



To All Members of Parliament

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## Commons debate on approving the Withdrawal Agreement 29 March 2019

This briefing note explains the legal significance of the debate on a Government motion to approve the Withdrawal Agreement anticipated for Friday 29 March 2019.

### 1. Recap – what is a ‘meaningful vote’?

A “meaningful vote” is a motion under [section 13\(1\)\(b\) European Union \(Withdrawal\) Act 2018](#). It is **the second of four** statutory pre-requisites for the ratification by the UK of a withdrawal agreement treaty between the UK and the EU.<sup>1</sup>

#### 1.1 What must a ‘meaningful vote’ approve?

[Section 13\(1\)\(b\)](#) is only satisfied if the House approves a resolution on a motion moved by a Minister of the Crown, approving **both**:

- the “negotiated withdrawal agreement” (hereafter “the WA”); and
- the “framework for the future relationship” (hereafter “the PD”).

The WA is a draft treaty text. It forms the basis for the legal “divorce” between the UK and the EU. The PD is a joint statement of intent about the desired destination for the long-term future relationship between the UK and the EU but is not itself a treaty.

#### 1.2 Have we had ‘meaningful votes’ before?

Two ‘meaningful votes’ have taken place (on [15 January](#) and [12 March](#)). Both resulted in substantial Government defeats.

- The first time, the House was asked to approve just [two documents](#).
- The second time [three supplementary documents](#) were also included as part of the approval “package”.

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<sup>1</sup> The other three being the laying of documents for approval before Parliament, the opportunity for the Lords to debate the documents, and the passage of a Bill to implement the final withdrawal agreement treaty.

## 1.3 Other Library resources on meaningful votes and the deal

For further details on the meaningful vote, see the Library paper:

- [A User's Guide to the Meaningful Vote](#).<sup>2</sup>

For further details on the documents previously put before the House for approval, see:

- [The UK's EU Withdrawal Agreement](#);<sup>3</sup>
- [The Political Declaration on the Framework for Future EU-UK Relations](#);<sup>4</sup> and
- [The 'Strasbourg Package'](#)<sup>5</sup>

## 2. Current context – Article 50 extended

### 2.1 European Council Decision 22 March

The UK is not leaving the European Union on 29 March 2019. This is because Article 1 of the [European Council Decision](#) of 22 March 2019 extends [Article 50\(3\) TEU](#)'s two-year period.<sup>6</sup>

### 2.2 "Flextension" – two extension dates

The [Council Decision](#) extends Article 50 to one of two dates, depending on whether **the House of Commons** has **approved the Withdrawal Agreement** by **the end of this week**. It says:

In the event that the Withdrawal Agreement is approved by the House of Commons by 29 March 2019 at the latest, the period provided for in Article 50(3) TEU is extended until 22 May 2019.

In the event that the Withdrawal Agreement is not approved by the House of Commons by 29 March 2019 at the latest, the period provided for in Article 50(3) TEU is extended until 12 April 2019. In that event, the United Kingdom will indicate a way forward before 12 April 2019, for consideration by the European Council.

### Scenario 1 – Commons approves the WA

If the WA is approved this week the UK will have until **22 May 2019** to adopt the legislation to ratify and implement the Agreement.

The [Council Decision](#) made clear that approval of the Withdrawal Agreement must:

exclude[] any re-opening of the Withdrawal Agreement

and moreover that:

any unilateral commitment, statement or other act by the United Kingdom should be compatible with the letter and the spirit of the Withdrawal Agreement.

In practice this means, for example, that a resolution approving the Withdrawal Agreement could neither seek changes to or the removal of the Ireland/Northern Ireland "backstop", nor impose any conditions that would be incompatible with provisions of the Withdrawal Agreement itself.

