



European Union (Withdrawal) Bill: Commons Consideration of Lords Amendments HL Bills 79, 102 and 111 of 2017–19

Summary

The House of Lords made a total of 201 amendments to the European Union (Withdrawal) Bill. The Bill returned to the Commons for consideration of Lords amendments on 12 and 13 June 2018. The Commons agreed to all the Government amendments made to the Bill in the Lords.

Of the 15 amendments (or groups of amendments) which the House of Lords made to the Bill by defeating the Government, the Commons agreed to keep one (on future interaction with EU law and agencies), and to amend and keep another (on Northern Ireland border arrangements and North-South cooperation).

The Commons rejected a further eight Lords amendments, covering: arrangements for committees in both Houses to sift certain statutory instruments made under the Bill; removing the fixed date of exit day; challenges to the validity of retained EU law; changing the threshold for ministers to use delegated powers in the Bill from when “appropriate” to when “necessary”; requiring parliamentary approval for a negotiating mandate; making it a negotiating objective for the UK to remain in the European Economic Area (EEA) after exit day; retaining the Charter of Fundamental Rights in domestic law after exit day; and enhanced protection for certain areas of retained EU law.

The Commons replaced the remaining five Lords amendments with new amendments of its own, covering: parliamentary approval of the outcome of negotiations with the EU (a ‘meaningful vote’); reporting on progress on negotiating the UK’s future customs relationship with the EU; challenges on the grounds of general principles of EU law; the maintenance of EU environmental principles and standards; and the maintenance of refugee family unity within Europe.

This Briefing has been written in advance of the Bill’s return to the House of Lords on 18 June 2018 for the Lords to consider the Commons amendments. It does not summarise the whole debate but seeks to give an overview of the new provisions added to the Bill through amendments made in lieu and the amendments made to the clause on Northern Ireland and North-South cooperation.

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1. Introduction

The House of Lords made 192 amendments to the [European Union \(Withdrawal\) Bill](#) at report stage, including government defeats on 14 areas. The Government suffered a further defeat in the House of Lords at the Bill's third reading, and a further eight government amendments were made. These amendments are covered in the following House of Lords Library Briefings:

- [European Union \(Withdrawal\) Bill: Lords Report Stage](#), 14 May 2018 (covers the report stage amendments in depth)
- [European Union \(Withdrawal\) Bill: Summary of Lords Amendments](#), 18 May 2018 (provides a summary of the amendments made at report and third reading)

The Bill returned to the House of Commons for Commons consideration of Lords amendments (CCLA) over two days on 12 and 13 June 2018.¹ At this stage, the Commons had to take a decision on every Lords amendment, in each case deciding whether to agree, amend, disagree or replace (make an amendment in lieu).

This Briefing has been written in advance of the Bill's return to the House of Lords on 18 June 2018 for the Lords to consider the Commons amendments. Lords amendments agreed to by the Commons are not subject to any further debate. If the Lords insist on all or any of the amendments with which the Commons has disagreed, or disagree to the amendments made by the Commons to or instead of their amendments, or offer different amendments on the same subject, further proceedings would be required again in the Commons to consider any changes made. Time has been scheduled for this to take place in the Commons on 20 June 2018 if necessary.² Further information about the operation of parliamentary 'ping-pong' is given in section 4 of the House of Commons Library briefing, [European Union \(Withdrawal\) Bill 2017–19: Commons Consideration of Lords Amendments](#) (5 June 2018).

This Briefing does not summarise all aspects of the debate that took place over the two days of Commons consideration of Lords amendments. It seeks to give an overview of new provisions added to the Bill through amendments made in lieu and the amendments made to the clause on North-South cooperation.

¹ The Lords made 201 amendments in total. One of these was to a clause which was removed by a later amendment. Four of the amendments made at third reading in the Lords were to a new clause that had been added at report stage; the Commons treated these five amendments as a single package. The Commons therefore considered a total of 196 amendments made in the Lords.

² [HC Hansard, 14 June 2018, col 1098](#).

Overview of Proceedings at CCLA

On 12 and 13 June, the House of Commons agreed to all the government amendments made to the Bill in the Lords. Those relating to devolution were agreed to on division by 321 to 40.³ The rest were agreed to without division.⁴

Of the 15 amendments (or groups of amendments) which the House of Lords had made to the Bill by defeating the Government:

- The Commons agreed without division to keep one in the Bill unamended—a new clause (clause 18 in HL Bill 102) which provides that nothing in the Bill can prevent the UK from replicating EU law in domestic law made on or after exit day, or from continuing to participate in, or have a formal relationship with, EU agencies after exit day.⁵
- Eight were rejected by the Commons on division. The Lords amendments that were thereby removed from the Bill covered: arrangements for committees in both Houses to sift certain statutory instruments made under the Bill; removing the fixed date of exit day; challenges to the validity of retained EU law; changing the threshold for ministers to use delegated powers in the Bill from when “appropriate” to when “necessary”; requiring parliamentary approval for a negotiating mandate; making it a negotiating objective for the UK to remain in the European Economic Area (EEA) after exit day; retaining the Charter of Fundamental Rights in domestic law after exit day; and enhanced protection for certain areas of retained EU law. Further details about the divisions on these amendments are given in Appendix I at the end of this Briefing.
- The Commons agreed without division to a government amendment to the Lords’ new clause on the continuation of North-South cooperation and the prevention of new border arrangements between Ireland and Northern Ireland, and then to keep the clause as amended in the Bill.⁶ Further details about the changes made to this amendment in the Commons are given in section 2.4 of this Briefing.
- For the remaining five amendments (or groups of amendments) which resulted from government defeats in the Lords, the Commons agreed to replace them with amendments in lieu proposed by the Government. These amendments covered: parliamentary approval of the outcome of negotiations with the EU (a ‘meaningful vote’); reporting on progress on negotiating

³ [HC Hansard, 12 June 2018, cols 844–7.](#)

⁴ [ibid, col 839;](#) and [HC Hansard, 13 June 2018, col 1044.](#)

⁵ [HC Hansard, 13 June 2018, col 1044.](#)

⁶ [HC Hansard, 12 June 2018, col 844.](#)

the UK's future customs relationship with the EU; challenges on the grounds of general principles of EU law; the maintenance of EU environmental principles and standards; and the maintenance of refugee family unity within Europe. Further details about the changes made to these areas of the Bill in the Commons are given in section 2 of this Briefing—a short summary is provided at the start of section 2, and the rest of section 2 goes on to cover each amendment in lieu in greater detail. Additional information about the divisions on these amendments are given in Appendix 2 at the end of this Briefing.

A Labour amendment which sought to replace the Lords amendment on remaining in the EEA with a requirement for the Government to negotiate to “retain full access to the internal market of the European Union” was defeated by 322 votes to 240.⁷

Numbering of Amendments and Clauses

Throughout this Briefing, the amendment numbers quoted are those used during the Commons debate, preceded by the abbreviation LA to indicate that the Commons is discussing a Lords amendment. The number given in square brackets afterwards is the number by which the amendment was originally referred to in the Lords. These numbers in square brackets are given for ease of cross-referencing to our earlier Briefings which explain the background and effect of the Lords amendments in greater detail. For example, LA43 [86] means that the amendment in question was number 43 of the Lords amendments the Commons had to take a decision on, but it was originally numbered 86 when the Lords made the amendment at report stage.

This Briefing mostly focuses on the amendments that resulted from government defeats in the Lords, and all but one of them occurred at report stage in the Lords. Therefore, the number in square brackets usually refers to the amendment numbering at report stage in the Lords. The only exception to this is the following pair of amendments:

- LA1 [1] where the 1 in square brackets refers to an amendment made at Lords report stage (paving amendment for the amendment on a customs union).
- LA3 [1] where the 1 in square brackets refers to an amendment made at Lords third reading (to do with maintaining EU environmental principles and standards).

Numbers in square brackets after clause references refer to the clause numbers in HL Bill 102 (the Bill as amended on report in the House of

⁷ [HC Hansard, 13 June 2018, cols 1008–10.](#)

Lords).

2. Lords Amendments: Agreed with Amendment or Disagreed with Amendment in Lieu

This section of the Briefing discusses those Lords amendments which were either agreed with amendment or disagreed with amendments in lieu. The purpose of each section is to describe the fate of each amendment and to provide a summary of the amendments or amendments in lieu which were made. Whilst references are made to the discussion in the House of Commons these sections are not intended to be a comprehensive summary of the debate on each amendment.

