



## Adjournment of the House of Lords Debate on the Withdrawal Agreement and Political Declaration

### Summary

On 10 December 2018, the House of Lords adjourned the debate it was holding on the withdrawal agreement and political declaration agreed by the Government and the EU during the Brexit negotiations. This debate was being held to fulfil the requirements on the House of Lords under section 13 of the European Union (Withdrawal) Act 2018, which sets out certain steps that must be taken before the UK would be able to ratify the withdrawal agreement. The Lords adjourned its debate when the Government decided not to go ahead with a planned vote on the withdrawal agreement and political declaration in the House of Commons—what has become known as the ‘meaningful vote’. This briefing summarises recent developments which may influence when the Lords has the opportunity to debate this matter again. It does not cover what might happen were the Commons to decide not to approve the withdrawal agreement and political declaration in a rescheduled ‘meaningful vote’.

### Lords and Commons Debates on Withdrawal Agreement and Political Declaration

On 25 November 2018, the UK and the EU concluded a withdrawal agreement setting out the terms of the UK’s departure from the EU and a political declaration on the framework for their future relationship, as provided for under article 50(2) of the Treaty on European Union. Under the terms of article 50 of the Treaty on European Union, the UK is set to leave the EU on 29 March 2019, two years from the date of giving notice of its intention to leave. Following its ratification, the withdrawal agreement would become a legally binding international treaty. The political declaration sets out a framework for the future relationship between the UK and the EU. The precise terms of the future relationship can only be negotiated once the UK has left the EU and become a third country. Formal negotiations can then begin before a legally binding agreement (or agreements) can be reached.

Section 13(1) of the European Union (Withdrawal) Act 2018 (EUWA) sets out specific requirements that must be met before the UK can ratify the withdrawal agreement:

- 13 Parliamentary approval of the outcome of negotiations with the EU
- (1) The withdrawal agreement may be ratified only if—
  - (a) a Minister of the Crown has laid before each House of Parliament—
    - (i) a statement that political agreement has been reached,
    - (ii) a copy of the negotiated withdrawal agreement, and
    - (iii) a copy of the framework for the future relationship,
  - b) 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,
  - (c) a motion for the House of Lords to take note of the negotiated withdrawal agreement and the framework for the future relationship has been tabled in the House of Lords by a Minister of the Crown and—

- (i) the House of Lords has debated the motion, or
- (ii) the House of Lords has not concluded a debate on the motion before the end of the period of five Lords sitting days beginning with the first Lords sitting day after the day on which the House of Commons passes the resolution mentioned in paragraph (b), and
- (d) an Act of Parliament has been passed which contains provision for the implementation of the withdrawal agreement.

The House of Lords debate on the withdrawal agreement and political declaration in fulfilment of the requirement under section 13(1)(c) began on 5 December 2018, continued on 6 December 2018 and was due to conclude on 10 December 2018.<sup>1</sup> The House of Commons debate on a motion to approve the withdrawal agreement and the framework for the future relationship in fulfilment of section 13(1)(b) began on 4 December 2018, continued on 5 and 6 December 2018, and was due to continue on 10 and 11 December 2018.<sup>2</sup> A vote on the motion, and/or up to six amendments to the motion selected by the Speaker—the so-called ‘meaningful vote’ on the deal—was expected to take place on 11 December 2018.

### **Deferral of the Commons ‘Meaningful Vote’**

However, on 10 December 2018, the Prime Minister made an announcement in the Commons that she was going to defer the ‘meaningful vote’ in order to seek further assurances from the EU about the Northern Ireland backstop arrangements in the deal:

I have listened very carefully to what has been said, in the Chamber and out of it, by Members on all sides. From listening to those views, it is clear that while there is broad support for many of the key aspects of the deal, on one issue, the Northern Ireland backstop, there remains widespread and deep concern. As a result, if we went ahead and held the vote tomorrow, the deal would be rejected by a significant margin. We will therefore defer the vote scheduled for tomorrow, and will not proceed to divide the House at this time.<sup>3</sup>