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<sup>2</sup> [A User's Guide to the Meaningful Vote](#), 18/8424, 25 October 2018

<sup>3</sup> [The UK's EU Withdrawal Agreement](#), 19/8453, 14 March 2019

<sup>4</sup> [The Political Declaration on the Framework for Future EU-UK Relations](#), 18/8454, 30 November 2018

<sup>5</sup> [The 'Strasbourg Package'](#), 19/8525, 13 March 2019

<sup>6</sup> [European Council Decision taken in agreement with the United Kingdom, extending the period under Article 50\(3\)TEU](#), EUCO XT 20006/19, 22 March 2019

## Scenario 2 – Commons does not approve the WA

If the UK Parliament does not approve the WA, the [Council Decision](#) provides that the legal default is that the UK will **leave with no deal on 12 April 2019**. However, it is expected that the UK Government will **give an indication of a way forward** to the European Council before then.

To depart from that legal default outcome one or more of three things must happen:

- a withdrawal agreement must be ratified before Article 50 expires on 12 April;
- a further extension of Article 50 must be agreed; or
- the UK must unilaterally revoke Article 50.

## 2.3 Further extensions and European Parliamentary Elections

The [Council Decision](#) made clear that, if the UK was still a Member State on 23-26 May 2019, it would be required to participate in the European Parliamentary elections.

It follows that an extension beyond 22 May 2019, if agreed by the European Council and the UK Government, would involve such an undertaking being made.

In practice, such an undertaking would have to be given considerably earlier than 22 May 2019. This is because UK legislation requires at least 25 working days notice before polling day for a European Parliamentary election.<sup>7</sup>

This partly explains why, **in the absence of approval for the Withdrawal Agreement** the European Council only offered an extension until 12 April: it is the latest point at which a decision would have to be taken about the UK's participation in those elections.

## 2.4 Other Library resources on extension of Article 50

For further details on the extension of Article 50, see:

- [Extending Article 50: could Brexit be delayed?](#)<sup>8</sup>
- [Extending the Article 50 Period: FAQs](#)<sup>9</sup>
- [The EU agrees to delay Brexit – but for how long?](#)<sup>10</sup>
- [EU 'exit day' is changed in UK law](#)<sup>11</sup> and
- [What is "exit day"? Dispelling misconceptions about the extension of Article 50](#)<sup>12</sup>

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<sup>7</sup> [Schedule 1 European Union Parliamentary Elections Regulations 2004](#)

<sup>8</sup> [Extending Article 50: could Brexit be delayed?](#), 19/8496, 21 March 2019

<sup>9</sup> Commons Library Insight, [Extending the Article 50 Period: FAQs](#), 21 March 2019

<sup>10</sup> Commons Library Insight, [The EU agrees to delay Brexit – but for how long?](#), 25 March 2019

<sup>11</sup> Commons Library Insight, [EU 'exit day' is changed in UK law](#), 28 March 2019

<sup>12</sup> Commons Library Insight, [What is "exit day"? Dispelling misconceptions about the extension of Article 50](#), 19 March 2019

## 3. Securing approval for the Withdrawal Agreement (etc.)

### 3.1 Government intention to bring back “MV3”

The Government indicated [prior to the European Council meeting of 21 March 2019](#) that the length of extension to Article 50 it would seek would depend on whether – beforehand – the House of Commons had passed a ‘meaningful vote’.<sup>13</sup>

By this, it meant passing a resolution for the purposes of [section 13\(1\)\(b\)](#): one approving **both** the WA **and** the PD.

However, no “MV3” was introduced before the European Council summit.

### 3.2 Speaker’s ruling on revisiting the “same question”

On Monday 18 March, [the Speaker made a statement concerning the “same question” rule of the House of Commons](#).<sup>14</sup> He explained that any motion in connection with the UK’s withdrawal from the EU must not be “substantially the same” as any question previously decided in the same session.<sup>15</sup> In the context of a further ‘meaningful vote’ he explained this meant the Government could not seek approval on substantially the same basis as it had done on 12 March.

[In supplementary remarks on Wednesday 27 March](#), the Speaker said:

I understand that the Government may be thinking of bringing meaningful vote 3 before the House either tomorrow, or even on Friday, if the House opts to sit that day. Therefore, in order that there should be no misunderstanding, I wish to make it clear that I do expect the Government to meet the test of change. They should not seek to circumvent my ruling by means of tabling either a “notwithstanding” motion or a paving motion. The Table Office has been instructed that no such motions will be accepted.<sup>16</sup>

In practice, this means it would be difficult for the Government to table a third “meaningful vote” approving merely the existing components of the existing negotiated “deal”. There would need to be a material change to the Withdrawal Agreement and/or the Political Declaration.