The sections are presented in the order of the 'Lords Amendment' number, as created for their consideration in the Commons. In summary:

- Lords amendments on the issue of a customs union were disagreed by the Commons and replaced by a Government amendment in lieu. The Government would have to make a written statement before 31 October 2018. This would outline the steps it had taken in negotiation with the EU to seek to negotiate a customs arrangement (as opposed to a customs union) with the EU, as part of its future relationship. Such a statement would also no longer be a prerequisite for the repeal of the European Communities Act 1972.
- The Commons agreed a Government amendment in lieu on environmental protections. This provided that the Government would publish a draft bill that included a set of environmental principles (outlined in the amendment). Ministers would have to have regard to these (in circumstances to be set out in the bill). It would also establish a public body to take enforcement action which could include legal action if necessary.
- The Commons agreed a Government amendment in lieu on the reunification of refugee families. This would require the Government to seek to negotiate a reciprocal agreement with the EU on the reunification of unaccompanied children (who had made an application for international protection) with relatives in the UK or an EU member state. The original Lords amendment made reference to preserving 'specified effects' of the EU's 'Dublin III' regulation, which makes provision for EU member states on this issue.
- The Commons agreed Government amendments to provisions added in the Lords which would restrict specified powers under the Bill from making certain changes to the border arrangements in Northern Ireland. The Government had previously argued that the original amendment was not drafted in a legally appropriate way and its amendments sought to address this.

- The Commons agreed a government amendment in lieu on parliamentary approval of negotiations (a ‘meaningful vote’) which would give the Commons a veto over the withdrawal agreement, but would remove the power for Parliament to issue binding directions to the Government if no deal was agreed. Instead, if the Commons did not pass a resolution approving the withdrawal agreement and framework for the future relationship, the Government would have to make a statement on its proposed next steps in relation to Article 50 negotiations within 28 days.
- The general bar on bringing legal action on the grounds of failure to comply with the general principles of EU law was reinstated (as the Commons disagreed to the Lords amendment which had removed it). However, the Commons agreed to a government amendment in lieu which would allow claims to be brought in specified circumstances for three years from exit day (previous versions of the Bill had only provided for a shorter time limit of three months from exit day).

2.1 Customs Union (LA1 [1] and LA2 [4])

On the second day of CCLA, the House of Commons disagreed LA1 [1] on division by 325 votes to 298⁸ and LA2 [4] on division by 326 votes to 296.⁹ Taken together, LA1 [1] and LA2 [4] amended clause 1 of the Bill so that the European Communities Act 1972 could be repealed only if the Government had laid a statement before both Houses of Parliament by 31 October 2018, outlining the steps taken in the Brexit talks to negotiate, as part of the framework for the future relationship, an arrangement which enables the UK to continue participating in a customs union with the EU. LA1 [1] and LA2 [4] were tabled by Lord Kerr of Kinlochard (Crossbench), Lord Patten of Barnes (Conservative), Baroness Hayter of Kentish Town (Labour) and Baroness Ludford (Liberal Democrat).¹⁰ The House of Lords voted in favour of LA 1 [1] by 348 votes to 225.¹¹ Amendment LA2 [4] was consequently agreed to in the Lords without division.¹²

Lord Kerr described the amendments as “a call to the Government to explore a customs union”.¹³ He advanced five arguments in favour of the UK remaining in a customs union with the EU. Firstly, he argued that costs in the manufacturing industry would rise if goods and components in the supply chain had to cross a customs frontier.¹⁴ Secondly, he argued that it would be

⁸ [HC Hansard, 13 June 2018, cols 1016–20.](#)

⁹ [ibid, cols 1021–4.](#)

¹⁰ [HL Hansard, 18 April 2018, cols 1197 and 1201.](#)

¹¹ [ibid, col 1197.](#) The tellers for the contents reported 348 votes, the clerks recorded 347 names.

¹² [ibid, col 1201.](#)

¹³ [ibid, col 1173.](#)

¹⁴ [ibid, cols 1173–4.](#)

“hard not to see a fall in overall exports if our trade with the European Union became more complicated”, and said it would be “much more complicated if we do not have a customs union”.¹⁵ Thirdly, Lord Kerr said that as customs unions are concerned with goods, not services, remaining in a customs union with the EU would still leave the UK “entirely free” to negotiate new arrangements for trade in services, investment protection, remittance of profits, intellectual property, data protection, access to government procurement—“all the new ideas and new issues which are now much more important in trade negotiation than tariffs”.¹⁶ Lord Kerr’s fourth point was to do with avoiding a hard border between Ireland and Northern Ireland. He said that a hard border was “inevitable” without a customs union, as even if trade across the border was tariff-free other checks would be required at the border to enforce rules of origin and phytosanitary measures.¹⁷ Lord Kerr’s final argument centred on the UK’s negotiations with the EU. He suggested that leaving the customs union was a red line laid down by the Government, and that no-one could argue that the country had “voted knowingly to leave the customs union”.¹⁸

Responding to the debate on the amendments for the Government in the Lords, Lord Callanan, Minister of State at the Department for Exiting the European Union, restated the Government’s policy that “the UK, in its entirety is leaving the customs union”.¹⁹ He argued that remaining in a customs union with the EU would “leave us with less influence over our international trade policy than we have now”, and the Government did not believe that would be in the best interests of UK business. He said that the Government would be guided in negotiations with the EU by “what delivers the greatest economic advantage to the UK”, and by three strategic objectives:

First, we want to ensure UK-EU trade is as frictionless as possible. Secondly, we want to avoid a hard border between Ireland and Northern Ireland—a commitment that was solidified by last December’s joint report. Thirdly, we want to establish an independent international trade policy.²⁰

Lord Callanan said that the Government had not formed its policy “arbitrarily” but “because we do not believe a customs union is in the best interests of the UK and UK businesses”. He reminded the House that the Government had set out two potential options for a future customs relationship with the EU—a customs partnership and a highly streamlined customs arrangement.²¹ He said that agreeing to the amendments would

¹⁵ [HL Hansard, 18 April 2018, col 1174.](#)

¹⁶ *ibid*, cols 1174–5.

¹⁷ *ibid*, col 1175.

¹⁸ *ibid*, col 1176.

¹⁹ *ibid*, col 1194.

²⁰ *ibid*, col 1195.

²¹ HM Government, [Future Customs Arrangements—A Future Partnership Paper](#), 15 August 2017.

send a signal that the Government would not seek to negotiate these options and instead pursue an outcome it had already ruled out.²²

During CCLA, the House of Commons agreed government amendments IA and IB in lieu of LA1 [1] and LA2 [4].²³ Amendment IA inserted a new clause into the Bill which would require a Minister of the Crown (before 31 October 2018) to lay a statement in writing before Parliament outlining the:

[S]teps taken by Her Majesty's Government, in negotiations under Article 50(2) of the Treaty on European Union, to seek to negotiate an agreement, as part of the framework for the United Kingdom's future relationship with the EU, for the United Kingdom to participate in a customs arrangement with the EU.²⁴

Amendment IB amended the Bill's commencement provisions, such that the new clause would come into force on the day on which the Bill was passed.

As compared with LA1 [1] and LA2 [4], amendment IA would not require the statement to be made by Ministers before the European Communities Act 1972 could be repealed. Additionally, it changed references to 'a customs union' to 'a customs arrangement'.

Sir Keir Starmer, Shadow Secretary of State for Exiting the European Union, argued that the proposal in LA [1] and LA2 [4], that the UK seek to negotiate a customs union with the EU, was a "sensible one for many reasons".²⁵ He argued that the UK's manufacturing model had adapted to the existence of the EU's customs union:

Thus, typically, we see, across the UK, thousands of manufacturing businesses that operate on the basis of a vital supply chain in goods and parts from across the EU. The car industry is an obvious example, but not the only one.²⁶

Sir Keir asserted that such businesses therefore operated on the basis of a 'just-in-time' approach, "parts come in and are assembled, and the finished product then goes quickly and seamlessly across the UK and/or out to the EU".²⁷

Speaking for the Government on the Commons consideration of LA [1] and LA2 [4], Robert Buckland, the Solicitor General, said he understood the

²² [HL Hansard, 18 April 2018, col 1196.](#)

²³ [Commons Amendments in Lieu, Amendments to Amendments and Reasons](#), HL Bill 111 of session 2017–19.

