



Further Take-Note Debate on EU Withdrawal 13 February 2019

Summary

A take note debate (a debate on a non-amendable motion) on the UK's withdrawal from the EU is scheduled to take place in the House of Lords on 13 February 2019. A debate on an amendable motion is scheduled to take place in the House of Commons on 14 February 2019. At the time of writing this briefing, the exact wording of the motion for debate in each House is not known.

The scheduling of the Commons debate is related to a commitment made by the Prime Minister on 29 January 2019 when the Commons voted in favour of a backbench amendment supported by the Government to replace the Northern Ireland backstop in the EU withdrawal agreement with "alternative arrangements to avoid a hard border". The Prime Minister said this gave her a mandate to reopen negotiations with the EU to seek legally binding changes to the withdrawal agreement. She said she intended to bring a revised deal back to the Commons for a "second meaningful vote" as soon as possible. However, if the Government had not brought back a revised deal by 13 February 2019, she said she would make a statement on that date and table an amendable motion for debate the next day. This date is a self-imposed deadline, not a statutory one under the European Union (Withdrawal) Act 2018 (EUWA). The Prime Minister did not say anything explicitly about holding a debate in the Lords at the same time, but the Leader of the House of Lords had already indicated that the Lords would have the opportunity to consider the outcome of the votes held in the Commons on 29 January 2019.

Mrs May met Jean-Claude Juncker, President of the European Commission, on 7 February 2019 for what they described as "robust but constructive talks". Mrs May outlined various options for achieving legally binding changes to the terms of the backstop to address Parliament's concerns. President Juncker said that the EU would not reopen the withdrawal agreement, but remained open to adding wording to the political declaration on the future relationship between the UK and the EU. Further talks between the two sides are ongoing, and Mrs May and President Juncker have agreed to meet again before the end of February to take stock of these discussions.

This House of Lords Library Briefing updates an earlier briefing published on 31 January 2019 which detailed debates held in the Lords and Commons under section 13 of the EUWA on 28 and 29 January 2019, and the role of the House of Lords in the next steps in the Brexit process. This new briefing repeats the content of the earlier briefing, with the addition of new material to explain the context of the scheduling of the forthcoming debates in both Houses and to provide an update on recent developments in the Brexit negotiations since 31 January 2019.

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I. Introduction

This briefing has been published in preparation for the take note debate on the UK's withdrawal from the EU which is due to take place in the House of Lords on 13 February 2019. It is an update of a briefing the House of Lords Library previously published on 31 January 2019 on [Leaving the European Union: Recent Developments and Debates Under Section 13 of the European Union \(Withdrawal\) Act 2018](#). This briefing repeats the contents of the earlier briefing, with the addition of:¹

- a section explaining how the 13 February 2019 debate relates to earlier debates in both Houses (section 2 of this briefing)
- a section on developments since 31 January 2019 (section 8 of this briefing)

2. Forthcoming Brexit Debates in Both Houses, 13 and 14 February 2019

On 13 February 2019, a 'take note' debate (a debate on a non-amendable motion) on the UK's withdrawal from the European Union is scheduled to take place in the House of Lords.² A debate on an amendable motion relating to the UK's withdrawal from the EU is also scheduled to take place in the House of Commons on 14 February 2019.³ The selection of amendments for the Commons debate will be up to the Speaker of the House of Commons. At the time of writing this briefing, the exact wording of the motion for debate in each House is not known.

These debates follow a series of earlier debates held in both Houses for the purposes of section 13 of the European Union (Withdrawal) Act 2018 (EUWA). Section 13 sets out the steps required before any withdrawal agreement agreed with the EU could be ratified as an international treaty, and what must happen next if the Government puts a deal before Parliament but fails to win the support of the House of Commons. The previous debates have been as follows:

- **Lords: 5, 6 and 10 December 2018**—The House of Lords held a debate for the purposes of section 13(1)(c) of the EUWA. This requires the Government to table a take note motion in the Lords on the withdrawal agreement and political declaration as one of the steps required before ratification of the withdrawal agreement can proceed. This debate was adjourned when the

¹ Some of the section headings used in the previous briefing have been amended in this briefing for clarity.

² Government Whips' Office, House of Lords, [Forthcoming Business](#), 6 February 2019, p 3.

³ [HC Hansard, 7 February 2019, col 420](#).