The Government would struggle, given the Speaker’s stated conclusions, to hold a further “meaningful vote” **even if** a majority of MPs supported the idea of passing a “paving motion” first to disapply the “same question” rule.

### 3.3 What did this appear to mean?

**At first sight**, this ruling from the Speaker effectively meant:

- the Government could not secure an “approval resolution” meeting the full conditions of [section 13\(1\)\(b\) EU \(Withdrawal\) Act 2018](#) for the existing negotiated “deal” in the current Parliamentary session; and
- the 22 May extension “option” in the [Council Decision](#) would effectively therefore be ruled out. This would be the case **even if** MPs had wanted to approve the Withdrawal Agreement this week.

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<sup>13</sup> [Statement under Section 13\(4\) of the European Union \(Withdrawal\) Act 2018](#), HCWS1421, 15 March 2019

<sup>14</sup> [HC Deb 18 March 2019 Vol 656 cc775-792](#)

<sup>15</sup> See M. Jack (ed.), *Erskine May Parliamentary Practice*, 24<sup>th</sup> edition, 2011, p.397

<sup>16</sup> [HC Deb 27 March 2019 Vol 657 c370](#)

Article 50 would therefore only extend to 12 April 2019 under the [Council Decision](#). The UK would have had to request any further extension much sooner if the Government and/or Parliament felt it was warranted (e.g. to avoid an imminent no-deal outcome).

## 4. The Government's proposed motion

### 4.1 Avoiding the "same question" rule

The Government has, following discussions between the Attorney General and the Speaker, found a mechanism by which the House could be asked a materially different proposal from the one it was asked on 12 March. It can do so without any changes having been made to either the Withdrawal Agreement or the Political Declaration, or their supplementary documents (the "Strasbourg Package").

### 4.2 Purpose of bringing forward this motion

This new motion (if adopted as a resolution) is intended to secure per the [Council Decision](#), an extension of Article 50 until 22 May.

An additional consequence (in political and legislative but not in legal terms) would be to move forward at least part of the Parliamentary process of ratifying the Withdrawal Agreement.

Instead of being asked to approve the Withdrawal Agreement and the Political Declaration, MPs would only be asked, at this stage at least, to approve the former. The motion reads as follows:

That this House notes the European Council Decision of 22 March 2019 taken in agreement with the United Kingdom extending the period under Article 50(3) of the Treaty on European Union, which provides for an extension to the Article 50 period to 22 May 2019 only if the House of Commons approves the Withdrawal Agreement by 29 March 2019;

notes that if the House does not do so by that date the Article 50 period will only as a matter of law be extended to 12 April 2019 and that any extension beyond 22 May 2019 would require the UK to bring forward the necessary Day of Poll Order to hold elections to the European Parliament;

notes that Article 184 of the Withdrawal Agreement refers to the Political Declaration between the UK and EU agreed on 25 November 2018, but that the EU has stated it remains open to negotiating changes to the Political Declaration;

notes that the House is currently undertaking deliberations to identify whether there is a design for the future relationship that commands its support;

notes that even should changes be sought to the Political Declaration, leaving the European Union with a deal still requires the Withdrawal Agreement;

declares that it wishes to leave the EU with an agreement as soon as possible and does not wish to have a longer extension;

therefore approves the Withdrawal Agreement, the Joint Instrument and the Unilateral Declaration laid before the House on 11 March 2019 so that the UK can leave the EU on 22 May 2019;

notes that this approval does not by itself meet the requirements of section 13(1)(b) of the European Union (Withdrawal) Act 2018; and resolves that it is content to proceed to the next steps of this process, including fulfilling section 13 of that Act.

The Leader of the House indicated that, if this motion were to be approved on Friday 29 March 2019, the Government would then proceed to bring forward the *EU (Withdrawal Agreement) Bill*.