²⁴ *ibid*, amendment IA, p 1.

²⁵ [HC Hansard, 13 June 2018, col 911.](#)

²⁶ *ibid*.

²⁷ *ibid*.

issue of ‘just-in-time’ supply arguing that this was a reason why the Government’s policy was to seek as frictionless trade as possible in its negotiations with the EU.²⁸ He stated that it was the Government’s policy to look at two options for a customs relationship with the EU:

Option 1 is the proposed new customs partnership, and option 2 is the streamlined customs arrangement. Currently, two ministerial groups are taking forward work on those models. We accept that the precise form of any new customs arrangements will of course have to be the subject of negotiation.²⁹

Mr Buckland also said that the House of Commons would have the opportunity to discuss the issue of the UK’s future customs relationship with the EU when the Trade Bill and the Taxation (Cross-border Trade) Bill returned to the Commons following their committee stages:

On the customs union, I want to reiterate the commitment given by my right hon. Friend the Leader of the House last week that the Trade Bill and the Taxation (Cross-border Trade) Bill will be brought back the House by mid-July at the latest, which will give all right hon. and hon. Members the opportunity to have the debate that I know they are itching to have on these important issues.³⁰

2.2 Maintenance of EU Environmental Principles and Standards (LA3 [1] Agreed at Lords Third Reading)

On the second day of CCLA, the House of Commons disagreed LA3 [1] on division by 320 votes to 296.³¹ The Commons agreed government amendments 3A and 3B in lieu, without division.³² LA3 [1] was a new clause that had been agreed by the House of Lords at the Bill’s third reading and sought to require the Secretary of State to take steps to ensure that EU environmental principles and standards would be maintained in the UK after exit day.

Some of the specific requirements set out in LA3 [1] were for the Secretary of State to:

- publish within six months of the Act being passed proposals for primary legislation to establish:
 - a duty on public authorities to apply principles of environmental law established in EU law; and

²⁸ [HC Hansard, 13 June 2018, col 924.](#)

²⁹ *ibid*, col 927.

³⁰ *ibid*, cols 930–1.

³¹ *ibid*, cols 1040–3.

³² *ibid*, col 1043.

- an independent body to monitor public authorities' compliance with environmental law
- lay before Parliament before 1 January 2020 a Statement of Environmental Policy setting out how certain environmental principles would be given effect. This included principles such as 'the polluter pays principle' and the 'precautionary principle' as it relates to the environment.

LA3 [1] was originally agreed in the Lords on division by 294 votes to 244.³³ The amendment was moved by Lord Krebs (Crossbench) and tabled also in the names of Baroness Jones of Whitchurch (Labour), Baroness Bakewell of Hardington Mandeville (Liberal Democrat) and Lord Deben (Conservative).

The amendment moved by Lord Krebs at third reading followed a number of other amendments on the subject of environmental protection during the Bill's passage through the Lords. It was tabled in the context of the Government's consultation on the establishment of a new independent statutory body, tasked with holding the government to account for upholding environmental standards in England.³⁴ In response to a series of these amendments on the second day of the Bill's report stage in the House of Lords, Lord Callanan, Minister of State at the Department for Exiting the European Union, stated that the Government welcomed the sentiments behind the amendments, but that it believed they were unnecessary.³⁵ He said that the Government would be publishing the consultation in time for the Bill's third reading³⁶ and argued that these amendments would "prejudge the outcome of the forthcoming consultation by setting requirements in legislation now".³⁷ Lord Deben (Conservative), who tabled one of the amendments at report, asked whether it would be possible to bring an amendment forward on third reading, should the House feel that the principles outlined in the consultation were not sufficient. Lord Callanan responded that it would be possible to look at the issue again after the consultation was published.³⁸

On moving LA3 [1] at the Bill's third reading in the House of Lords, Lord Krebs said that:

We have considered the contents of the consultation, which was published last Wednesday, and we are not satisfied. Although the

³³ [HL Hansard, 16 May 2018, cols 702–5.](#)

³⁴ Department for Environment, Food and Rural Affairs, '[New Environmental Protections to Deliver a Green Brexit](#)', 12 November 2017.

³⁵ [HL Hansard, 23 April 2018, col 1433.](#)

³⁶ The consultation was published on 10 May 2018 and closes on 2 August 2018; Department for Environment, Food and Rural Affairs, '[Environmental Principles and Governance after EU Exit](#)', 10 May 2018.

³⁷ [HL Hansard, 23 April 2018, col 1433.](#)

³⁸ *ibid*, col 1436.

consultation document is encouraging, it does not go far enough.³⁹

Lord Krebs expressed concern that whilst some environmental protections would be transferred into UK law by the Bill, he argued that some elements, including environmental principles and enforcement mechanisms, would not:

[A]lthough the rules for protecting our environment will be translated into UK legislation, crucially, the environmental principles underpinning those rules will not and, furthermore, the current mechanisms for enforcing the rules will disappear and not be replaced. If approved, the amendment would fill those gaps and so ensure that, as intended, the protection of our environment after Brexit will indeed remain the same as it is now.⁴⁰

Lord Krebs argued that the consultation's proposal to put the environmental principles in a policy statement (rather than primary legislation) and the proposal for the "green watchdog" to serve advisory notices to the Government, was "weak"⁴¹ and:

[F]ar weaker than the current arrangements, under which the Commission has the power to initiate court action. In contrast, an advisory notice can be ignored and there is no sanction if it is.⁴²

On consideration of the LA3 [1] in the House of Commons, Sir Keir Starmer, Shadow Secretary for Exiting the European Union, stated that LA3 [1] had Labour's support, arguing that the environmental principles and enforcement mechanisms should be retained and replaced to prevent a weakening of the UK's protection for the natural environment.⁴³ He referred to the amendment in lieu originally tabled by Sir Oliver Letwin (Conservative MP for West Dorset), saying that it would introduce helpful developments but that it did not, in Labour's view, go far enough.⁴⁴

Speaking for the Government, Robert Buckland, the Solicitor General, spoke to LA3 [1]. He referred to the Government's consultation:

My right hon. Friend the Secretary of State announced that we will bring forward an environmental principles and governance Bill in draft form in autumn of this year to deliver those proposals, with the introduction of a bill early in the second session of this Parliament. For this reason we warmly welcome the amendment tabled by my right hon. Friend the Member for West Dorset (Sir Oliver Letwin) in lieu of

³⁹ [HL Hansard, 16 May 2018, col 681.](#)

⁴⁰ *ibid*, col 682.

⁴¹ *ibid*.

⁴² *ibid*.

⁴³ [HC Hansard, 13 June 2018, col 922.](#)

⁴⁴ *ibid*, col 923.

the amendment tabled by Lord Krebs.⁴⁵

He said that despite the “good intentions” behind LA3 [1] the Government could not accept it.⁴⁶ Mr Buckland argued that it would create legal uncertainty and “did not take into account that a significant proportion of environmental legislation and policy is devolved”.⁴⁷ He argued that LA3 [1] would “create a risk-averse” approach to the design of environmental standards because it would “require the Government to extend the scope to all public authorities”.⁴⁸ The Solicitor General also expressed concern that the direct duty placed on the Government by the amendment was not how the existing EU legal framework functioned:

The requirement of a direct duty in Lords amendment 3 to apply those environment principles listed in the amendment across a wide range of Government activities goes far beyond the way it works at EU level currently. Such a far-reaching duty does not exist anywhere in EU law, so instead of replicating and bringing down those principles, we are in danger of creating some [un]intended consequences that would cause concern to Members across this House.⁴⁹

Mr Buckland said that the Government recognised that a reassurance of its intentions was needed and so it would be supporting Sir Oliver Letwin’s amendment in lieu, putting its name to it. This amendment, 3A, inserted a new clause into the Bill, subclause (1) of which would require the Secretary of State to publish a draft bill which consisted of:

- (a) a set of environmental principles,
- (b) a duty on the Secretary of State to publish a statement of policy in relation to the application and interpretation of those principles in connection with the making and development of policies by Ministers of the Crown,
- (c) a duty which ensures that Ministers of the Crown must have regard, in circumstances provided for by or under the Bill, to the statement mentioned in paragraph (b),
- (d) provisions for the establishment of a public authority with functions for taking, in circumstances provided for by or under the Bill, proportionate enforcement action (including legal proceedings if necessary) where the authority considers that a Minister of the Crown is not complying with environmental law (as it is defined in the Bill), and

⁴⁵ [HC Hansard, 13 June 2018, col 934.](#)

⁴⁶ *ibid*, cols 934–5.