Mrs May said she had hoped that the changes she had secured to the backstop during the negotiations would “reassure Members that we could never be trapped in it indefinitely”.<sup>4</sup> However, having accepted that “these elements do not offer a sufficient number of colleagues the reassurance that they need”, Mrs May said she would go to see the leaders of the other EU member states, the European Council and the European Commission in advance of the European Council summit scheduled for 13–14 December 2018 to “discuss with them the clear concerns that this House has expressed”.<sup>5</sup> She spoke of seeking “further reassurances” from them about “whether the backstop, should it ever be used, can be brought to an end”, but did not state explicitly what form such “reassurances” might take—for example, whether she would seek to renegotiate the text of the legally binding withdrawal agreement, or whether the “reassurances” might take some other form.<sup>6</sup>

### **Adjournment of the Lords Debate**

In response to news that the Government was intending to “pull” the ‘meaningful vote’ in the Commons, Baroness Smith of Basildon, Shadow Leader of the Opposition in the House of Lords, moved that the House of Lords adjourn its debate until it could hear the Prime Minister’s statement.<sup>7</sup> The House voted 201 to 163 in favour of adjourning.<sup>8</sup> The Prime Minister’s statement was later repeated in the Lords, after which the House adjourned again.<sup>9</sup>

## EU Response

Donald Tusk, President of the European Council, has said that the EU-27 leaders will discuss Brexit on 13 December 2018. He stated that they would “not renegotiate the deal, including the backstop”, but were ready to “discuss how to facilitate UK ratification”.<sup>10</sup> He said that the EU would also discuss its preparedness for a no-deal scenario, “as time is running out”. Jean-Claude Juncker, President of the European Commission, said that the deal already agreed was “the best—and only—deal possible”.<sup>11</sup> He emphasised that there was “no room for renegotiation, but further clarifications are possible”.

## Rescheduling the ‘Meaningful Vote’

Section 13(1)(b) of the EUWA provides that the withdrawal agreement may only be ratified if the negotiated withdrawal agreement and the political declaration 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. Speaking after the Prime Minister’s statement on 10 December 2018 about deferring the Commons vote, Andrea Leadsom, Leader of the House of Commons, confirmed the Government’s understanding of this:

[...] the Government are under a statutory obligation to have the deal approved via a motion in this House. Without such approval, the Government would legally be unable to ratify the withdrawal agreement.<sup>12</sup>

Under section 13(1)(d) of the EUWA, the withdrawal agreement cannot be ratified until an Act of Parliament has been passed which contains provision to implement the withdrawal agreement. Mrs Leadsom said that in order to bring forward this legislation, the Government would need to hold the ‘meaningful vote’ as soon as possible.<sup>13</sup> However, she did not give any dates when this might take place. She indicated that the Commons would rise for the Christmas recess on 20 December 2018 and return on 7 January 2019 as already agreed, suggesting that any changes to this would be a matter for the House.<sup>14</sup> She gave an assurance that the matter would not return to the House during the week commencing 24 December 2018.<sup>15</sup> The Prime Minister stated that “the timing of the vote will be determined by the extent and nature of the discussions with the European Union”.<sup>16</sup>

With regard to the timing of the ‘meaningful vote’, section 13(2) of the EUWA specifies that:

So far as practicable, a Minister of the Crown must make arrangements for the motion mentioned in subsection (1)(b) to be debated and voted on by the House of Commons before the European Parliament decides whether it consents to the withdrawal agreement being concluded on behalf of the EU in accordance with article 50(2) of the Treaty on European Union.

No date has yet been set for the European Parliament to vote on the withdrawal agreement. A European Parliament press release stated at the end of November that: “In line with article 50 of the EU treaty, the European Parliament is set to vote on the withdrawal agreement in early 2019”.<sup>17</sup>

The Prime Minister said during the debate on her statement that “there is in legislation the issue of the 21 January date”.<sup>18</sup> The 21 January 2019 date comes into play under the EUWA in two scenarios:

- **Under section 13(7):**  
if the Prime Minister makes a statement before the end of 21 January 2019 that no agreement in principle can be reached in negotiations under article 50(2) of the Treaty on

European Union on the substance of—

- (a) the arrangements for the United Kingdom’s withdrawal from the EU, and
- (b) the framework for the future relationship between the EU and the United Kingdom after withdrawal.