## 5. Legal effects if this motion is adopted

This motion, if adopted as a resolution by the House of Commons, must be understood in two distinct legal contexts.

### 5.1 Effect of the motion in EU law

This motion appears to satisfy the terms of [the European Council Decision of 22 March 2019](#) for the longer of the two agreed extensions. If this motion were adopted as a resolution of the House of Commons, Article 50(3)'s two-year negotiating period would be extended to 22 May instead of 12 April. This would mean that the UK would:

- leave with a deal on 22 May 2019 (if it went on to ratify the Withdrawal Agreement);
- leave without a deal on 22 May 2019 (if the necessary conditions for ratifying the Withdrawal Agreement were not met); or
- need to ask for and secure a further extension of Article 50 before 22 May 2019.

### Continuing relevance of 12 April 2019

The third of those scenarios described above comes with an important disclaimer. If the UK wishes to seek a longer extension of Article 50(3) the EU has indicated it must then participate in European Parliamentary elections in May 2019.

As previously explained, the UK's [domestic legislation](#) requires notice to be given for holding those elections no later than 12 April 2019.<sup>17</sup> This is (at least) part of the reason why the EU only granted an extension to 12 April in the event that MPs did not approve the Withdrawal Agreement by the end of this week.

- **The expectation was that the UK would need to decide no later than 12 April whether it intended to participate in those elections.**

If this motion passed **but** – at some point after 12 April but before 22 May – it became clear that the UK might not be able to ratify the Withdrawal Agreement “on time” significant difficulties might arise. The UK would not have committed to hold European Parliamentary elections at the same time as other Member States. However, one of the highly likely preconditions for a further extension of Article 50 would have required the Government to have made arrangements to hold those elections in the usual way.

- **It may be more difficult for the United Kingdom to persuade the European Union to agree to an extension beyond 22 May if problems arose after 12 April. The domestic provisions for holding elections might not be in place sufficiently far in advance.**

### 5.2 Effect of the motion in UK law

In and of itself, this motion plainly would not satisfy the conditions set out in [section 13\(1\)\(b\)](#) of the [European Union \(Withdrawal\) Act 2018](#). Simply put it does not approve the framework for the future relationship.

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<sup>17</sup> [Schedule 1 European Union Parliamentary Elections Regulations 2004](#)

## Could Parliament pass a resolution approving the Withdrawal Agreement now and another approving the Political Declaration later?

There is (at least) an arguable case that two separate resolutions approving the WA and then the PD separately would discharge the legal requirements of [section 13\(1\)\(b\) EU \(Withdrawal\) Act 2018](#). The provision itself states (emphasis added):

The withdrawal agreement may be ratified only if... the negotiated withdrawal agreement and the framework for the future relationship have been approved by **a resolution** of the House of Commons **on a motion** moved by a Minister of the Crown.

However, [section 6\(c\) Interpretation Act 1978](#) provides that:

In any Act, unless the contrary intention appears... words in the singular include the plural and words in the plural include the singular.

Accordingly, if “a resolution” and “a motion” can be understood to include “resolutions” and “motions”, the separation of the two approval decisions would be permissible.

Where the difficulty would be, in practice, is that before those motions can be moved for debate, both “the negotiated withdrawal agreement” and “the framework for the future relationship” must be identified in a written “statement that political agreement has been reached”.<sup>18</sup>

This is not a problem if the Political Declaration remains **unchanged** between the point the documents are identified and approval is given. If, however, a revised Political Declaration were to be reached **after** the Commons had approved the withdrawal agreement, it is likely **that a new statement that political agreement had been reached would need to be made**.

Simply put: the meaningful vote process would have to start from the beginning. The Withdrawal Agreement would also need to be approved from scratch, not just the Political Declaration.

## Could Parliament pass the Bill first and hold a “proper” meaningful vote later?

[Section 13\(1\) European Union \(Withdrawal\) Act 2018](#) requires **all four** of its prerequisites to be satisfied before the UK can ratify the withdrawal agreement.

Strictly speaking, Parliament need not fulfil these conditions in their “logical” order. Although it has been assumed throughout this process that the ‘meaningful vote’ would precede the *EU (Withdrawal Agreement) Bill*, the order could (legally) be reversed.