⁴⁷ *ibid*, col 935.

⁴⁸ *ibid*.

⁴⁹ *ibid*.

- (e) such other provisions as the Secretary of State considers appropriate.⁵⁰

The amendment also provided a list of the principles referenced in amendment 3A subclause (1)(a):

- (2) The set of environmental principles mentioned in subsection (1)(a) must (however worded) consist of—
- (a) the precautionary principle so far as relating to the environment,
 - (b) the principle of preventative action to avert environmental damage,
 - (c) the principle that environmental damage should as a priority be rectified at source,
 - (d) the polluter pays principle,
 - (e) the principle of sustainable development,
 - (f) the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities,
 - (g) public access to environmental information,
 - (h) public participation in environmental decision-making, and
 - (i) access to justice in relation to environmental matters

This is substantively similar to that contained in LA3 [1], however, in place of the text in 2(f) above, LA3 [1] included the text “prudent and rational utilisation of natural resources”.⁵¹ Amendment 3B amended the Bill’s commencement provisions, such that the new clause would come into force on the day on which the Bill was passed.

The Solicitor General highlighted that the amendment referred to the ability of the enforcement body to take the Government to court, stating that the power would be “proportionate and appropriate”.⁵² He also said that the draft bill and forthcoming policy statement would provide further details on how the principles will be interpreted and how they will apply.⁵³

2.3 Dublin III Regulation: Refugee Family Reunion (LA24 [59])

On the second day of CCLA, the House of Commons disagreed LA24 [59], without division.⁵⁴ The Commons agreed government amendments 24A

⁵⁰ [Commons Amendments in Lieu, Amendments to Amendments and Reasons](#), HL Bill 111 of session 2017–19, amendment 3A, p 3.

⁵¹ *ibid*, Lords amendment 3, p 2.

⁵² [HC Hansard, 13 June 2018, col 937](#).

⁵³ *ibid*.

⁵⁴ *ibid*, col 1043.

and 24B in lieu, without division.⁵⁵ LA24 [59] had been agreed by the House of Lords on the fourth day of the Bill's report stage and had sought to maintain the effect of EU rules about refugee family reunion once the UK withdrew from the EU.⁵⁶

LA24 [59] would have required that the Government make arrangements, including through negotiations with the EU, to preserve the rights of those seeking asylum—including unaccompanied minors, adults and children—to join a family member, sibling or relative in the UK. These rights are currently provided for under Regulation (EU) No 604/2013, which is also known as both the Dublin Regulation and the Dublin III Regulation.⁵⁷ The amendment would also require the Government to report to Parliament within six months of the passing of the Bill, and every six months thereafter, on the progress made in negotiations with the EU to secure continued reciprocal arrangements on refugee family reunion.

Moving LA24 [59], Lord Dubs (Labour) said his aim was to “maintain after Brexit one of the main existing legal routes to safety for unaccompanied child refugees”.⁵⁸ He explained the Dublin procedure enabled unaccompanied child refugees who are in one EU member state to join a relative in another EU country. For example, a Syrian child in France can join an uncle in Sweden, and then make an asylum claim in Sweden. Lord Dubs said the amendment was “not asking for anything new, just not to stop something that is working fairly well”.⁵⁹ The UK's participation in Dublin III would end when it left the EU, unless a new arrangement is negotiated. Lord Dubs recognised that the UK could not “achieve this unilaterally”, so he said the amendment would “establish that the Government will negotiate with our EU partners to maintain this legal route to safety”.⁶⁰

Speaking on the second day of CCLA, Sir Keir Starmer, Shadow Secretary of State for Exiting the European Union, said that Labour supported LA24 [59], describing it as “long overdue”.⁶¹ Sir Keir also spoke to the Government's clause:

We recognise that some concern has been raised about the scope of family reunion that qualifies under the Government's clause, and I would welcome any clarification from the Minister on that issue. However, in general, Labour will support the amendment.⁶²

Speaking for the Government, Robert Buckland, the Solicitor General, said

⁵⁵ [HC Hansard, 13 June 2018, col 1044.](#)

⁵⁶ [HL Hansard, 30 April 2018, col 1952](#)

⁵⁷ [Regulation \(EU\) No 604/2013.](#)

⁵⁸ [HL Hansard, 30 April 2018, col 1946.](#)

⁵⁹ *ibid*, cols 1946–7.

⁶⁰ *ibid*, col 1947.

⁶¹ [HC Hansard, 13 June 2018, col 924.](#)

⁶² *ibid*.

that he believed that Lord Dubs had tabled the amendment with the best intentions but that the Government wished to ensure that the amendment was phrased in such a way as to enable the Government to deliver the intended outcome.⁶³ Mr Buckland said that it was unlikely that the UK would be continuing to participate in Dublin III once it had left the EU and he expressed concern that amendment LA24 [59] would require the Government to negotiate to remain subject to it. He stated that whilst the Government still intended to provide reunification routes it did not believe Dublin III was the mechanism by which to achieve this:

We remain absolutely committed to providing a safe, legal route for unaccompanied asylum-seeking children to join close family members in the UK, but, with the greatest respect, setting up a negotiation that ties the UK to a specific outcome—specifically, one part of a regulation that is likely to be replaced soon—is not the way to do that.⁶⁴

Robert Buckland argued that the Government's in lieu amendments sought to “establish a new, bespoke arrangement that safeguards our commitment to these children, while being distinct from what is after all an internal EU process”.⁶⁵ Mr Buckland said that the Government was committed to seeking a reciprocal agreement with the EU, but that this would not automatically confer long-term status within the UK for those unaccompanied children reunited with relatives in the UK:

I want to place it clearly on record that this Government will seek a new reciprocal agreement with the EU to allow unaccompanied asylum-seeking children present in an EU member state to join close family members here in the UK, and vice versa, where it is in their best interests to do so. Any such agreement will be to allow an unaccompanied asylum-seeking child to reside with family members while their claim is being considered. That will not automatically confer long-term status here, or mean that that person will be granted refugee status. As with all claims, the UK will examine those claims in line with our international obligations and domestic rules and legislation—the due process that is such an important element of this.⁶⁶

The Government's in lieu amendment 24A inserted a new clause into the Bill which would provide that a Minister of the Crown must seek to negotiate an agreement with the EU to allow for the reunification of unaccompanied children with relatives lawfully resident in the UK or an EU Member state:

A Minister of the Crown must seek to negotiate, on behalf of the

⁶³ [HC Hansard, 13 June 2018, col 939.](#)

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ *ibid*, col 938.

United Kingdom, an agreement with the EU under which, after the United Kingdom's withdrawal from the EU, in accordance with the agreement—

- (a) an unaccompanied child who has made an application for international protection to a member state may, if it is in the child's best interests, come to the United Kingdom to join a relative who is aged 18 or over and—
 - (i) is a lawful resident of the United Kingdom, or
 - (ii) has made a protection claim which has not been decided, and
- (b) an unaccompanied child in the United Kingdom, who has made a protection claim, may go to a member state to join a relative there, in equivalent circumstances.⁶⁷

The new clause would define a relative for this purpose as:

- (a) a spouse or civil partner of the child or any person with whom the child has a durable relationship that is similar to marriage or civil partnership, or
- (b) a parent, grandparent, uncle, aunt, brother or sister of the child;⁶⁸

An unaccompanied child would be defined as:

a person under the age of 18 (“the child”) who is not in the care of a person who—

- (a) is aged 18 or over, and
- (b) by law or custom of the country or territory in which the child is present, has responsibility for caring for the child.⁶⁹

Amendment 24B amended the Bill's commencement provisions, such that the new clause would come into force on the day on which the Bill was passed.