- **Under section 13(10):**

if, at the end of 21 January 2019, there is no agreement in principle in negotiations under article 50(2) of the Treaty on European Union on the substance of—

- (a) the arrangements for the United Kingdom’s withdrawal from the EU, and
- (b) the framework for the future relationship between the EU and the United Kingdom after withdrawal.

In both of these scenarios, the Government would be required to make a statement setting out how it intended to proceed, and both Houses would debate this statement. Different timescales for making the statement and holding the debate would apply in each scenario—these are set out in section 13(7) to 13(13). In both scenarios where the 21 January 2019 date is engaged, Parliament would be debating a statement from the Government setting out its plans in the absence of a deal.

The Prime Minister made a written statement on 26 November to confirm:

[...] for the purposes of section 13 of the European Union (Withdrawal) Act 2018, that political agreement has been reached. I am of the opinion that an agreement in principle has been reached in negotiations under article 50(2) of the Treaty on European Union on the substance of:

- a. the arrangements for the United Kingdom’s withdrawal from the European Union, and
- b. the framework for the future relationship between the European Union and the United Kingdom after withdrawal.<sup>19</sup>

The statement would seem to indicate that sections 13(7) and 13(10) are not engaged, and the date of 21 January 2019 is not relevant since agreement in principle has been reached. Gavin Phillipson, Professor of Law at Durham University (who also works with the House of Commons Library on Brexit and constitutional issues), suggested that “the consensus seems to be” this would remain the case until or unless the Prime Minister formally told the House of Commons that she had changed her mind and there was no longer “agreement in principle” with the EU, revoking her written statement of 26 November 2018.<sup>20</sup>

In the Commons Chamber, Justine Greening (Conservative MP for Putney) put this point to Theresa May, saying:

The Prime Minister has not yet confirmed when the meaningful vote will be held. My understanding from the House of Commons Library is that now that the Government have made a statement, as she has done, that the political agreement on the withdrawal agreement and future framework has been reached, the requirement on the Government to make a statement to the House by 21 January on no deal has been superseded because of her statement today. In its view, in practice, the latest date we could have a meaningful vote is 28 March. Is this what she intends? Can I get an assurance that the delay she is talking about is a matter of days, not weeks and months?<sup>21</sup>

The Prime Minister said she did not believe that the scenario Ms Greening described was “the correct one”.<sup>22</sup> She said that “the date of 21 January has been set in legislation” and she was “conscious of the requirement that that places on the Government”.

Brigid Fowler, Senior Researcher at the Hansard Society, noted that Mrs May’s answer to Justine Greening suggested that the Prime Minister thought the 21 January deadline was still in play.<sup>23</sup> In a tweet, Dr Fowler suggested that:

If gov[ernment] is now of the view that political agreement with EU has \*not\* been reached, that we’ve effectively reverted to the negotiation phase & that the s[ection] 13(7)-(12) provisions are thus potentially back in play, it needs to clarify this urgently to the House.

In the absence of such gov[ernment] clarification, we’re just stuck at s[ection] 13(1)(b) ie we’ve got political agreement with the EU but HoC [House of Commons] approval of WA [withdrawal agreement] + Pol Dec [political declaration] has neither been given nor declined.<sup>24</sup>

Yvette Cooper (Labour MP for Pontefract and Castleford) tabled an urgent question in the Commons on 11 December 2018, to ask the Attorney General to make a statement on the Government’s duty under section 13 of the EUWA if no deal is reached by 21 January 2019.<sup>25</sup> Answering for the Government, Robin Walker, Parliamentary Under Secretary of State at the Department for Exiting the European Union, explained how the Government saw the 21 January 2019 deadline operating depending on whether or not it had a deal to put to the House for a vote:

In keeping with the clear intention of the EU (Withdrawal) Act 2018, the Government will ensure that the question of whether to accept an agreement is brought back to this House before 21 January. If Parliament accepts that deal, we will introduce the EU (Withdrawal Agreement) Bill to implement the withdrawal agreement in domestic legislation. If Parliament were to reject the deal, the Government will be required to make a statement of its proposed next steps and table a motion in neutral terms on that statement. Following the passage of the amendment to the business of the House motion last week, that motion would be amendable. So it is our clear intention that this House will consider this matter before 21 January and have the opportunity to decide on the deal. But let me also say this clearly: in the unlikely and highly undesirable circumstances that as of 21 January there is no deal before the House, the Government would bring a statement to the House and arrange for a debate as specified by the law.<sup>26</sup>

