



In Focus

European Union (Notification of Withdrawal) Act 2017 and Parliamentary Approval of the Outcome of Brexit Negotiations

Background

On 29 March 2017, the House of Lords is due to debate a motion tabled by Baroness Smith of Basildon, Leader of the Opposition in the Lords, calling for the appointment of a joint committee of both Houses to consider and report by the end of October 2017 on the terms and options for votes in Parliament on the outcome of negotiations on the UK's withdrawal from the EU, including how any such votes be taken before an agreement is considered by the European Parliament.

Since the Supreme Court ruled that an Act of Parliament would be required to authorise ministers to trigger Article 50 and begin the process of withdrawing from the EU, Keir Starmer, the Shadow Secretary of State for Exiting the European Union, has been calling for Parliament also to have “a meaningful vote at the end of the exercise”.¹ In her Lancaster House speech on 17 January 2017, in which she set out her Brexit negotiating objectives, Theresa May confirmed that the Government would “put the final deal that is agreed between the UK and EU to a vote in both Houses of Parliament, before it comes into force”.² During the House of Commons committee stage debate on the European Union (Notification of Withdrawal) Act 2017, David Jones, Minister of State at the Department for Exiting the European Union, announced a government undertaking to hold a parliamentary vote before a withdrawal deal was finally concluded, and a vote on the UK's future relationship with the EU.³ Several attempts (ultimately unsuccessful) were made during the passage of the Act through Parliament to introduce amendments to put guarantees about a parliamentary vote on the face of the Act. This briefing summarises what happened during the passage of the Act in order to provide the background context to Baroness Smith's motion.

House of Commons Committee Stage

Keir Starmer moved a new clause which would have required parliamentary approval by both Houses for any agreement with the EU on the UK's withdrawal terms or future relationship with the EU before final terms were agreed with the Commission and prior to endorsement by the European Parliament and Council.⁴ David Jones intervened to announce that the Government was now undertaking to hold a parliamentary vote before a deal was finally concluded:

[...] we intend that the vote will cover not only the withdrawal arrangements but also the future relationship with the European Union. Furthermore, I can confirm that the Government will bring forward a motion on the final agreement, to be approved by both Houses of Parliament before it is concluded. We expect and intend that this will happen before the European Parliament debates and votes on the final agreement.⁵

He argued that there was “no need” to amend the Bill to reflect this.⁶ Keir Starmer described this as a “very important concession”, but other MPs were less convinced that it represented an advance on what the Government had previously promised.⁷

Chris Leslie (Labour/Co-operative MP for Nottingham East) spoke to a new clause he had tabled which would have required that no “new treaty or relationship” could be concluded with the EU without approval by both Houses of Parliament.⁸ This approval would have to be given before terms were agreed with the European Commission for putting to the European Parliament and Council. Mr Leslie explained that his new clause “deliberately talk[ed] about a new treaty or relationship”, because the new relationship might not involve the signing of an agreement. He insisted that “we should have a vote if that relationship includes no deal”, and said that it was “extremely disappointing” that the Minister had said this would not be the case. David Jones said that this new clause was “unnecessary” as he had already promised there would be a vote on the final draft treaty and any other agreement.⁹

Keir Starmer said he would not press his new clause to a division in order to allow time for other new clauses to be voted on.¹⁰ A vote was held on Chris Leslie’s new clause, which was defeated by 326 votes to 293, a majority of 33.¹¹

House of Lords Committee and Report Stage

At report stage in the House of Lords, Lord Pannick (Crossbench) moved an amendment he had tabled with Baroness Hayter of Kentish Town (Labour’s Spokesperson for Exiting the European Union), Lord Oates (Liberal Democrat) and Viscount Hailsham (Conservative) which would have required the prior approval of both Houses of Parliament before the Government could conclude a withdrawal agreement or an agreement on the UK’s future relationship with the EU.¹² In the case of the withdrawal agreement, parliamentary approval would have been required before the European Parliament debated and voted on the deal. Lord Pannick said that subsections (1) to (3) of the amendment, which set out these requirements, were intended to set out the Government undertaking given by Mr Jones at committee stage in the Commons. In addition to this, subsection (4) of the amendment would have required the approval of both Houses before the Prime Minister could decide that the UK should leave the EU without an agreement in place. Lord Pannick argued that it “must be for Parliament to decide whether to prefer no deal or the deal offered by the EU”. Lord Pannick had moved an amendment with a similar intention at committee stage, but withdrew it so he could redraft it in light of points made in the debate.¹³

