced that it had decided to offer the 3-month extension set out in the letter. The Prime Minister, though describing the extension [in a letter to Donald Tusk](#) as an “unwanted prolongation of the UK’s membership of the EU” nevertheless accepted this offer. He was required to do by section 3 of the [EU \(Withdrawal\) \(No. 2\) Act 2019](#).

This means that, unless the Withdrawal Agreement is ratified and enters into force at the end of either November or December, the UK will leave the European Union no earlier than 31 January 2020.

### Other resources

It may also be helpful to refer to the following other Commons Library Briefing papers, which covered the first two extensions of Article 50:

- [Extending Article 50: could Brexit be delayed?](#), 19/8496, 21 March 2019.
- [Brexit delayed: the European Council Conclusions on extending Article 50](#), 19/8533, 22 March 2019
- [Brexit delayed again: until 31 October 2019?](#), 19/8549, 17 April 2019

and to the Commons Library Insight concerned with the most recent extension:

- [What does the latest Brexit delay mean for the UK and EU?](#), 31 October 2019

# 1. Article 50's deadline in EU law

## Summary

[Article 50](#) is a provision in the Treaty on European Union, to which all the EU's Member States are a signatory. It allows any Member State to withdraw from the European Union: it is a unilateral secession clause. If a Member State **decides**, in accordance with its own constitutional requirements, to withdraw from the European Union, it can do so by **notifying** the European Council of that intention. This triggers a process whereby one of three outcomes can be reached:

- leaving the EU with a withdrawal agreement;
- leaving the EU without a withdrawal agreement; or
- unilateral revocation whereby the Member State in question remains a Member State.

By default, this process lasts up to two years. However if the European Council decides unanimously and with the departing Member State's agreement to "extend" the two year period, the parties can do so. Extension cannot be to an "indefinite" point in the future but more than one extension is possible. An extension can always be cut short by the entry into force of a withdrawal agreement.

Discussions are held and decisions taken by the European Council under [Article 50](#) without the participation of the Member State. However decisions to approve a withdrawal agreement, or to extend the Article 50 process, always require, in any case, the departing Member State's agreement.

The manner and timescale for the UK's withdrawal from the European Union is governed by a specific provision of the EU's Treaties:

[Article 50 TEU](#).

## 1.1 Relevant text of the Treaty

[Article 50\(1\)](#) provides:

Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements

[Article 50\(2\)](#) adds (emphasis added):

**A Member State which decides to withdraw shall notify the European Council of its intention.** In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

[Article 50\(3\)](#) then adds:

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 referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

This means that the [Article 50](#) process allows (broadly) for one of five outcomes once commenced. Either the Member State:

- leaves with a withdrawal agreement within two years;
- leaves without a withdrawal agreement after two years;

- leaves with a withdrawal agreement, but after an extended period;
- leaves without a deal, but after an extended period; or
- unilaterally revokes its notification under Article 50 and does not leave the EU.<sup>2</sup>

## 1.2 The process in practice

[Article 50](#) refers to the “decision” that must be taken for an extension to take place. However, it is silent as to the process by which formal discussions about an extension are to begin. In practice, we have seen a four-stage process emerge:

- the Government of the departing Member State asks in writing for an extension;
- the other members of the European Council discuss the request;<sup>3</sup>
- the other members of the European Council then decide (by unanimity) whether there should be an extension (and for how long); and finally
- the Government of the Member State intimates whether it agrees to that extension.

## 1.3 There can be multiple extensions of Article 50

There is nothing in the text of [Article 50](#) that prevents the European Council from taking multiple decisions to extend the process for a departing Member State.<sup>4</sup> However, the European Council has been mindful that “decisions to extend may not be repeated in a manner that would make the duration of the withdrawal indefinite” and that all extension decisions “must respect the principle of proportionality between its duration and the purpose it is intended to serve”.<sup>5</sup>

What matters most for the purposes of EU law is that any decisions are taken by unanimity among the Member States. In the case of the United Kingdom, there have been three extensions of [Article 50](#).

## 1.4 There can be multiple extension dates

The constraints of [Article 50\(3\)](#) likely render unlawful any decision **indefinitely** to extend [Article 50](#). The more apt or relevant decision to

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<sup>2</sup> [C-621/18 Wightman v Advocate General](#), 10 December 2018

<sup>3</sup> [Article 50\(4\)](#) provides that, when an extension is contemplated “the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it”.

<sup>4</sup> This is different, for example, from the power of the Joint Committee – under Article 132 of the draft Withdrawal Agreement – to extend the transition or implementation period. That article specifies that the Joint Committee may only adopt a “single decision” to extend by “up to 1 or 2 years”.

<sup>5</sup> See [Council of the European Union document circulated on 20 March](#) ahead of the first extension decision and section 3.5 of Commons Library Briefing Paper, [Brexite delayed: the European Council Conclusions on extending Article 50](#), 19/8533, 22 March 2019

be taken in those circumstances presumably would be the unilateral revocation of the notification by the Member State concerned. There must be a clear and identifiable **date and time** by which the EU Treaties cease to apply to the departing Member State. If this were not to be the case, the objects and approach of [Article 50\(3\)](#) would be frustrated, as an extension could, in practice, continue indefinitely in the absence of the entry into force of a withdrawal agreement.