Prime Minister decided to delay the ‘meaningful vote’ in the Commons.⁴

- **Commons: 4, 5, 6 and 10 December 2018**—The House of Commons held a debate for the purposes of section 13(1)(b) of the EUWA, which requires the House of Commons to approve the withdrawal agreement and political declaration as one of the steps required before ratification of the withdrawal agreement can proceed. A vote, the so-called ‘meaningful vote’, was expected to take place on 11 December 2018, but on 10 December, the Prime Minister announced that she was going to defer the vote in order to seek further assurances from the EU about the Northern Ireland backstop arrangements in the deal.⁵
- **Lords: 9, 10 and 14 January 2019**—The House of Lords concluded its debate on the withdrawal agreement and political declaration for the purposes of section 13(1)(c) of the EUWA, and agreed without division to the Government’s take note motion.⁶ The House voted by 321 to 152—a majority of 169—in favour of a separate motion tabled by Baroness Smith of Basildon, Shadow Leader of the House of Lords. Whilst noting that it was for the Commons to determine the matter, Baroness Smith’s motion rejected a no-deal outcome and regretted that the terms of the withdrawal agreement and political declaration would “damage the future economic prosperity, internal security and global influence of the UK”.⁷
- **Commons: 9, 10, 11, 14 and 15 January 2019**—The House of Commons concluded its debate on the withdrawal agreement and political declaration for the purposes of section 13(1)(b) of the EUWA. The ‘meaningful vote’ took place on 15 January 2019, and the Commons voted by a majority of 230 not to approve the withdrawal agreement and political declaration.⁸
- **Lords: 28 January 2019**—The House of Lords held a further debate in line with the requirements of section 13 of the EUWA about what must happen in the event the Government loses a ‘meaningful vote’ on the withdrawal agreement and political declaration. The House agreed without division to the Government’s take note motion, and voted in favour of a

⁴ For more details, see: House of Lords Library, [Adjournment of the House of Lords Debate on the Withdrawal Agreement and Political Declaration](#), 11 December 2018.

⁵ [HC Hansard, 10 December 2018, col 23](#). For more details, see: House of Lords Library, [Withdrawal Agreement: Section 13\(1\)\(c\) of the European Union \(Withdrawal\) Act 2018](#), 4 January 2019.

⁶ [HL Hansard, 14 January 2019, col 118](#).

⁷ *ibid*, cols 119–22.

⁸ [HC Hansard, 15 January 2019, cols 1122–5](#). The outcome of the ‘meaningful vote’ and the events leading up to the Lords debate on 28 January 2019 and the Commons debate on 29 January 2019 are covered in more detail in the Lords Library Briefing on [Further Debate for the Purposes of Section 13 of the European Union \(Withdrawal\) Act 2018](#) (24 January 2019).

separate motion moved by Baroness Smith of Basildon calling on the Government to take all appropriate steps to ensure the UK does not leave without a deal, and to provide sufficient time in the Lords to pass legislation to implement any deal that has majority support in the Commons.⁹ This debate is covered in more detail in sections 3 and 4 of this briefing.

- **Commons: 29 January 2019**—The House of Commons held a further debate in line with the requirements of section 13 of the EUWA about what must happen in the event the Government loses the ‘meaningful vote’. The Commons voted by a majority of 16 in favour of a backbench amendment supported by the Government to replace the Northern Ireland backstop with “alternative arrangements to avoid a hard border” (the Brady amendment).¹⁰ The Commons also voted by a majority of eight in favour of an amendment rejecting the UK leaving the EU with no deal (the Spelman amendment).¹¹ This debate is covered in more detail in sections 3 and 5 of this briefing.

The Prime Minister said that the Commons’ support for the Brady amendment gave her a mandate to reopen negotiations with the EU to seek legally binding changes to the withdrawal agreement.¹² She said she intended to bring a revised deal back to the Commons for “a second meaningful vote” as soon as possible.¹³ She said that if the House did not support that deal, the Government would table an amendable motion for debate the next day. Additionally, she said that if the Government had not brought a revised deal back to the Commons by 13 February 2019, it would make a statement and table an amendable motion for debate the next day.¹⁴

Andrea Leadsom, Leader of the House of Commons, confirmed on 7 February 2019 that this remained the Government’s position:

[...] we will bring a revised deal back to this House for a second meaningful vote as soon as we possibly can. Should that not be possible by 13 February, the Government will table an amendable motion for debate on 14 February. Hon. and right hon. Members will know that the Prime Minister is currently negotiating a revised deal for the UK’s departure from the EU. She will provide an update to this House next week and I will make a further business statement if necessary as a consequence of her statement.¹⁵

⁹ [HL Hansard, 28 January 2019, cols 98 cols 118–22.](#)

¹⁰ [HC Hansard, 29 January 2019, cols 784–7.](#)

¹¹ *ibid*, cols 779–83.