Yvette Cooper said that these assurances were not enough, as the House needed to know the Government’s legal interpretation of section 13, and that was why she had put her question to the Attorney General.<sup>27</sup> Since the Government had pulled the vote scheduled for 11 December 2018, Ms Cooper said that the House did not know when or whether a vote would come. She suggested that Mr Walker’s “warm words” were “not enough when so much is at stake”. She sought urgent assurance from the Attorney General that the Government would not try to find a loophole that there was a deal, even though the Commons had not voted on it, thereby avoiding the requirements of section 13(7)-(11), which would require the Government to make a statement by 21 January 2019. She said that this would be a “constitutional outrage”.

Mr Walker said he had set out the Government’s clear interpretation of the legislation, which was that there would be a motion before the Commons by 21 January in all the scenarios he had outlined. He said he fully expected the House would have the opportunity to vote on a deal sooner than 21 January.<sup>28</sup>

As noted above, the ‘meaningful vote’ is only one of the requirements that must be fulfilled under section 13 of the EUWA before the withdrawal agreement could be ratified, and the other requirements could have a bearing on the timing of the ‘meaningful vote’. Section 13(1) of the EUWA also requires the tabling of a debate in the Lords and the passing of legislation to implement the withdrawal agreement. Furthermore, section 13(14) of the EUWA provides that section 13 does not affect the operation of part 2 of the Constitutional Reform and Governance Act 2010 (CRAG), which deals with the ratification of treaties, in relation to the withdrawal agreement. Section 20(1) of CRAG sets out that a treaty is not to be ratified unless a minister has laid a copy before Parliament and a period of 21 sitting days has elapsed since the day after the treaty was laid before Parliament, without either House resolving that it should not be ratified. Should the Commons resolve against ratification, the minister may lay a statement indicating that the minister is of the opinion that the treaty should nevertheless be ratified and explaining why. A second period of 21 sitting days is then triggered, during which the Commons may resolve again against ratification. In such a way the Commons theoretically has the power to delay ratification indefinitely.

The Government has confirmed that the withdrawal agreement will be subject to the provisions of CRAG, and that the 21-day sitting period may take place in parallel with the passage of the legislation to implement the withdrawal agreement.<sup>29</sup> The Government has said that it intends to bring forward this bill after the ‘meaningful vote’:

If Parliament approves the Withdrawal Agreement and the framework for our future relationship, the Government will bring forward the EU (Withdrawal Agreement) Bill to give the Withdrawal Agreement domestic legal effect, as provided for in the EU (Withdrawal) Act 2018.<sup>30</sup>

The House of Commons Exiting the European Union Committee has stated that it is “essential that sufficient time is provided for proper consideration of the legislation required”.<sup>31</sup> The House of Lords Constitution Committee wrote to the Department for Exiting the European Union on 5 December to ask if the Government intended to fast-track the European Union (Withdrawal Agreement) Bill, or if it was the Government’s intention that the normal minimum intervals between stages would be adhered to.<sup>32</sup> No response from the Government has yet been published.

The Government would also need to lay the withdrawal agreement before Parliament for the purposes of CRAG in sufficient time to allow at least 21 sitting days to elapse before 29 March 2019. While the Government has said the legislation and the CRAG process could be going on at the same time, it has not stated whether it would intend to wait until after the ‘meaningful vote’ before beginning the CRAG process. The House of Commons Exiting the European Union Committee recommended that the CRAG process should commence no earlier than the introduction of the legislation in Parliament, and should not be triggered when the withdrawal agreement was laid in the House ahead of the parliamentary vote, “unless the timing of events does not allow for this”.<sup>33</sup> The Government said it “note[d] the committee’s views on this point”.<sup>34</sup> The Prime Minister’s written statement of 26 November explicitly stated that: “The laying of the withdrawal agreement before Parliament at this stage does not [...] trigger any procedures under the Constitutional Reform and Governance Act 2010”.<sup>35</sup>