2.4 Northern Ireland Border Arrangements (LA25 [88])

On the first day of CCLA the House of Commons agreed government amendments to LA25 [88] without division. LA25 [88] added clause 13 to the Bill during report stage in the Lords. This new clause was entitled ‘Continuation of North-South Co-operation and the Prevention of New Border Arrangements’. It related to various border arrangements between

⁶⁷ [Commons Amendments in Lieu, Amendments to Amendments and Reasons](#), HL Bill 111 of session 2017–19, amendment 24A, p 8.

⁶⁸ *ibid*, p 9.

⁶⁹ *ibid*.

Northern Ireland and the Republic of Ireland and would restrict specified powers under the Bill from making certain changes to existing border arrangements.

LA25 [88] was agreed on day five of report in the House of Lords by 309 votes to 242.⁷⁰ LA25 [88] inserted a new clause [13] into the Bill, subclause (1) of which would require Ministers of the Crown, in exercising powers under the Bill, to act in a way compatible with the Northern Ireland Act 1998 and that they must:

- (b) have due regard to the joint report from the negotiators of the EU and the United Kingdom Government on progress during phase I of negotiations under Article 50 of the Treaty on European Union.⁷¹

Subclause (2) would mean that regulations made under clauses 7 [9], 8⁷², 9 [11] or 17 [22] of the Bill could not be made which:

- (a) diminish any form of North-South cooperation across the full range of political, economic, security, societal and agricultural contexts and frameworks of cooperation, including the continued operation of the North-South implementation bodies, or
- (b) create or facilitate border arrangements between Northern Ireland and the Republic of Ireland after exit day which feature—
 - (i) physical infrastructure, including border posts, (ii) a requirement for customs or regulatory compliance checks, (iii) a requirement for security checks, (iv) random checks on goods vehicles, or (v) any other checks and controls,

that did not exist before exit day and are not subject to an agreement between Her Majesty's Government and the Government of Ireland.⁷³

LA25 [88] was a cross-party amendment, tabled by Lord Patten of Barnes (Conservative), Lord Murphy of Torfaen (Labour), Baroness O'Neill of Bengarve (Crossbench) and Baroness Suttie (Liberal Democrat). On moving the amendment, Lord Patten explained that it reflected what he “understood to be the Government's policy” on a frictionless border and the relationship between the border and the Good Friday Agreement.⁷⁴ However, he argued

⁷⁰ [HL Hansard, 2 May 2018, cols 2116–18.](#)

⁷¹ *ibid.*, col 2073.

⁷² Clause 8 of the Bill had been removed on day three of report in the House of Lords by government amendment 47A.

⁷³ [HL Hansard, 2 May 2018, col 2073.](#)

⁷⁴ *ibid.*

that despite the Government's intentions, the amendment should be put into the Bill because it would support the Prime Minister's position in the face of what he described as "the over-the-cliff, on-to-the-rocks Brexit" which he believed was supported by some Members of the House of Commons.⁷⁵ Lord Patten spoke to the relationship between a frictionless border and trade but also asserted that the "border is closely related to the survival of the Good Friday Agreement".⁷⁶ He expressed concern that security installations could produce "the exact opposite of security".⁷⁷ Lord Murphy said the purpose of the amendment was to enshrine the principles of the Good Friday Agreement in the Bill.⁷⁸

In the debate on the amendment in the Lords, several Members expressed concern that the amendment's requirement that changes in border arrangements would need to be subject to an agreement between the UK and Irish Governments could be perceived as a move toward joint authority. For example, Lord King of Bridgwater (Conservative) said that whilst he believed the intention was good,⁷⁹ he contended the last line of the amendment could introduce "something like a touch of joint authority".⁸⁰ The relationship of the amendment to the Good Friday Agreement was also questioned. Lord Bew (Crossbench) said although there was a "great deal of spirit" behind the amendment he believed that the failure to mention the Good Friday Agreement, as opposed to the Northern Ireland Act 1998, was a problem.⁸¹ He argued this was because the Act did not signal, as the Agreement did, that the Agreement was dependent on the agreement between the parties to it.⁸²

The Government's amendments 25A to 25E to LA25 [88] removed the reference to clause 8 and amended the reference to clause 17 to 17(1) or (5) [22(1) or (6)]. The Government's amendment also amended subclause (2)(a) removing the following text:

[...] across the full range of political, economic, security, societal and agricultural contexts and frameworks of co-operation, including the continued operation of the North-South implementation bodies.⁸³

And replacing it with:

[...] provided for by the Belfast Agreement (as defined by section 98

⁷⁵ [HL Hansard, 2 May 2018, col 2073.](#)

⁷⁶ *ibid*, col 2076.

⁷⁷ *ibid*.

⁷⁸ *ibid*, col 2107.

⁷⁹ *ibid*, col 2089.

⁸⁰ *ibid*.

⁸¹ *ibid*, col 2096.

⁸² *ibid*.

⁸³ [Commons Amendments in Lieu, Amendments to Amendments and Reasons](#), HL Bill 111 of session 2017–19, Lords amendment 25, p 9.

of the Northern Ireland Act 1998).⁸⁴

It also removed the references in subclause 2(b)(i) to (v) with the text “physical infrastructure, including border posts or checks and controls”.⁸⁵ Similar wording was used in the December 2017 joint report between the UK Government and the EU.⁸⁶ Finally, it altered the reference to an agreement between Her Majesty’s Government and the Government of Ireland to a reference to an agreement between the UK and the EU.⁸⁷

On speaking to the Government’s amendments on day one of CCLA, David Lidington, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, referred to Lord Patten’s remarks, agreeing that in many ways amendment LA25 [88] was a statement of Government policy:⁸⁸

It seeks to ensure that we will not act incompatibly with the Northern Ireland Act 1998 and that we will have due regard to the joint report of December last year. It seeks to protect North-South cooperation between Northern Ireland and Ireland and to prevent, among other things, physical infrastructure on the border with Ireland.⁸⁹

Responding to the debate on day five of report in the House of Lords, when LA25 [88] was made to the Bill, Lord Duncan of Springbank, Parliamentary Under Secretary of State at the Northern Ireland Office and Scotland Office, said that many of the elements of the amendment were “exact statements” of government policy.⁹⁰ However, the Minister argued that the second half of LA25 [88] consisted of political rather than legislative statements and that these left a “conspicuous ambiguity”.⁹¹ The Minister said that the Government intended to return to the House with wording set out in another bill that would achieve the same objective:

It is important to recognise that it is the intention of the Government to return not with ambiguous statements which may or may not be subject to misinterpretation but to return in the appropriate bill with the exact, detailed language which will give the absolute confidence that we must have in this law. That is why we are unable to support the amendment [...]⁹²

⁸⁴ [Commons Amendments in Lieu, Amendments to Amendments and Reasons](#), HL Bill 111 of session 2017–19, Lords amendment 25, p 10.

⁸⁵ *ibid.*

⁸⁶ Prime Minister’s Office et al, [Joint Report on Progress During Phase 1 of Negotiations Under Article 50 TEU on the UK’s Orderly Withdrawal from the EU](#), 8 December 2017, p 7.

⁸⁷ [Commons Amendments in Lieu, Amendments to Amendments and Reasons](#), HL Bill 111, Lords amendment 25, p 10.

⁸⁸ [HC Hansard, 12 June 2018, col 843](#).

⁸⁹ *ibid.*

⁹⁰ [HL Hansard, 2 May 2018, col 2110](#).

⁹¹ *ibid.*

⁹² *ibid.*

At CCLA, David Lidington echoed Lord Duncan’s earlier remarks arguing that the amendment had not been drafted in a “legally appropriate way” and that government amendments 25A to 25E were designed to “tidy it up and ensure that was in a fit form”.⁹³

The debate was then drawn to a close in consequence of the programme motion. However, on the second day Sir Keir Starmer, Shadow Secretary for Exiting the European Union, referred to amendment 25. He said that this was agreed “without any dissent from the Opposition” and he argued it had implications for customs arrangements:

That is a very significant amendment; after the political commitment in December to no hard border, no infrastructure, no checks and no controls, we now have a binding law to that effect. This goes to the issue of maximum facilitation, because if maximum facilitation does involve infrastructure, checks or controls, it would be unlawful under the provision passed yesterday. Therefore, it cannot happen.⁹⁴

2.5 Parliamentary Approval of Negotiations: ‘Meaningful Vote’ (LA19 [49])

The House of Commons voted by 324 to 298 (a majority of 26) to disagree LA19 [49], a cross-party Lords amendment which set out a procedure for parliamentary approval of the outcome of negotiations with the EU.⁹⁵ This amendment has been dubbed the ‘meaningful vote’ amendment. The Commons agreed to government amendments 19A and 19B in lieu without a vote.⁹⁶ Government amendment 19A would—like the Lords amendment—give the House of Commons the power to veto a withdrawal agreement negotiated by the Government with the EU. However—unlike the Lords amendment—it would not give the Commons Parliament the power to make a binding direction to the Government in relation to the negotiations if the Commons rejected a deal, if Parliament failed to pass legislation approving the deal, or if no deal was agreed with the EU in the first place.