However, this does not prevent an [Article 50\(3\)](#) extension decision from setting out **mutually exclusive alternative extension dates**. For example, the UK's first extension of [Article 50](#) was to one of two dates, depending on whether the House of Commons had approved the negotiated withdrawal agreement by a certain point.

Had it done so, the European Council's decision would have granted an extension to 22 May 2019. The purpose of such an extension would have been to allow Parliament to debate and pass the *EU (Withdrawal Agreement) Bill* to implement that treaty.

Because the House of Commons did not approve the negotiated withdrawal agreement, the extension was instead a short one – only to 12 April 2019 – and granted for a different purpose. The intention of that extension was to enable the Prime Minister to set out her proposals for what should be done in the absence of “a deal” and to allow the European Council and Parliament then to consider those proposals.

## 1.5 Ratifying an agreement can cut short Article 50

The entry into force of a Withdrawal Agreement brings the [Article 50](#) process to an end. It does so irrespective of whether the initial two-year negotiating period had elapsed, or indeed whether [Article 50](#) had been extended to a date further into the future.

The current draft Withdrawal Agreement provides, in Article 185, for the date on which it is to enter into force once ratified by both parties. It defines the entry into force as the earlier of either:

- the expiry of the extended Article 50 process (to whatever date that may be); or
- the first day of the month immediately following the completion of ratification by both parties.<sup>6</sup>

So, for example, were both parties to have ratified the Withdrawal Agreement on 18 November 2019, the UK would leave the European Union on 30 November 2019 at 11pm even though an extension has been agreed to 31 January 2020.

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<sup>6</sup> Note that this is expressed in Central European Time, so would be at 11pm UK time on the final day of the preceding month.

## 2. Who asks for an extension?

### Summary

International relations, including the UK's relations with the EU, are usually conducted by the UK Government. The prerogative power of foreign affairs and treaty-making is therefore something in respect of which Parliament has a limited role. However, where and to the extent that Parliament passes Acts of Parliament, it can legally constrain the executive's freedom of action.

This paper explains that Parliament has in practice had a very considerable role in the process by which the UK has sought and secured three extensions of Article 50. It identifies four distinct ways in which Parliament has sought to shape the process and to influence Government policy, namely:

- pure political pressure to change Government policy (e.g. through resolutions);
- indirect legislative pressure to encourage the seeking of an extension (e.g. amending Government legislation not principally concerned with Brexit);
- the "threat" of passing specific primary legislation to direct and constrain executive action; and
- passing specific primary legislation to direct and constrain executive action.

### 2.1 Who acts in the European Council?

Although [Article 50](#), including the extension process, is an EU law process, the domestic constitutional arrangements of a departing Member State have an important impact. It is domestic constitutional law that determines both **how a decision is taken to withdraw** from the EU and **who has the authority to notify the EU of that intention**.

However, domestic constitutional law also determines **who may ask for and agree to an extension** on the departing Member State's behalf. The European Council consists of heads of state or government from the 28 Member States, but the conduct of those representatives may be constrained by the domestic law in their respective countries.

### 2.2 Executive initiative

In the United Kingdom, it is typically Her Majesty's Government that conducts foreign affairs and treaty making. It does so under the Royal Prerogative or, where relevant, under the authority of an Act of Parliament.<sup>7</sup> The corollary of this is that the Prime Minister decides when, whether, and for how long to seek an extension under [Article 50\(3\)](#).

Although Parliament had a role in enabling the Prime Minister to commence the Article 50 process, it did not, by default, have a further role in authorising, mandating or prohibiting the seeking of an extension of that process. However, as with any aspect of Government

<sup>7</sup> An example of the latter is the UK's notification of intention to withdraw. It was made by the UK Government, but under the authority of the [EU \(Notification of Withdrawal\) Act 2017](#). It could not be done under the Royal Prerogative because of the ruling of the UK Supreme Court in [R \(Miller\) v Secretary of State for Exiting the European Union \[2017\] UKSC 5](#)



policy, Parliamentarians can and have sought to influence the approach taken by the UK Government towards the extension of [Article 50](#).

Some MPs sought to exercise that influence so as to dissuade extension. However, on several occasions the majority of MPs have supported an extension or further extension, at first instance to avoid or delay the risk of leaving the EU without a deal. Thereafter, objectives of MPs have diverged. Some have wished to see a deal reached and ratified with the additional time available. Others have sought to use an extension either: to hold a second referendum; to facilitate a general election; or even to revoke the UK's notification of [Article 50](#) outright.

## 2.3 Parliamentary influence

There have been four distinct ways that Parliament generally, and MPs in particular, have sought to influence Government policy on the [Article 50](#) timeline.

- The first has been **pure political pressure**: by (among other things) passing resolutions in Parliament expressing opposition towards leaving the European Union without a deal.
- The second has been **indirect legislative pressure**: by scrutinising and amending Government legislation or by withholding support for other Government measures. Typically this legislation or these measures will have a loose or consequential connection to the Brexit process.
- The third has been **the “threat” of direct legislative initiative**: concessions have been secured from the Government by making clear that legislation otherwise would pass restricting its freedom of action with regard to [Article 50](#).
- The fourth has been **actual direct legislative initiative**: passing primary legislation to compel the Government to seek and secure a particular extension of [Article 50](#) notwithstanding its stated policy to the contrary.