If any final meaningful vote were to be on substantially the same proposition as that which MPs rejected on 12 March, the Government may still face difficulties meeting the statutory requirement of [section 13\(1\)\(b\)](#). If, on the other hand, changes were subsequently agreed to (e.g.) the Political Declaration, there would be no obvious obstacle in terms of Parliamentary procedure to the holding of a further meaningful vote.

## Could Parliament enable the ratification of the Withdrawal Agreement without ever passing a full “meaningful vote”?

In strict legal terms yes. But it would have to change the law to do so.

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<sup>18</sup> [section 13\(1\)\(a\)\(i\)](#) and [\(16\) EU \(Withdrawal\) Act 2018](#)

Although the [EU \(Withdrawal\) Act 2018](#) imposes statutory prerequisites for ratifying a withdrawal agreement, it does not legally prevent Parliament from deciding that, on reflection, it wishes to allow the treaty to be ratified notwithstanding those requirements. No Parliament can bind its successors as to what domestic law should say. **However any changes would require primary legislation to amend the EU (Withdrawal) Act 2018 itself.**

Given that one of the four pre-requisites for ratification **is itself the passage of an Act of Parliament**, the *EU (Withdrawal Agreement) Bill* would provide a practical mechanism by which Parliament could (if it wished) modify, repeal, replace or override [section 13](#).

Robert Craig and Professor Gavin Phillipson addressed this possibility [in an article for the UK Constitutional Law Association in October 2018](#).<sup>19</sup> They pointed out that, if the *EU (Withdrawal Agreement) Bill* included a provision saying:

Notwithstanding the provisions of the EU Withdrawal Act, section 13, or any other enactment, it shall be lawful to ratify the Withdrawal Agreement

and that Bill went on to receive Royal Assent, the UK Government may, perfectly lawfully, ratify that withdrawal agreement.

Ultimately, the question of whether such a provision would be acceptable to Parliament is one for MPs and Peers to judge. It would mean, legally, that no bespoke vote on whether MPs approve the Political Declaration (or indeed the “principle” of the Withdrawal Agreement) has to take place before the Withdrawal Agreement can be ratified.

## How likely is it that the Government will use the Withdrawal Agreement Bill to modify or dispense with ratification requirements?

The Government has already indicated that, in certain circumstances, it would be willing to use the *Withdrawal Agreement Bill* to disapply certain ratification requirements for the Withdrawal Agreement.

In addition to [section 13](#), the Withdrawal Agreement legally must satisfy [Part 2 Constitutional Reform and Governance Act 2010](#) (CRAG).<sup>20</sup> Part of its provisions require a 21 sitting-day period between the laying of a treaty before Parliament and its ratification. However, [in an exchange with Dominic Grieve on 12 February 2019](#), the Prime Minister indicated the *EU (Withdrawal Agreement) Bill* would be used to dispense with that requirement if ratification faced acute time pressures. She said (emphasis added):

the European Union (Withdrawal) Act 2018 makes clear that the provisions of the 2010 Act apply to the withdrawal agreement and require it to be laid before Parliament for 21 sitting days. In most circumstances, that period may be important for the House to have an opportunity to study a piece of legislation, but in this instance, MPs will already have debated and approved the agreement as part of the meaningful vote. **While we will follow normal procedure if we can, where there is insufficient time remaining following a successful meaningful vote, we will make provision in the withdrawal agreement Bill, with Parliament’s consent, to ensure that we are able to ratify on time to guarantee our exit in an orderly way.**<sup>21</sup>

The Government would not have needed to use primary legislation in this way to dispense with the requirements in CRAG. [Section 22](#) of that Act allows for that time limit to be disappplied completely in “exceptional cases”.

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<sup>19</sup> R. Craig and G. Phillipson, [Could the ‘Meaningful Vote’ End up in Court?](#), UK Constitutional Law Association, 24 October 2018

<sup>20</sup> [section 13\(14\) EU \(Withdrawal\) Act 2018](#)

<sup>21</sup> [HC Deb 12 February 2019 Vol 654 cc744-5](#)