¹² *ibid*, col 788.

¹³ *ibid*, col 671.

¹⁴ *ibid*.

¹⁵ [HC Hansard, 7 February 2019, col 420.](#)

The Prime Minister's commitment that—if she had no revised deal to put to Parliament—she would make a statement to the Commons on 13 February 2019 and hold a debate the following day is a self-imposed deadline. Unlike the previous debates listed above, such a debate would not be fulfilling a statutory requirement under the EUWA. However, should the Government bring a revised deal back to Parliament, the provisions of section 13(1) of the EUWA regarding the steps that must be fulfilled before a withdrawal agreement could be ratified would be engaged. This would include the need for the Government to secure the Commons' formal approval, hence the talk of a second 'meaningful vote'. A take note motion on the withdrawal agreement and political declaration would also need to be tabled in the Lords.

When the Prime Minister made the commitment to a debate in the Commons on 14 February if she had not by then brought back a revised deal for a second 'meaningful vote' under the EUWA, she did not say anything explicitly about holding a debate in the Lords around the same time. However, Baroness Evans of Bowes Park, Leader of the House of Lords, had already indicated that the Lords would be given the opportunity to consider the outcome of the votes held in the Commons on 29 January 2019. This is covered further in section 9 of this briefing, which looks at the role of the House of Lords in relation to the next steps in the Brexit process.

3. Requirement for Debates After Government Defeat in the 'Meaningful Vote'

On 15 January 2019, the House of Commons voted by a majority of 230 not to approve the withdrawal agreement and political declaration negotiated by the Government with the EU.¹⁶ Under section 13(1) of the European Union (Withdrawal) Act 2018 (the EUWA), approval from the Commons (the 'meaningful vote') is one of the steps required before the withdrawal agreement could be ratified as an international treaty. Sections 13(4)–(6) of the EUWA also set out what must happen next if the Government fails to win approval from the Commons for its Brexit deal. This includes a requirement to make a statement within 21 days of the 'meaningful vote' setting out how the Government intends to proceed and arranging for debates to take place in both Houses within seven sitting days of the statement.

Additionally, an amendment moved by Dominic Grieve (Conservative MP for Beaconsfield) before the 'meaningful vote' took place sought to speed up the timetable for what would happen next if the Government lost the vote. The Speaker's decision to allow Mr Grieve's amendment to be considered was

¹⁶ [HC Hansard, 15 January 2019, cols 1122–5](#). The outcome of the 'meaningful vote' and the events leading up to the Lords debate on 28 January 2019 and the Commons debate on 29 January 2019 are covered in more detail in the Lords Library Briefing on [Further Debate for the Purposes of Section 13 of the European Union \(Withdrawal\) Act 2018](#) (24 January 2019).

controversial.¹⁷ The Commons voted in favour of Mr Grieve's amendment by 308 to 297, a majority of 11.¹⁸ The terms of the amendment state that if the Government failed to win approval for its deal in the 'meaningful vote', it "shall table within three sitting days a motion under section 13 [of the EUWA], considering the process of exiting the European Union under article 50". Having lost the 'meaningful vote', Mrs May said that although this amendment was "not legally binding", she would "respect the will of the House" on the timetable set out in the Grieve amendment.¹⁹

The 'meaningful vote' was the largest government defeat in a century.²⁰ Following this, the Prime Minister said it was necessary to "confirm whether the Government still enjoys the confidence of the House".²¹ She said that if Labour tabled a motion of no confidence in the Government, time would be made available to debate it the following day. Jeremy Corbyn stated his belief that "the Government have lost the confidence of this House and this country" and confirmed he had tabled a motion of no confidence in the Government.²² The Commons voted on 16 January 2019 on a motion of no confidence in the Government, tabled by Labour and supported by the Scottish National Party (SNP), the Liberal Democrats, Plaid Cymru and the Green Party. The House voted against the motion by 325 votes to 306, a majority of 19.²³

In line with the requirements of sections 13(4)–(6) of the EUWA and the Grieve amendment, Theresa May made oral and written statements on 21 January 2019 setting out her intended next steps, and debates were arranged to take place in the Lords on 28 January 2019 and the Commons on 29 January 2019.²⁴

The Government made a further written statement on 24 January 2019 to

¹⁷ See for example: Jack Simson Caird, '[Brexit and the Speaker of the House of Commons: Do the Ends Justify the Means?](#)', *Verfassungsblog*, 10 January 2019; David Howarth, '[Speaker John Bercow Shows the Government's Control is on Even Shakier Ground than it Thought](#)', *Times* (£), 10 January 2019; and Mark Darcy, '[Bercow's Unprecedented Ruling Could Change the Course of Brexit](#)', BBC News, 9 January 2019. The amendment was to a government motion that was to be put 'forthwith'; such motions had been understood not to be subject to debate or amendment.