## 3. The first extension to 12 April 2019

### Summary

On 20 March 2019, ahead of the European Council summit, [then Prime Minister Theresa May wrote to Donald Tusk, the President of the European Council](#), asking for an extension of [Article 50](#) until no later than 30 June 2019. The European Council decided, [on 22 March 2019](#), to offer an extension until one of 12 April and 22 May 2019, [to which the UK Government formally agreed](#).

This extension, properly understood, was the culmination of Parliamentary pressure having been applied to the UK Government. An extension was sought as a direct result of initiatives taken by MPs to influence Government policy. MPs applied a combination of political and indirect legislative pressure, and then the “threat” of direct legislative initiative, to persuade the Government to seek and agree to an extension of [Article 50](#).

### 3.1 What had been Government policy?

#### Willing to leave without a deal if necessary

Throughout the negotiations, and even after the first rejection of the negotiated withdrawal agreement and framework for the future relationship in January 2019, the Government had insisted that it was prepared to leave the EU without a deal if Parliamentary approval for withdrawal could not be secured before the 29 March 2019 deadline.

#### Generally sceptical of the value of an extension

The Prime Minister repeatedly expressed the view that an extension of [Article 50](#) would not assist with reaching a deal that could pass through Parliament. For example, Theresa May said in Prime Minister’s Questions [on 23 January 2019](#):

This is not just an arbitrary date. It is a date to which the House effectively agreed when it triggered article 50, because it understood that the article 50 process was a two-year process, and, as I said in response to the Leader of the Opposition, that process will end on 29 March 2019. I do not believe that extending article 50 resolves any issues, because at some point Members must decide whether they want a no-deal situation, to agree a deal, or to have no Brexit.<sup>8</sup>

#### Preferred not to ask even for a technical extension

The Government even appeared opposed (at least at first) to a technical extension of [Article 50](#). Such an extension would have been sought to allow time to pass the *European Union (Withdrawal Agreement) Bill* and to comply with an additional time constraint set out in [Part 2](#) of the [Constitutional Reform and Governance Act 2010](#) (‘CRAG’). On 12 February 2019, the Prime Minister indicated that that *EU (Withdrawal Agreement) Bill* would disapply [CRAG](#) if (necessary) so that the 21 sitting day “waiting period” to ratify the treaty would no longer

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<sup>8</sup> [HC Deb 23 January 2019 Vol 653 c239](#)

apply.<sup>9</sup> This suggested the Government's preference was to legislate more quickly, rather than to extend the process, even if the Commons approved a deal but wished to spend more time scrutinising the implementing legislation.<sup>10</sup>

## 3.2 What did Parliament do?

### Exerted pure political pressure

Following the rejection of the original negotiated withdrawal agreement and framework for the future relationship ([on 15 January 2019](#)), the Government set out its intentions in a "Brexit Next Steps" statement as required by the [EU \(Withdrawal\) Act 2018](#).<sup>11</sup> The House then debated the implications of that statement [on 29 January 2019](#).

The Government's "neutral motion" was amended by two (mostly different) majorities of MPs to express a view about what should happen next. Firstly, [the motion was amended by Dame Caroline Spelman](#) (on a division by 318 votes to 310) to make clear that the House of Commons:

rejects the United Kingdom leaving the European Union without a Withdrawal Agreement and a Framework for the Future Relationship.<sup>12</sup>

Secondly, MPs expressed a view as to what should be done to secure their approval for an agreement. They passed an amendment in the name of Graham Brady ([by 317 votes to 301](#)), which said the House:

requires the Northern Ireland backstop to be replaced with alternative arrangements to avoid a hard border; supports leaving the European Union with a deal and would therefore support the Withdrawal Agreement subject to this change.<sup>13</sup>

Neither of these amendments, both of which formed part of the final resolution, altered the default in EU law (that the UK would leave without a deal on 29 March 2019). Nor did they require, as a matter of UK law, that the Prime Minister to seek an extension of [Article 50](#) for the purposes of renegotiating and securing an agreement which MPs could support.

However, the Spelman amendment gave an indication that the House might support an extension if a deal could not be completed before the 29 March 2019 deadline (and may take further action if the Prime Minister refused to ask for an extension in those circumstances). The Brady amendment provided a political context and purpose for further negotiations with the EU.

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<sup>9</sup> Such a provision was ultimately included in clause 33 of the [EU \(Withdrawal Agreement\) Bill 2019](#) introduced by the Johnson Government on 21 October 2019.

<sup>10</sup> [HC Deb 12 February 2019 Vol 654 cc744-745](#)

<sup>11</sup> [HCWS1258](#), 21 January 2019

<sup>12</sup> [HC Deb 29 January Vol 653 cc779-783](#)

<sup>13</sup> [HC Deb 29 January Vol 653 cc784-787](#)

## Exerted indirect legislative pressure

Another means by which MPs sought to influence the Government's position on an extension was through amending its legislation: applying "indirect" legislative pressure.