In response to support expressed for a further amendment tabled by Dominic Grieve (Conservative MP for Beaconsfield), the Government gave a commitment to bring forward a further amendment when the Bill returns to the Lords.⁹⁷

⁹³ [HC Hansard, 12 June 2018, col 844.](#)

⁹⁴ [HC Hansard, 13 June 2018, col 914.](#)

⁹⁵ [HC Hansard, 12 June 2018, cols 811–14.](#)

⁹⁶ *ibid*, col 814. Government amendment 19A was the substantive amendment; government amendment 19B inserted a provision that the new clause in amendment 19A would come into force on the day on which the Act was passed.

⁹⁷ [HC Hansard, 13 June 2018, col 893.](#)

LA19 [49] inserted a new clause [10] into the Bill, which required that:

- The Government could conclude a withdrawal agreement with the EU under the terms of Article 50 only if a draft of the agreement had been:
 - approved by a resolution of the House of Commons; and
 - subject to the consideration of a motion in the House of Lords.
- The Government must “so far as practicable” make arrangements for the Commons resolution to be debated and voted on before the European Parliament debated and voted on the draft withdrawal agreement.
- The Government could implement a withdrawal agreement only if Parliament has approved it and any transitional measures agreed within or alongside the withdrawal agreement by an Act of Parliament
- If:
 - the Commons did not approve a resolution on a draft withdrawal agreement by 30 November 2018; or
 - an Act of Parliament to approve the withdrawal agreement did not receive royal assent by 31 January 2019; or
 - no withdrawal agreement was reached between the UK and the EU by 28 February 2019

then the Government would have to follow any direction in relation to the Article 50 negotiations which had been:

- approved by a resolution of the House of Commons; and
- subject to the consideration of a motion in the House of Lords.

During the Commons consideration of this Lords amendment, David Davis, Secretary of State for Exiting the European Union, described the amendment as “an unconstitutional shift that risks undermining our negotiations with the European Union” since it “enables Parliament to dictate to the Government their course of action in international negotiations”.⁹⁸ He said this was “not practical, not desirable and not appropriate”. He observed it was “accepted practice” that governments negotiate treaties, and this had been the case in negotiations on previous EU treaties.⁹⁹ In his view, the deadlines specified in the Lords amendment would “simply allow the other side to use time against

⁹⁸ [HC Hansard, 12 June 2018, col 737.](#)

⁹⁹ *ibid*, col 738.

us, as it has already tried to do”.¹⁰⁰

Mr Davis explained that the Government was proposing amendment 19A in lieu. This amendment builds on commitments that the Government gave earlier in the Brexit process and the Bill’s passage, but which it had not previously sought to put on the face of a bill. The Prime Minister, Theresa May, said in her Lancaster House speech in January 2017 that the Government would put the final deal agreed with the EU to a vote in both Houses of Parliament before it came into force.¹⁰¹ During the Commons committee stage of the European Union (Notification of Withdrawal) Bill (the legislation which authorised the triggering of Article 50), David Jones, the then Minister of State at the Department for Exiting the European Union, said this vote would cover not only the withdrawal arrangements, but also the future relationship with the EU.¹⁰² He said the Government expected and intended this vote would take place before the European Parliament voted on the deal, but it could not guarantee this as it did not control the timing of what happened in the European Parliament.¹⁰³ In a written ministerial statement in December 2017, David Davis, Secretary of State for Exiting the European Union, laid out further details about the Government’s intentions to:

- hold a vote in both Houses on the final deal agreed with the EU (covering both the withdrawal agreement and the terms of the future relationship) as soon as possible after the conclusion of negotiations;
- lay the withdrawal agreement before Parliament for scrutiny under the terms of the Constitutional Reform and Governance Act 2010; and
- introduce a Withdrawal Agreement and Implementation Bill to give the withdrawal agreement domestic legislative effect (providing Parliament had voted in favour of the deal).¹⁰⁴

On the same day, clause 9 [11] of the European Union (Withdrawal) Bill was amended at committee stage in the Commons to add a condition that ministers cannot make regulations to implement the withdrawal agreement without the prior enactment of a statute by Parliament approving the final terms of the UK’s withdrawal from the EU.¹⁰⁵ The amendment was tabled by Dominic Grieve (Conservative MP for Beaconsfield), and the vote which approved it was the Government’s only defeat on the Bill in the House of Commons.

¹⁰⁰ [HC Hansard, 12 June 2018, col 739.](#)

¹⁰¹ Prime Minister’s Office, ‘[The Government’s Negotiating Objectives for Exiting the EU: PM’s Speech](#)’, 17 January 2017.

¹⁰² [HC Hansard, 7 February 2017, col 264.](#)

¹⁰³ *ibid*, cols 264 and 326.

¹⁰⁴ House of Commons, ‘[Written Statement: Procedure for the Approval and Implementation of EU Exit Agreement](#)’, 13 December 2017, WS342.

¹⁰⁵ [HC Hansard, 13 December 2017, cols 521–5.](#)

Moving the Government's amendment in lieu on 12 June 2018, David Davis explained its provisions as follows:

The amendment provides that the withdrawal agreement cannot be ratified unless both the agreement and the future framework have been approved by a motion of this House. It also prevents the agreement from being ratified unless an Act of Parliament has been passed to implement it. This is all before the Constitutional Reform and Governance Act as well. Therefore, this is in addition to the Government's commitment to introduce the Withdrawal Agreement and Implementation Bill if Parliament votes in favour of a final deal [...]

The Government have also made provisions to allow the vote to happen in this House before the European Parliament votes on the deal, as long as it is practical. This follows the spirit of the Lords amendment, but our proposal has some significant differences. First, we have attached a deadline to the Lords consideration of a motion on the final deal [five sitting days after the Commons passes a resolution to approve the withdrawal agreement and framework for the future partnership]. It is not right that the Lords could have a veto on the deal simply by filibustering or refusing to consider the motion. Anyone who suggests that this is unlikely should consider that it was a concern raised by their Lordships themselves in debate [...]

Secondly, we have removed Parliament's power to give binding negotiating directions to the Government. As I have said, this would represent a profound constitutional shift in terms of which branch of the state holds the right to act in the international sphere [...]

Instead we have provided that, in the event that Parliament rejects the deal put to it, the Government will be legally obliged to make a statement on their proposed next steps in relation to Article 50 negotiations within 28 days of that rejection. This House would of course then have plenty of tools at its disposal to respond, but I am as confident as ever that we will secure an agreement that this House will want to support.¹⁰⁶

Mr Davis said he hoped the House would recognise the Government had taken a "fair and positive" approach to the Lords amendment, "retaining those elements that are sensible and viable, while removing those elements that are practically and constitutionally unacceptable".¹⁰⁷

In a blog post analysing the Lords amendment and the Government's amendment in lieu, the House of Commons Library argued that they both represent "a significant constitutional innovation" by giving Parliament the

¹⁰⁶ [HC Hansard, 12 June 2018, cols 739–40.](#)

¹⁰⁷ *ibid*, col 741.

legal right to veto an international agreement for the first time.¹⁰⁸ The Lords amendment would go further by granting Parliament a “constitutionally unprecedented” power to give negotiating directions.