¹⁸ [HC Hansard, 9 January 2019, cols 386–90.](#)

¹⁹ [HC Hansard, 15 January 2019, col 1126.](#)

²⁰ Philip Cowley, '[Could the Vote on May's Final Deal End in an Historic Government Defeat?](#)', *Prospect*, 11 January 2019.

²¹ [HC Hansard, 15 January 2019, col 1126.](#) For information about confidence motions and the significance of commanding the confidence of the House, see: House of Commons Library, [Confidence Motions](#), 16 January 2019.

²² [HC Hansard, 15 January 2019, col 1127.](#)

²³ [HC Hansard, 16 January 2019, cols 1269–73.](#)

²⁴ [HC Hansard, 21 January 2019, cols 25–66](#); House of Commons, '[Written Statement: Statement under Section 13\(4\) of the European Union \(Withdrawal\) Act](#)', 21 January 2019, HCWS1258; [HC Hansard, 17 January 2019, cols 1319 and 1321–2](#); and Government Whips' Office, House of Lords, [Forthcoming Business](#), 17 January 2019.

“avoid any legal uncertainty” about whether it had complied with the provisions of section 13(1) of the EUWA.²⁵ Section 13(1) sets out steps the Government must take if, at the end of 21 January 2019, there was no agreement in principle in the article 50 negotiations with the EU on the arrangements for the UK’s withdrawal and the framework for its future relations with the EU. The Government noted that “[w]hile the negotiations have yielded an agreement, that agreement has not been approved by Parliament”, emphasising that “making this statement does not prejudice any further actions the Government may choose to take under section 13(1) of the European Union (Withdrawal) Act 2018 at a later date”.²⁶ Section 13(1) is the part of the EUWA which sets out how the Government must receive parliamentary approval for a withdrawal agreement and political declaration before a withdrawal agreement could be ratified.

In her statement of 21 January 2019, the Prime Minister summarised the issues that had been at the centre of the cross-party conversations she had held since securing the confidence of the House of Commons in a vote on 16 January 2019.²⁷ On the basis of these discussions, she concluded that three “key changes” were needed in the Government’s approach:²⁸

- The Government would be “more flexible, open and inclusive” in its engagement with Parliament regarding the negotiation of the UK’s future relationship with the EU.
- The Government would “embed the strongest possible protections on workers’ rights and the environment”.
- The Government would “work to identify how we can ensure that our commitment to no hard border in Northern Ireland and Ireland can be delivered in a way that commands the support of this House and the European Union”.

4. Lords Debate on 28 January 2019

On 28 January 2019, the House of Lords debated the following motion, moved by Baroness Evans of Bowes Park, Leader of the House:

That this House, in accordance with the provisions of section 13(6)(b)

²⁵ House of Commons, [‘Written Statement: Statement under Section 13\(1\)\(a\) of the European Union \(Withdrawal\) Act’](#), 24 January 2019, HCWS1271.

²⁶ House of Commons, [‘Written Statement: Statement under Section 13\(4\) of the European Union \(Withdrawal\) Act’](#), 21 January 2019, HCWS1258.

²⁷ [HC Hansard, 21 January 2019, cols 25–66](#). The Lords Library Briefing on [Further Debate for the Purposes of Section 13 of the European Union \(Withdrawal\) Act 2018](#) (24 January 2019), covers the content of the statement in greater detail. The written statement of 21 January 2019 repeated the text of the Prime Minister’s oral statement but also set out some additional procedural steps the Government intended to take in relation to section 13(1) of the EUWA.