For example, the [Finance \(No. 3\) Bill 2017-19](#) was amended on 8 January 2019 by Yvette Cooper at Report stage. Then clause 89 (now [section 90](#) of the [Finance Act 2019](#)) granted the Treasury powers in connection with EU withdrawal, including for a "no deal exit" scenario.

The Cooper amendment stated that the Treasury's powers could not come into force unless and until:

- the House of Commons had passed a "Meaningful Vote";
- the Prime Minister had sought an extension of [Article 50](#); or
- the House of Commons had approved leaving the EU without a deal.<sup>14</sup>

By including this conditionality on the delegated powers it conferred, Parliament was asserting for itself a greater role in the Brexit process. It meant the Government could not pursue a no-deal outcome as easily without first having taken steps to delay or avert it, or to get subsequent Parliamentary approval for it.

## "Threatened" to legislate

Beyond political and "indirect" legislative pressure, MPs also contemplated changing UK law to compel the Prime Minister to seek an extension of [Article 50](#). Three private member's Bills were presented in quick succession, which proposed to pass such a law. However, their intention was to secure a change of Government policy: if that could be achieved without passing the Bill, it could then be abandoned.

### European Union (Withdrawal) (No. 2) Bill 2017-19

The first Bill [was presented by Nick Boles MP](#) on 15 January 2019. Part of its proposal involved giving a role to the Commons Liaison Committee: to form a Brexit plan. If the plan the Committee reached required an extension, or it did not arrive at a plan, the Government would then have to seek an extension. This approach was shelved when the Chair of the Committee expressed concerns as to whether this was consistent with its proper role. The Bill never received a Second Reading.

You can read more about this Bill in the Library's briefing paper:

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

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

A second Bill quickly followed, [presented by Yvette Cooper on 21 January 2019](#). It was a much less complex Bill in terms of its content. It proposed to give the Prime Minister until 26 February 2019 to secure approval for a deal. If this didn't happen, MPs could pass a motion to instruct the Government to seek an extension and specify for how long.

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<sup>14</sup> [HC Deb 8 January 2019 Vol 652 cc278-282](#)

This Bill never received a Second Reading. MPs decided not to debate it. On 29 January 2019, the House rejected Yvette Cooper's amendment ([by 321 votes to 298](#)) to a "Brexit Next Steps" motion. Had it passed, it would have allowed backbenchers to "[take control of the order paper](#)" in order to debate the Commons stages of the Bill.<sup>15</sup>

You can read more about this Bill in the Library's briefing paper:

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

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

The third Bill, also in the name of Yvette Cooper, [was presented on 13 February 2019](#). It proposed a three-stage process:

- the Prime Minister would have until 13 March 2019 to get Commons approval for a deal;
- if no approval was forthcoming she could then ask whether the Commons approved the UK leaving without a deal;
- if the Commons then rejected leaving without a deal, the Prime Minister would then have to ask MPs to approve seeking an extension, and then have to seek it if the Commons approved it.

This Bill is explained in full in the Library's briefing paper and Insight:

- [European Union \(Withdrawal\) \(No. 4\) Bill 2017-19](#), 19/8502, 19 February 2019
- [Yvette Cooper's Private Member's Bill explained](#), 19 February 2019

As with the first two Bills, this Bill was never actually debated in the House of Commons. Unlike the first two Bills, however, this one applied sufficient political pressure to change Government policy. Before this Bill was presented, the Government had refused to commit to seeking an extension should its deal be rejected a second time by MPs. However, there was a real "risk" for the Government that MPs would vote (in late February) to make time for this Bill to be debated.

[On 26 February 2019](#), the Prime Minister promised at the despatch box to hold the votes that would have been required by the Bill, and to abide by whatever the House of Commons decided as a result.<sup>16</sup> Cooper therefore did not press for the Bill to be debated. This led to votes on:

- the revised deal on ([on 12 March 2019](#));
- whether to leave without a deal ([on 13 March 2019](#)); and
- the Government's new proposal to seek a "limited" extension to the Brexit process ([on 14 March 2019](#)).

MPs voted to reject the revised deal ([by 391 votes to 242](#)), against leaving without a deal ([by 321 votes to 278](#)) and for the Government's proposal to seek an [Article 50](#) extension ([by 412 votes to 202](#)).

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<sup>15</sup> [HC Deb 29 January 2019 Vol 653 cc770-774](#)

<sup>16</sup> See also Commons Library Insight, [The Brexit timetable: One promise, two weeks, three key votes](#), 1 March 2019



### 3.3 Impact of Parliamentary votes

The decisions of the House of Commons in mid-January, though not legally binding on the Prime Minister as to an extension, in practice led to her [letter to Donald Tusk of 20 March 2019](#). That letter, sent ahead of the European Council summit, requested an extension of [Article 50](#) and therefore eventually led to the European Council's decision to offer a first extension, to which the Prime Minister then agreed.

Parliament can therefore be said, through a variety of political and legislative measures, to have influenced Government policy on the first extension, despite having (at that time) no statutory role in the extension of [Article 50](#).