Stephen Hammond (Conservative MP for Wimbledon) asked what would happen under the Government’s amendment should the UK not reach a deal with the EU for Parliament to approve.¹⁰⁹ Mr Davis said that the Government would “do the same thing and come back and make a statement to the House, and the House would then have the right to respond”, although he believed this scenario was “incredibly, almost implausibly, unlikely”.¹¹⁰

Responding to Mr Davis, Dominic Grieve argued that the Government’s amendment in lieu was deficient because it did not make provision for what would happen if no deal was reached between the UK and the EU.¹¹¹ He said that it would provoke “an immense crisis” if this were to happen, and argued that Parliament should “take sensible steps, in anticipation of this, to try to ensure a coherent process for dealing with it”.¹¹²

He tabled an amendment to the Government’s proposal, which provided that, if the Commons did not pass a resolution approving the withdrawal agreement and framework for the future partnership, the Government would have 21 days (as opposed to 28 days in the Government’s proposal) to make a statement setting out how it proposed to proceed. Under its own proposal, the Government would simply have to make the statement, but under subsection (5A) of Mr Grieve’s amendment, within seven days of such a statement being made, a Minister of the Crown would have to move a motion in the House of Commons to seek approval of the Government’s approach. Mr Grieve’s amendment also made specific provision for what would happen in the event that the Government failed to reach agreement with the EU on a deal by certain deadlines:

- (5B) In the event of no political agreement having been reached on a withdrawal agreement by the end of 30 November 2018, a Minister of the Crown must move a motion in the House of Commons setting out how the Government intends to proceed and seeking the approval of the House for that course of action.

¹⁰⁸ House of Commons Library, [‘Parliament’s Right to a Meaningful Vote: Amendments to the EU \(Withdrawal\) Bill’](#), 11 June 2018. Under the terms of the Constitutional Reform and Governance Act 2010 (CRAG), the House of Commons theoretically has the power to delay ratification of a treaty indefinitely, but it does not have an outright veto—for further information about Parliament’s existing powers under CRAG, see: House of Commons Library, [Brexit: Parliament’s Role in Approving and Implementing Agreements with the European Union](#), 23 May 2018.

¹⁰⁹ [HC Hansard, 12 June 2018, col 740.](#)

¹¹⁰ *ibid.*

¹¹¹ *ibid.*

¹¹² *ibid.*, col 764.

(5C) If no political agreement has been reached on a withdrawal agreement by the end of February 2019, the Government must bring the matter before both Houses of Parliament within five days and must follow any direction in relation to the negotiations under Article 50(2) of the Treaty on European Union which has been—

- (a) approved by a resolution of the House of Commons, and
- (b) the subject of a motion which has either been debated in the House of Lords, or upon which the House of Lords has not concluded a debate on the motion before the end of the period of five sitting days beginning with the first sitting day after the day on which the House of Commons passes the resolution mentioned in paragraph (a).

In response to Dominic Grieve’s amendment, David Davis indicated he was willing to meet him and discuss his concerns, but maintained that he would always keep three principles in mind:

First, we must never do anything that undermines the Government’s negotiating position, or encourages delays in the negotiations [...] Secondly, we cannot change the fundamental constitutional structure, which makes the Government responsible for international relations and international treaties [...]

This constitutional structure has stood for hundreds of years and many thousands of treaties. As I said earlier, nobody suggested for a moment that the House of Commons should negotiate the Maastricht Treaty, the Lisbon Treaty, or one of two other controversial treaties that came before this House. We cannot change that structure now, on this basis.

Thirdly, we must—under all circumstances—respect the result of the referendum.¹¹³

Speaking for the Opposition, Matthew Pennycook, Shadow Minister for Exiting the European Union, said that the choice which faced Parliament under the Government’s amendment was “between the draft withdrawal agreement, even if it is found wanting, and the hardest of departures—the most disorderly exit”.¹¹⁴ He described the aim of LA19 [49] as to ensure that, if Parliament rejected the withdrawal agreement, “it does not then simply become a passive spectator to what happens next but instead secures a decisive role in actively shaping how the Executive then proceed”.¹¹⁵

¹¹³ [HC Hansard, 12 June 2018, cols 740–1.](#)

¹¹⁴ *ibid*, col 744.

¹¹⁵ *ibid*, col 746.

He was dismissive of the Government's offer simply to make a statement about how it would proceed if the House of Commons rejected the deal negotiated with the EU.¹¹⁶ He described the Government's amendment in lieu as "the same 'take it or leave it' vote that the Government offered last year, with a few extra baubles".¹¹⁷ He urged MPs to agree to the Lords amendment, but he also acknowledged that Dominic Grieve's amendment was "a significant improvement on the Government's amendment in lieu".¹¹⁸

As Mr Grieve was speaking to his amendment later in the debate, Robert Buckland, the Solicitor General, intervened to say that he would meet Mr Grieve the following day to discuss "build[ing] on" the Government's amendment in lieu in light of Mr Grieve's proposals, ahead of the Bill returning to the House of Lords.¹¹⁹ Mr Buckland said that there was "merit" in the approach outlined in subsection (5A), but that he needed more time to think about the other parts of the amendment.¹²⁰ He gave a "clear undertaking" to use Dominic Grieve's comments "as the basis for structured discussions ahead of the Lords stages".¹²¹

It was reported that during the debate, the Government Chief Whip, Julian Smith, and the Prime Minister held private conversations with Mr Grieve and other Conservative MPs who might vote against the Government.¹²² At the end of the debate, Mr Buckland said that the Government was "looking very carefully" at amendments that might be tabled in the Lords as a "product of any discussions" he held with Mr Grieve.¹²³ In response, Antoinette Sandbach (Conservative MP for Eddisbury) said that Mr Buckland had made "an important concession", without which she would have voted against the Government and in favour of the Lords amendment.¹²⁴

The Lords amendment was disagreed to on division, and the Government's amendment in lieu was accepted without division.¹²⁵

Speaking the following day, the Prime Minister confirmed that she had agreed with David Davis that morning that the Government would bring forward a further amendment in the Lords.¹²⁶

¹¹⁶ [HC Hansard, 12 June 2018, col 747.](#)

¹¹⁷ *ibid*, col 748.

¹¹⁸ *ibid*, col 749.

¹¹⁹ *ibid*, col 765.

¹²⁰ *ibid*, col 766.

¹²¹ *ibid*, col 767.

¹²² Annabelle Dickson, '[UK Government Wins Key Brexit Vote After Concession](#)', Politico, 12 June 2018; and Jessica Elgot, '[Pro-EU Tories Warn PM: Keep Your Word or Face Fresh Rebellion](#)', *Guardian*, 13 June 2018.

¹²³ [HC Hansard, 12 June, col 785.](#)

¹²⁴ *ibid*, col 785.

¹²⁵ *ibid*, cols 811–14.

¹²⁶ [HC Hansard, 13 June 2018, col 893.](#)

She reaffirmed that the Government would abide by the three principles outlined by Mr Davis:

My hon. Friend [Jacob Rees-Mogg (Conservative MP for North East Somerset)] is absolutely right about the separation of powers and the different roles of Government and Parliament. As my right hon. Friend the Brexit Secretary made clear in the House yesterday, the Government's hand in the negotiations cannot be tied by Parliament, but the Government must be accountable to Parliament. Government determines policy, and we then need parliamentary support to be able to implement that policy.

The other aspect of this that I am absolutely clear on is that I cannot countenance Parliament being able to overturn the will of the British people. Parliament gave the decision to the British people, the British people voted to leave the European Union and, as Prime Minister, I am determined to deliver that.¹²⁷

On 14 June, the Government tabled amendments in lieu (19C to 19L) to be considered at the next stage in the House of Lords.¹²⁸ The Government's subsection (4) and (5A) would follow Mr Grieve's amendment in giving the Government 21 days to make a statement about how it planned to proceed if the House of Commons did not pass a resolution approving the withdrawal agreement and framework for the future relationship. Where Mr Grieve's subsection (5A) would require the Government to seek Commons approval for that approach, the Government's subsection (5A) would instead require the Government to make arrangements for:

- “a motion in neutral terms, to the effect that the House of Commons has considered the matter of the statement” to be moved by a Minister in the House of Commons within seven sitting days; and
- a motion to “take note” of the statement to be moved by a Minister in the House of Lords within seven sitting days.

The Government's subsections (5B) to (5G) make provision for what would happen in a no-deal scenario. Under subsection (5B), if the Prime Minister made a statement before the end of 21 January 2019 that “no agreement in principle can be reached” with the EU on “the substance of” the UK's withdrawal arrangements and the framework for the future relationship, then (5C) would require the Government to:

- make a statement within 14 days setting out how it proposed to proceed; and

¹²⁷ [HC Hansard, 13 June 2018, col 893.](#)

¹²⁸ [HL Bill 111\(a\), Motions to be Moved on Consideration of Commons Reasons and Amendments](#), 14 June 2018.