The House of Commons Exiting the European Union Committee also recommended that there should be a vote on the withdrawal agreement if a resolution were tabled against it during the 21-day CRAG process.<sup>36</sup> Neither House has yet resolved against ratification of a treaty under the CRAG provisions, and there are limited options for how they can do so.<sup>37</sup> Although CRAG puts on a statutory footing Parliament’s opportunity to scrutinise treaties, and gives the Commons the power to block ratification of treaties, the Act does not require either House to debate or vote on them.<sup>38</sup> In response to the

committee, the Government said that if a motion was tabled against the withdrawal agreement during the 21-day CRAG process, it would “be considered in line with existing conventions”.<sup>39</sup> However, it also noted that if the Commons did not approve the withdrawal agreement and political declaration under section 13 of the EUWA, the CRAG process would be “irrelevant as there would be no treaty to ratify”, and that delaying the ratification of the withdrawal agreement would not legally delay or prevent the UK leaving the EU on 29 March 2019 under the terms of article 50.<sup>40</sup>

### Rescheduling the Lords Debate

Ratification of the withdrawal agreement could not proceed without the Commons giving its approval to the withdrawal agreement and political declaration; as it has not done so, the ‘meaningful vote’ would have to be rescheduled for ratification to proceed. However, section 13(1)(c) of the EUWA does not require approval from the Lords. Section 13(1)(c) requires the Government to table a take note motion, but under section 13(1)(c)(ii), the Lords would not necessarily have to have concluded its debate for the requirement for a Lords debate to be fulfilled.

Speaking on 10 December 2018, Baroness Smith of Basildon, Shadow Leader of the House of Lords, said that if the withdrawal agreement or political declaration were amended, the process under section 13(1)(c) would apply, but if no changes were made to the withdrawal agreement and political declaration and they were brought back to the Commons for approval, the Lords might not have an opportunity to debate them again:

If the Prime Minister returns to Parliament with amended agreements then your Lordships’ House will, as provided for in legislation, have a further debate and an opportunity for a further Motion on that deal but if she returns with the same arrangements—albeit unlikely—there is no legislative guarantee of a further debate.<sup>41</sup>

However, Baroness Smith said that she and Lord Taylor of Holbeach, the Government Chief Whip, had agreed that “whatever the outcome of the further negotiations there will be an opportunity for a debate on a Motion in your Lordships’ House on the withdrawal agreement and the political declaration, for this House to express its view”.<sup>42</sup> Lord Taylor said that “should the Government decide as a result of other negotiations to come forward with any further proposals, whatever they are, we will find time to debate them fully and to have motions in respect of any further issues arising”.<sup>43</sup> Lord Taylor later repeated his offer “made in good faith of providing more time for this House to consider the issue further when it returns to the Commons”.<sup>44</sup>

Lord Hannay of Chiswick (Crossbench) asked the Leader of the House to confirm that “the processes laid down in the EU Withdrawal Act have not been spent and that therefore it is not a question of giving this House a chance to just debate any other reassurances she gets, but that we have to go through the whole business laid down in the EU Withdrawal Act?”.<sup>45</sup> In response, Baroness Evans of Bowes Park said Lord Hannay was “right that specific conditions are set out in the EU Withdrawal Act”, and the Government “will abide by them”.<sup>46</sup>

<sup>1</sup> [HL Hansard, 5 December 2018, cols 977–1013](#) and [cols 1023–1108](#); and [HL Hansard, 6 December 2018, cols 1119–98](#).

<sup>2</sup> [HC Hansard, 4 December 2018 cols 733–45](#) and [cols 747–861](#); [HC Hansard, 5 December 2018, cols 899–1024](#); and [HC Hansard, 6 December 2018, cols 1081–1212](#).

<sup>3</sup> [HC Hansard, 10 December 2018, col 23](#).

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*, col 24.

<sup>6</sup> *ibid.*, col 31.