### 3.4 What extension was actually offered?

The first extension of [Article 50](#) anticipated two possible scenarios. How long the extension would be depended upon whether there was a realistic prospect that the UK could ratify the Withdrawal Agreement before the European Parliamentary elections.

If the House of Commons had approved the Withdrawal Agreement by 29 March 2019, the extension would have lasted to **22 May 2019** (the day before EP elections were scheduled to take place in the UK). The UK Parliament would therefore have had just under two months within which to pass the *EU (Withdrawal Agreement) Bill* so that the UK could then ratify the withdrawal agreement.

However, if MPs had not approved the Withdrawal Agreement by then, a shorter extension would be offered: only to **12 April 2019**. The purpose of that extension was to allow the UK Government to come forward with alternative proposals for how it wished to proceed, and for the European Council to reassess the situation at its 10 April summit.

In the event, the House of Commons was asked to approve, but rejected, the withdrawal agreement [on 29 March 2019](#) (by 344 votes to 286). The extension therefore only took the UK to 12 April 2019.

### 3.5 Domestic legal consequences

By agreeing to the extension of [Article 50](#), the Government had created a discrepancy between the date on which the Treaties would cease to apply (in **EU law**) and the date on which post-exit arrangements would come into force in **domestic law** (also known as 'exit day'). To bring the two back into alignment, the Government sought Parliamentary approval for regulations to change exit day. This was forthcoming in both Houses and, on 28 March 2019, the [EU \(Withdrawal\) Act 2018 \(Exit Day\) \(Amendment\) Regulations 2019](#) came into force.<sup>17</sup> The regulations provided for both eventualities: i.e. a change to exit day irrespective of whether it was to 12 April 2019 or the 22 May 2019.

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<sup>17</sup> See also Commons Library Insight, [What is "exit day"? Dispelling misconceptions about the extension of Article 50](#), 19 March 2019

## 4. The second extension to 31 October 2019

### Summary

On 5 April 2019, ahead of the next European Council summit, [then Prime Minister Theresa May wrote to Donald Tusk, the President of the European Council](#), formally asking for a further extension of [Article 50](#). The European Council then decided, [on 11 April 2019](#), to offer an extension until 31 October 2019, [to which the UK Government then formally agreed](#).

Unlike with the first extension, the UK Parliament actually passed primary legislation to compel the Prime Minister to seek an extension of [Article 50](#). The [European Union \(Withdrawal\) Act 2019](#) (also known as the *Cooper-Letwin Act* or the *Cooper Act*) required the Prime Minister to seek an extension of Article 50 in accordance with a further resolution of the House of Commons.

The legislation in question could only be passed because of prior procedural steps taken by MPs to set aside time for debate on a private member's Bill. This procedural innovation has come to be known as "taking control of the order paper".

The Prime Minister actually asked for the second extension before the *Cooper-Letwin Bill* had completed its passage through the House of Lords (which did not happen until 8 April 2019). MPs also ended up approving her extension request (up to 30 June 2019) retrospectively. However, the Lords' contribution to the Bill was key: the final Act restricted the power of the Prime Minister to agree to an extension. She could only agree to an extension beyond 22 May 2019, effectively guaranteeing that the UK would participate in the European Parliamentary elections.

The concern in April among MPs opposed to leaving without a deal was not that the Prime Minister would not ask for a further extension. Rather, it was that the extension asked-for may not provide enough time to reach agreement on an alternative course of action that would prevent the UK leaving the EU without an agreement at a later date.

### 4.1 How was the Cooper-Letwin Bill passed?

The [European Union \(Withdrawal\) \(No. 5\) Bill 2017-19](#) was presented by Yvette Cooper on 2 April 2019. As a private member's Bill, it would normally have had limited prospects of becoming an Act of Parliament in the absence of Government support or acquiescence.

However, a series of procedural votes took place in the House of Commons to enable all of the Bill's Commons stages to be completed on Wednesday 3 April 2019. By amending a Government "Brexit Next Steps" motion, and then passing backbench Business of the House orders "off the back" of that, Sir Oliver Letwin's amendment enabled MPs to "[take control of the order paper](#)" and to give priority to Yvette Cooper's private member's Bill over Government business. For further details on how that was achieved, see the Commons Library Insight:

- [Taking control of the order paper](#), 26 June 2019

The Bill completed all of its Commons stages on Wednesday 3 April, completed its Lords stages across Thursday 4 and Monday 8 April, and received Royal Assent after a brief "[ping pong](#)" on Monday 8 April.

## 4.2 What did the Bill say?

The original Bill would have required the Prime Minister to seek an extension of [Article 50](#) to a date specified in a Commons resolution. If the European Council offered a different extension, she would then have had to revert to MPs and seek their approval for that extension.

The Bill was, however, significantly amended in the House of Lords on Monday 8 April. As enacted, its provisions instead provided that, if a “counter-offer” were made by the European Council, the Prime Minister could agree to it but only if it was to a date beyond 22 May 2019. This would in effect guarantee the UK’s participation in the European Parliamentary elections following any extension.