- make arrangements for:
 - “a motion in neutral terms, to the effect that the House of Commons has considered” this statement to be moved by a Minister in the House of Commons within seven sitting days of this statement; and
 - a motion to “take note” of the statement to be moved by a Minister in the House of Lords within seven sitting days.

Under subsection (5E), if at the end of 21 January 2019, no “agreement in principle” had been reached on “the substance of” the UK’s withdrawal arrangements and the arrangements for a future relationship, then subsection (5F) would require the Government to:

- make a statement within five days from 21 January 2019 setting out how it proposed to proceed; and
- make arrangements for:
 - “a motion in neutral terms, to the effect that the House of Commons has considered” this statement to be moved by a Minister in the House of Commons within five sitting days from the end of 21 January 2019; and
 - a motion to “take note” of the statement to be moved by a Minister in the House of Lords within five sitting days from the end of 21 January 2019.

Dominic Grieve described the Government’s proposal as “unacceptable” because the requirement for the motion to be in neutral terms meant that “the Government has made the motion unamendable, contrary to the usual methods of the House of Commons and therefore it cannot be accepted”.¹²⁹ He said this “undermined the purpose of the agreement” to give Parliament a meaningful say.¹³⁰ Sir Keir Starmer, Shadow Secretary of State for Exiting the European Union, tweeted that Theresa May had “gone back on her word”.¹³¹ He said that the government amendment “takes the meaning out of a meaningful vote”. He called on Parliament to reject it.

The Department for Exiting the European Union issued a statement saying that the amendments respected the tests set out by the Prime Minister and David Davis, whilst also taking account of “those across the House who called for the ability to express their views, in the unlikely event that our preferred scenario [of Parliament approving a deal negotiated with the EU]

¹²⁹ Heather Stewart and Anne Perkins, ‘[Tory Rebellion Back On After MPs Reject Brexit Amendment](#)’, *Guardian*, 14 June 2018.

¹³⁰ Oliver Wright and Sam Coates, ‘[Tory Rebels Up in Arms After May’s U-Turn](#)’, *Times* (£), 15 June 2018.

¹³¹ Keir Starmer, ‘[Personal Twitter Account](#)’, 14 June 2018.

did not come to pass”.¹³² The statement said:

That is why we have included three situations which would trigger a vote in both Houses: a) should Parliament reject the Government’s deal with the EU, b) that no agreement can be reached, or, c) there is no deal agreed by the 21 January 2019. This ensures that in all circumstances Parliament can hold government to account, while also allowing government to deliver on the will of the British people as expressed in the referendum.

But this remains hypothetical and the Government is confident we will agree a good deal with the EU which Parliament will support.¹³³

2.6 Right of Action Based on General Principles of EU Law (LA53 [19])

LA53 [19] removed provisions from schedule I of the Bill that would have prevented legal cases being brought after exit day on the grounds of a failure to comply with the general principles of EU law.¹³⁴ Speaking at Commons consideration of Lords amendments, Robert Buckland, the Solicitor General, reiterated the Government’s view that “it would not be right” to retain rights of action based on incompatibility with the general principles of EU law after the UK had left the EU.¹³⁵ He did not accept that rights saved by the Bill would not be justiciable if general principles challenges were excluded, as other sources of rights would continue to exist and operate in UK law.¹³⁶ However, he said that the Government had listened to concerns that had been raised, particularly in relation to accrued rights. He reminded the House that the Government had successfully introduced an amendment at the Bill’s report stage in the Commons which created a three-month window for a legal challenge based on the general principles of EU law to be brought after exit day, if it:

- related to something that happened before exit day; and
- did not seek to disapply or quash an Act of Parliament or the common law or anything related to them (ie it could be made against either administrative action or domestic legislation other than Acts of Parliament or rules of law).¹³⁷

He said that the Government was now going “considerably further”, having tabled an amendment in lieu which increased the window for bringing such a

¹³² *Guardian*, ‘[Government Publishes Amendment to EU Withdrawal Bill—Politics Live](#)’, 14 June 2018 (see entry at 18:39).

¹³³ *ibid.*

¹³⁴ For further background information about this amendment, see: House of Lords Library, [European Union \(Withdrawal\) Bill: Lords Report Stage](#), 14 May 2018, pp 23–5.

¹³⁵ [HC Hansard, 13 June 2018, col 931.](#)

¹³⁶ *ibid.*, col 933.

¹³⁷ *ibid.*; and [Explanatory Notes to the Bill as Introduced in the Lords](#), p 65.

challenge from three months to three years after exit (subject to normal statutory limitation periods).¹³⁸ Dominic Grieve (Conservative MP for Beaconsfield), the former Attorney General, said that this was “a great improvement”, and although it likely to apply only “in very few cases”, he thought it would be greatly valued, although he maintained that enhanced protections for some rights would “be lost without the Charter [of Fundamental Rights] and general principles”.¹³⁹

The Commons voted by 320 to 297 to disagree LA53.¹⁴⁰ The government amendment in lieu, extending the three-month window to three years, was agreed without division.

¹³⁸ [HC Hansard, 13 June 2018, col 933.](#)

¹³⁹ *ibid*, cols 933 and 956.

¹⁴⁰ *ibid*, cols 1031–4.

Appendix I: Lords Amendments: Disagreed (Listed in Order of Decision)

Lords Amendment Number (at CCLA)	Amendment Number Lords Stages	Subject	Commons Division	Commons Majority	Page Reference
110	70	Sifting committees and powers thereof	324 to 302	22	78–82
128	77	Sifting committees and powers thereof	325 to 304	21	
37	95	Date of Exit Day	326 to 301	25	70–3
39	99	Date of Exit Day	324 to 302	22	
125	74	Date of Exit Day	328 to 297	31	
52	18	Challenges to the validity of retained EU law	326 to 301	25	25–7
10	31	Regulation making powers: appropriate/necessary	320 to 305	15	38–42
43	86	Regulation making powers: appropriate/necessary	322 to 306	16	
45	87	Regulation making powers: appropriate/necessary	317 to 306	11	
20	51	Parliamentary approval for negotiation mandate	321 to 305	16	55–7
51	110A	European Economic Area	327 to 126	201	73–8
5	15	Charter of Fundamental Rights	321 to 301	20	14–22
4	11	Enhanced protection for certain areas of EU law	318 to 301	17	11–4

(Page references are to further background available in: House of Lords Library, [European Union \(Withdrawal\) Bill: Lords Report Stage](#), 14 May 2018)

Appendix 2: Lords Amendments: Agreed with Amendment or Disagreed with Amendment in Lieu (Listed in Order of Decision)

Lords Amendment Number (at CCLA)	Amendment Number Lords Stages	Subject	Fate	Commons Division	Commons Majority	Page Reference
19	49	Parliamentary approval of outcome of negotiations with the EU	Disagreed	324 to 298	26	48–55
		Government amendments (a) and (b) in lieu	Agreed	Without division	n/a	
25	88	Continuation of North-South cooperation and the prevention of new border arrangements	Amended	Without division	n/a	64–7
		Government amendments (a) to (e) to LA25	Agreed	Without division	n/a	
1	1 (at report stage)	Paving amendment	Disagreed	325 to 298	27	6–11
2	4	Report on steps towards negotiating participation in a customs union	Disagreed	326 to 296	30	
		Government amendments (a) and (b) in lieu	Agreed	Without division	n/a	
53	19	Challenges on the grounds of general principles of EU law	Disagreed	320 to 297	23	23–5
		Government amendment (a) in lieu	Agreed	Without division	n/a	
3	1 (at third reading)	Maintenance of EU environmental principles and standards	Disagreed	320 to 296	24	n/a
		Government amendments (c) and (d) in lieu	Agreed	Without division	n/a	
24	59	Maintenance of refugee family unity within Europe	Disagreed	Without division	n/a	59–62
		Government amendments (a) as amended and (b) in lieu	Agreed	Without division	n/a	

(Page references are to further background available in: House of Lords Library, [European Union \(Withdrawal\) Bill: Lords Report Stage](#), 14 May 2018)