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- <sup>7</sup> [HL Hansard, 10 December 2018, col 1212.](#)
- <sup>8</sup> *ibid.*, cols 1213–15.
- <sup>9</sup> [HL Hansard, 10 December 2018, cols 1216–28.](#)
- <sup>10</sup> Donald Tusk, '[Official Twitter Account](#)', 10 December 2018.
- <sup>11</sup> Jean-Claude Juncker, '[Official Twitter Account](#)', 11 December 2018.
- <sup>12</sup> [HC Hansard, 10 December 2018, col 87.](#)
- <sup>13</sup> *ibid.*
- <sup>14</sup> [HC Hansard, 10 December 2018, col 73.](#)
- <sup>15</sup> *ibid.*, col 89.
- <sup>16</sup> [HC Hansard, 10 December 2018, col 51.](#)
- <sup>17</sup> European Parliament, '[Brexit: The Time Has Come to Back the Withdrawal Deal](#)', 29 November 2018.
- <sup>18</sup> [HC Hansard, 10 December 2018, col 29.](#)
- <sup>19</sup> House of Commons, '[Written Statement: Exiting the European Union](#)', 26 November 2018, HCWS1110.
- <sup>20</sup> Gavin Phillipson, [Personal Twitter Account](#), 10 December 2018.
- <sup>21</sup> [HC Hansard, 10 December 2018, col 43.](#)
- <sup>22</sup> *ibid.*
- <sup>23</sup> Brigid Fowler, [Personal Twitter Account](#), 10 December 2018.
- <sup>24</sup> Brigid Fowler, [Personal Twitter Account](#), 10 December 2018.
- <sup>25</sup> Labour Whips, '[Official Twitter Account](#)', 11 December 2018.
- <sup>26</sup> Parliamentlive.tv, [House of Commons, Tuesday 11 December 2018, 12:42:56.](#)
- <sup>27</sup> *ibid.*, [12:44:22.](#)
- <sup>28</sup> *ibid.*, [12:48:08.](#)
- <sup>29</sup> Department for Exiting the European Union, [Legislating for the Withdrawal Agreement between the United Kingdom and the European Union](#), July 2018, Cm 9674, p 37.
- <sup>30</sup> *ibid.*
- <sup>31</sup> House of Commons Exiting the European Union Committee, [Parliamentary Scrutiny and Approval of the Withdrawal Agreement and Negotiations on a Future Relationship](#), 28 June 2018, HC 1240 of session 2017–19, p 31.
- <sup>32</sup> House of Lords Constitution Committee, [Letter from the Chairman to Lord Callanan](#), 5 December 2018.
- <sup>33</sup> House of Commons Exiting the European Union Committee, [Parliamentary Scrutiny and Approval of the Withdrawal Agreement and Negotiations on a Future Relationship](#), 28 June 2018, HC 1240 of session 2017–19, pp 31–2.
- <sup>34</sup> House of Commons Exiting the European Union Committee, [Parliamentary Scrutiny and Approval of the Withdrawal Agreement and Negotiations on a Future Relationship: Government Response to the Committee's Sixth Report](#), 19 October 2018, HC 1641 of session 2017–19, p 5.
- <sup>35</sup> House of Commons, '[Written Statement: Exiting the European Union](#)', 26 November 2018, HCWS1110.
- <sup>36</sup> House of Commons Exiting the European Union Committee, [Parliamentary Scrutiny and Approval of the Withdrawal Agreement and Negotiations on a Future Relationship: Government Response to the Committee's Sixth Report](#), 19 October 2018, HC 1641 of session 2017–19, p 5.
- <sup>37</sup> House of Commons Library, [Parliament's Role in Ratifying Treaties](#), 17 February 2018, p 3.
- <sup>38</sup> *ibid.*, p 18.
- <sup>39</sup> House of Commons Exiting the European Union Committee, [Parliamentary Scrutiny and Approval of the Withdrawal Agreement and Negotiations on a Future Relationship: Government Response to the Committee's Sixth Report](#), 19 October 2018, HC 1641 of session 2017–19, p 5.
- <sup>40</sup> *ibid.*
- <sup>41</sup> [HL Hansard, 10 December 2018, col 1209.](#)
- <sup>42</sup> *ibid.*
- <sup>43</sup> *ibid.*, col 1210.
- <sup>44</sup> *ibid.*, col 1215.
- <sup>45</sup> *ibid.*, col 1224.
- <sup>46</sup> *ibid.*, col 1224.
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