For further details on the Act’s provisions, see Commons Library Insight:

- [The Cooper Act and Article 50 – a new role for Parliament?](#), 9 April 2019

## 4.3 How did the Bill influence the Government’s policy?

The Prime Minister wrote to Donald Tusk on 5 April 2019 asking for an extension until the end of June 2019. This request was made after the Commons had approved the Bill, but before the House of Lords had considered it. The Bill having received Royal Assent on 8 April, the Commons motion required by it was debated on 9 April, and the House resolved – albeit retrospectively – to approve the seeking of the extension of [Article 50](#) the Prime Minister had already sought.

Given the timing of the Prime Minister’s request, it is reasonable to conclude that the [Cooper-Letwin Act](#) at least hastened, even if it did not itself bring about, the second request for an extension of [Article 50](#). The fact that the Government subsequently agreed to an extension until 31 October 2019 also suggests that the amendments made in the House of Lords had an impact. The Bill effectively became a mechanism by which Parliament could politically insist that the UK Government agree to a longer extension if that was what was offered.

The European Council’s extension decision provided an early termination mechanism (on 31 May if the UK failed to hold European Parliamentary elections).<sup>18</sup> However, on 1 April 2019 the Government appeared already to concede [in a letter to the Electoral Commission](#) that the UK would participate in the elections if required by EU law to do so.

Perhaps more importantly, given subsequent political developments, the [Cooper-Letwin Bill](#) provided a “proof of concept”. It showed both that backbenchers and opposition MPs could pass primary legislation explicitly against the wishes of the Government of the day, and that they could do so in order to place legal constraints and directions on the Government with regard to [Article 50](#).

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<sup>18</sup> Article 2, [European Council Decision taken in agreement with the United Kingdom extending the period under Article 50\(3\)TEU](#), EUCO XT 20013/19 BXT 38, 11 April 2019

## 4.4 Domestic consequences

As with the first extension, the second extension of [Article 50](#) necessitated a consequential amendment in domestic legislation to the definition of “exit day”. Unlike the first time around, however, Parliamentary approval for the relevant regulations was not required for the second and subsequent extensions. This is because the Government secured an amendment to the [EU \(Withdrawal\) \(No. 5\) Bill](#) changing the approval procedure for “change of exit day” regulations from the “[affirmative](#)” resolution procedure to the “[negative](#)” resolution procedure.

The negative resolution procedure allows the Government to make regulations immediately, subject only to annulment by either House of Parliament. Although there was a debate in a Delegated Legislation Committee [on 20 May 2019](#) which looked at the [EU \(Withdrawal\) Act \(Exit Day\) \(Amendment\) \(No. 2\) Regulations 2019](#), there was no debate on the floor of either House, and those regulations were therefore not annulled. They changed the definition of exit day to 31 October 2019 and provided no contingency for 31 May 2019, effectively confirming in UK law the Government’s intention to hold European Parliamentary elections. This intention was formally [confirmed](#) on 7 May 2019.

## 5. The third extension to 31 January 2020

### Summary

On becoming Prime Minister, Boris Johnson maintained that it was Government policy to leave the EU, whether with or without a deal, on 31 October 2019 and that he would not ask for an [Article 50](#) extension in any circumstances. At the same time, that Government made clear that it would not bring back the Withdrawal Agreement negotiated by the May Government but repeatedly rejected by MPs.

Many MPs perceived that this policy position increased the risk of the UK leaving the EU without a deal, whether because a revised deal would not be negotiated with the EU or because Parliament would not then agree to it or be able to pass the implementing legislation before 31 October 2019.

On the initiative of Sir Oliver Letwin, MPs used an emergency debate (under [Standing Order No. 24](#)) to “[take control of the order paper](#)” once again, giving priority to Hilary Benn’s private member’s Bill on Wednesday 4 September. The [EU \(Withdrawal\) \(No. 6\) Bill 2017-19](#) completed its Commons stages that day, completed its Lords stages across Thursday 5 and Friday 6 September, and the Bill received Royal Assent on Monday 9 September.

The [EU \(Withdrawal\) \(No. 2\) Act 2019](#) gave the Prime Minister until Saturday 19 October 2019 to secure Commons approval for an agreement under [Article 50](#) or for leaving the EU without a deal, failing which he would be compelled to seek a 3-month extension to 31 January 2020. This Act went further than the [Cooper-Letwin Act](#), however. Not only did it prescribe the form of letter to be sent when asking for an extension, it also explicitly compelled the Prime Minister to agree to an offer to extend until 31 January 2020. Had the European Council proposed a different date, he would also have had to agree to the extension was offered, unless he persuaded MPs “to decide not to approve” it.

When the House of Commons withheld approval for the Prime Minister’s deal [on 19 October 2019](#), the Prime Minister did send the letter as required. The European Council [decided to offer the 31 January 2020 extension](#) on 28 October 2019, and [the Prime Minister intimated in writing the same day](#) that this offer had been accepted by the UK. Therefore, unless both parties ratify the withdrawal agreement in November or December 2019, the UK will not leave the EU until at least 31 January 2020.