Lord Bridges of Headley, Parliamentary Under Secretary of State at the Department for Exiting the European Union, said that the Government had made a “crystal clear” commitment to give Parliament a vote on the agreement and would honour this promise, but putting it in the Bill could create unintended consequences and “a lucrative field day for lawyers”.¹⁴ He argued that subsection (4)—giving Parliament a vote in a ‘no deal’ scenario—went beyond what the Government had promised and would undermine the UK’s negotiating position because it would “only incentivise the European Union to offer us a bad deal”. He said the amendment was also “totally unclear” on what would happen if the Prime Minister believed that no deal was better than the deal on offer, but Parliament “says no to walking away”.¹⁵

Lord Pannick’s amendment was agreed to by 366 to 268, a majority of 98.¹⁶ In total 634 Members voted, the largest total number of Members voting in a single division on record.¹⁷

Ping Pong

When the Bill returned to the Commons, David Davis repeated Lord Bridges’ arguments that subsections (1) to (3) of the amendment were “wholly unnecessary” and that the Government could

not accept subsection (4) because it “must have the freedom to walk away from a deal that sets out to punish the UK for a decision to leave the EU”.¹⁸ He said that the commitment the Government had already made was “binding”.¹⁹ MPs voted against the Lords’ amendment by 331 votes to 286, a majority of 45.²⁰ The reason given for the Commons’ rejection of the amendment was that it was “not a matter that needs to be dealt with in the Bill”.²¹ When the Bill returned to the Lords, Lord Pannick regretted that the Commons had defeated the amendment but said it was “now time for this House to give way to the House of Commons on this matter”, bearing in mind that the Secretary of State had given a clear assurance that any agreement would be put to both Houses for their approval.²² Speaking on behalf of the Labour Party, Baroness Hayter, co-author of the amendment, said that the Government had “made the wrong call on this amendment” but that the Opposition would “seek to rectify that another way”.²³ She undertook to “hold the Government to their promise of a vote before that in the European Parliament” and to “work to devise a parliamentary route to establish that more firmly”.

Baroness Ludford, the Liberal Democrat Spokesperson for Exiting the European Union, moved that the Lords should insist on the amendment, arguing that “government assurances of a vote on a final deal are not enough”.²⁴ Baroness Ludford’s motion was defeated by 274 votes to 118, a majority of 156.²⁵ Members agreed without a division to the Government’s motion that the House should not insist on its amendment. The Act as passed makes no provision for parliamentary approval of a withdrawal agreement, of an agreement on the UK’s future relationship with the EU, or of a decision to withdraw without agreeing a deal.

¹ [HC Hansard, 24 January 2017, col 163.](#)

² Prime Minister’s Office, [‘The Government’s Negotiating Objectives for Exiting the EU: PM Speech’](#), 17 January 2017.

³ *ibid*, col 264.

⁴ [HC Hansard, 7 February 2017, col 260.](#) For more information about these stages in the process, see: House of Commons Library, [Brexit: How Does the Article 50 Process Work?](#), 16 January 2017.

⁵ *ibid*, col 264.

⁶ *ibid*, col 272.

⁷ *ibid*, cols 265–5.

⁸ *ibid*, cols 299–300.

⁹ *ibid*, col 327.

¹⁰ *ibid*.

¹¹ *ibid*, cols 329–34.

¹² [HL Hansard, 7 March 2017, col 1251.](#)

¹³ [HL Hansard, 1 March 2017, col 924.](#)

¹⁴ [HL Hansard, 7 March 2017, cols 1296–7.](#)

¹⁵ *ibid*, col 1298.

¹⁶ *ibid*, col 1299.

¹⁷ House of Lords Library, [House of Lords: Largest Votes Recorded](#), 16 March 2017.

¹⁸ [HC Hansard, 13 March 2017, cols 41–2.](#)

¹⁹ *ibid*, col 43.

²⁰ *ibid*, cols 78–82.

²¹ House of Lords, [European Union \(Notification of Withdrawal\) Bill—Commons Reasons](#), 13 March 2017, HL Bill 111 of 2016–17.

²² [HL Hansard, 13 March 2017, col 1727.](#)

²³ *ibid*, col 1731.

²⁴ *ibid*, col 1726.

²⁵ *ibid*, cols 1734–6.

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