### 5.1 Policy stance of the Johnson Government

During the Conservative Leadership campaign, and on becoming Prime Minister, Boris Johnson set out his policy position on Brexit. In his first speech in front of No. 10 Downing Street [on 24 July 2019](#) he said (emphasis added):

We are going to fulfil the repeated promises of parliament to the people **and come out of the EU on October 31. No ifs or buts.** And we will do a new deal, a better deal that will maximise the opportunities of Brexit while allowing us to develop a new and exciting partnership with the rest of Europe based on free trade and mutual support I have every confidence that in 99 days’ time we will have cracked it but you know what – we aren’t going to wait 99 days because the British people have had enough of waiting.<sup>19</sup>

In his first appearance as Prime Minister before the House of Commons, on 25 July 2019, he went further (emphasis added):

<sup>19</sup> HM Government, [Boris Johnson's first speech as Prime Minister](#), 24 July 2019



**we must... fulfil the repeated promises of Parliament to the people by coming out of the European Union, and by doing so on 31 October.**

**I and all Ministers are committed to leaving on this date, whatever the circumstances.** To do otherwise would cause a catastrophic loss of confidence in our political system. It would leave the British people wondering whether their politicians could ever be trusted again to follow a clear democratic instruction. I would prefer us to leave the EU with a deal; I would much prefer it. I believe that it is possible, even at this late stage, and I will work flat out to make it happen, but certain things need to be clear. The withdrawal agreement negotiated by my predecessor has been three times rejected by this House. Its terms are unacceptable to this Parliament and to this country. No country that values its independence, and indeed its self-respect, could agree to a treaty that signed away our economic independence and self-government, as this backstop does. A time limit is not enough. If an agreement is to be reached, it must be clearly understood that the way to the deal goes by way of the abolition of the backstop.<sup>20</sup>

## 5.2 How did Parliament legislate?

On return from summer recess, those opposed to leaving without a deal decided, once again, to seek to legislate to compel an extension of [Article 50](#) if the Prime Minister could not secure approval for a deal or leaving without one. MPs could not, however, rely upon the mechanism they had previously used to “take control of the order paper”.

Instead, Sir Oliver Letwin (on Tuesday 3 September) sought and secured an emergency debate under [Standing Order No. 24](#). In the past, these motions were only used to “debate” a matter, but on this occasion it was used to pass a Business of the House order (approved by the House [by a margin of 328 to 301](#)). The order gave precedence to consideration of the [European Union \(Withdrawal\) \(No. 6\) Bill 2017-19](#) (a private member’s Bill, presented by Hilary Benn) on Wednesday 4 September.

The Bill completed its Commons stages that day and undertook its Lords stages on Thursday 5 and Friday 6 September. The Lords approved the Bill without further amendment so it received Royal Assent on Monday 9 September 2019 without any further Commons proceedings.

## 5.3 What did the Act say?

### It set a deadline

The [EU \(Withdrawal\) \(No. 2\) Act 2019](#) first and foremost set the Prime Minister a deadline. If, on or before Saturday 19 October 2019, he could secure MPs’ approval for:

- an agreement under [Article 50\(3\)](#); or
- leaving the EU without a deal

nothing else would happen under the Act.<sup>21</sup>

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<sup>20</sup> [HC Deb 25 July 2019 Vol 663 c1458](#)

<sup>21</sup> [section 1\(1-3\) EU \(Withdrawal\) \(No. 2\) Act 2019](#)

## Duty to seek an extension of Article 50

If neither of those “approvals” were forthcoming, however, the Prime Minister was under a duty, by Saturday 19 October 2019, to have sent a letter seeking a 3-month extension of [Article 50](#) until 31 January 2020.<sup>22</sup>

The form of letter to be sent was specified in the **Schedule** of the Act.

The request could only be modified or revoked if the Government subsequently secured approval for an agreement or for leaving without a deal, for example at some point after Saturday 19 October 2019 but before exit day.<sup>23</sup>

## Duty to agree to an extension

Where this Act went further than the [EU \(Withdrawal\) Act 2019](#) was to specify exactly what **must** happen if the European Council did in fact offer an extension of [Article 50](#).<sup>24</sup>

If an extension were in fact to be offered to 31 January 2020, the Prime Minister would be required “immediately” to agree to it.

If a longer or a shorter extension were to be offered, the Prime Minister would have to agree to it unless he could persuade MPs to “decide not to approve” it within two days. It would be left to the Prime Minister to decide whether to ask MPs whether they wished to approve or reject the proposal.

For further information about other aspects of the [EU \(Withdrawal\) \(No. 6\) Bill](#), including various reporting requirements it also imposed, see the Commons Library Insight:

- [The Benn-Burt Bill: another Article 50 extension?](#), 4 September 2019

## 5.4 Government response

The Government opposed this Bill. It argued that it would make it more difficult to reach a negotiated settlement with the EU. The Prime Minister repeated his commitment that the UK would leave the EU on 31 October 2019 regardless of the circumstances. For example, he said the following in an update to the House [on 25 September 2019](#):

Mr Speaker, let me just explain why I call it the *surrender Act*. That is because it would oblige us to stay in the EU for month after month, at a cost of a billion pounds per month. It would take away from this country the ability to decide how long that extension would be, and it would give that power to the EU. It would absolutely undermine our ability to continue to negotiate properly in Brussels; it takes away the fundamental ability of a country to walk away from the negotiations, and I am afraid that is exactly what it does. If I may say so respectfully to Opposition Members who are getting very agitated about this, the best way

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<sup>22</sup> [section 1\(3-4\) EU \(Withdrawal\) \(No. 2\) Act 2019](#)

<sup>23</sup> [section 1\(5\) EU \(Withdrawal\) \(No. 2\) Act 2019](#)

<sup>24</sup> The *EU (Withdrawal) Act 2019* only restricted what the Prime Minister **could** do following an extension offer, rather than what she **must**.

to get rid of the *surrender Act* is not to have voted for it in the first place, to repeal it, and to vote for the deal that we are going to do. That is the way forward.<sup>25</sup>

In the event, the Government did reach an agreement in principle for a revised withdrawal agreement and framework for the future relationship at the 17-18 October 2019 European Council summit. A Saturday sitting of both Houses of Parliament was convened on 19 October 2019.

## 5.5 Approval withheld, extension sought

The Government hoped to avoid seeking an extension by securing approval for the revised agreement on Saturday 19 October 2019.<sup>26</sup>

That approval was not forthcoming for either the purposes of the [EU \(Withdrawal\) Act 2018](#) or the [EU \(Withdrawal\) \(No. 2\) Act 2019](#).

Sir Oliver Letwin's amendment was made to the Government's motion (on a division [by 322 votes to 306](#)), meaning that approval was "withheld" unless and until the implementing primary legislation for the Withdrawal Agreement was subsequently passed.<sup>27</sup>

Since the Government did not secure approval for either its Withdrawal Agreement or for leaving without a deal on Saturday 19 October, the Prime Minister was required, by the [Benn Act](#), to send a letter to the President of the European Council in the terms set out in the Schedule of that Act. It said:

Dear Mr President,

The UK Parliament has passed the European Union (Withdrawal) (No. 2) Act 2019. Its provisions now require Her Majesty's Government to seek an extension of the period provided under Article 50(3) of the Treaty on European Union, including as applied by Article 106a of the Euratom Treaty, currently due to expire at 11.00pm GMT on 31 October 2019, until 11.00pm GMT on 31 January 2020.

I am writing therefore to inform the European Council that the United Kingdom is seeking a further extension to the period provided under Article 50(3) of the Treaty on European Union, including as applied by Article 106a of the Euratom Treaty. The United Kingdom proposes that this period should end at 11.00pm GMT on 31 January 2020. If the parties are able to ratify before this date, the Government proposes that the period should be terminated early.

Yours sincerely,

Prime Minister of the United Kingdom of Great Britain and Northern Ireland

The Prime Minister also sent [additional correspondence with this letter](#), explaining (among other things) that:

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<sup>25</sup> [HC Deb 25 September 2019 Vol 664 c794](#)

<sup>26</sup> The House of Lords also sat to "take note" of the revised agreement. The Government also tabled, but never moved for debate in the Commons, a motion to approve leaving without a deal, which would (alternatively, and if approved) have relieved the Government of a duty to seek an extension.

<sup>27</sup> [HC Deb 19 October 2019 Vol 666 cc649-652](#)

While it is open to the European Council to accede to the request mandated by Parliament or to offer an alternative extension period, I have made clear since becoming Prime Minister, and made clear to Parliament again today, my view, and the Government's position, that a further extension would damage the interest of the UK and our EU partners, and the relationship between us.

### 5.6 Extension granted

Despite the request having been made, the Government attempted to persuade the European Council that an extension would not in fact be required. It presented the [\*European Union \(Withdrawal Agreement\) Bill 2019\*](#) on Monday 21 October 2019. The Bill was given its Second Reading on Tuesday 22 October 2019 (passing [by 329 votes to 299](#)).

The Government sought to secure agreement to an accelerated legislative timetable by way of a programme motion, which was voted on immediately after Second Reading. However, the programme motion, which would only have provided for further debate of the Bill later that day and on Wednesday 23 October 2019 and Thursday 24 October 2019, was rejected by the Commons ([by 322 votes to 308](#)).

Given the additional time that the House of Lords likely would take to consider the Bill, it therefore no longer appeared likely that the Bill could complete all its Parliamentary stages before Thursday 31 October 2019. An extension, of some kind, would therefore be necessary to avoid a no-deal outcome.

The European Council did not immediately offer an extension. Rather, it [waited until 28 October 2019](#). By this point it appeared less likely that a legislative timetable could be agreed to secure the passage of the Bill, for instance, by the end of November.

The decision made was [to grant an extension until 31 January 2020](#), meaning that the Prime Minister had to agree to it "immediately" under his statutory obligation. The Prime Minister did so, [writing a letter](#) to Donald Tusk, the President of the European Council.

Therefore, unless both parties ratify the Withdrawal Agreement in November or December 2019, the UK will not leave the EU until at least 31 January 2020.

As with the second extension, the Government made "change of exit day" regulations, the [\*European Union \(Withdrawal\) Act 2018 \(Exit Day\) \(Amendment\) \(No. 3\) Regulations 2019\*](#). These came into force on Wednesday 30 October 2019 and changed the domestic definition of exit day to 31 January 2020 at 11pm GMT.

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