²⁸ [HC Hansard, 21 January 2019, col 28](#).

of the European Union (Withdrawal) Act 2018, takes note of the Written Statement titled “Statement under Section 13(4) of the European Union (Withdrawal) Act 2018”, made on 21 January, and of the Written Statement titled “Statement under Section 13(11)(a) of the European Union (Withdrawal) Act 2018”, made on 24 January.²⁹

The relevant sections of the EUWA require that the debate in the House of Lords is on a ‘take note’ motion. The House of Lords *Companion to the Standing Orders* states that “‘Take note’ motions are not amendable”.³⁰ The House agreed to Baroness Evans’s motion without division.³¹

Alongside the government motion, the House also debated a motion moved by Baroness Smith of Basildon, Leader of the Opposition:

That this House, noting both its resolution of 14 January and the resolution of the House of Commons of 15 January, calls on Her Majesty’s Government to take all appropriate steps to ensure that (1) the United Kingdom does not leave the European Union without an agreement with the European Union, and (2) sufficient time is provided for this House to ensure the timely passage of legislation necessary to implement any deal or proposition that has commanded the support of the majority of the House of Commons.

On 14 January 2019, the House of Lords had voted by 321 to 152—a majority of 169—in favour of another motion tabled by Baroness Smith which, whilst noting that it was for the Commons to determine the matter, rejected a no-deal outcome and regretted that the terms of the withdrawal agreement and political declaration would “damage the future economic prosperity, internal security and global influence” of the UK.³² It was on 15 January 2019 that the Commons declined to approve the withdrawal agreement and political declaration.³³

Speaking to her new motion on 28 January 2019, Baroness Smith said it “reiterate[d] the stated position” of the House of Lords “on rejecting a no deal Brexit”, and “if the House of Commons agrees a course of action that requires new legislation, makes it clear that both the Government and this House should facilitate its passage”.³⁴ The Lords voted in favour of Baroness Smith’s motion by 283 to 131, a majority of 152.³⁵

²⁹ [HL Hansard, 28 January 2019, cols 916–86.](#)

³⁰ House of Lords, [Companion to the Standing Orders and Guide to the Rules of Proceedings](#), 2017, p 87, para 6.60.

³¹ [HL Hansard, 28 January 2019, col 98.](#)

³² [HL Hansard, 14 January 2019, cols 118–22.](#)

³³ House of Commons, [Votes and Proceedings](#), 15 January 2019.

³⁴ [HL Hansard, 28 January 2019, col 921.](#)

³⁵ *ibid*, cols 984–6.

The House of Lords *Companion to the Standing Orders* explains that motions—such as Baroness Smith’s motion—which are not ‘take note’ motions are resolutions.³⁶ It notes that:

Resolutions may be put down in cases where a member wishes the House to come to a definite decision on a subject, if necessary on a vote. A resolution, if passed, constitutes the formal opinion or decision of the House on the matter.³⁷

5. Commons Debate on 29 January 2019

5.1 Debate on an Amendable Motion

The Commons debate on 29 January 2019 took place on a motion that the House had considered the Government’s written statements of 21 and 24 January 2019, but unlike in the Lords, the Commons motion was amendable. The relevant sections of the EUWA required the Government to move a motion “in neutral terms”. In the House of Commons, generally a motion expressed in neutral terms is not amendable. Commons standing order 24B provides that:

Where, in the opinion of the Speaker or the Chair, a motion, That this House, or as the case may be, the committee has considered the matter, is expressed in neutral terms, no amendments to it may be tabled.³⁸

However, in December the Commons voted by 321 votes to 299 (a majority of 22) in favour of an amendment tabled by Dominic Grieve that means standing order 24B does not apply to government motions tabled under section 13 of the EUWA.³⁹ This has the effect of making such motions amendable. As with the Grieve amendment agreed in January, the Speaker’s decision to allow this amendment to be considered by the House attracted some comment.⁴⁰

The Speaker selected seven amendments for debate on 29 January 2019; two were agreed to and the others were defeated.

³⁶ House of Lords, [Companion to the Standing Orders and Guide to the Rules of Proceedings](#), 2017, p 86, para 6.56.

³⁷ *ibid*, p 87, para 6.57.

³⁸ House of Commons, ‘[Standing Orders 2018](#)’, 1 May 2018.

³⁹ [HC Hansard, 4 December 2018, cols 741–5](#).

⁴⁰ Jack Simson Caird, ‘[Brexit and the Speaker of the House of Commons: Do the Ends Justify the Means?](#)’, *Verfassungsblog*, 10 January 2019.

5.2 Brady Amendment: Northern Ireland Backstop and 'Alternative Arrangements'

The Commons voted by 317 to 301—a majority of 16—in favour of an amendment moved by Sir Graham Brady (Conservative MP for Altrincham and Sale West) which “requires the Northern Ireland backstop to be replaced with alternative arrangements to avoid a hard border; supports leaving the European Union with a deal and would therefore support the withdrawal agreement subject to this change”.⁴¹

During the debate, the Prime Minister spoke in favour of this amendment, arguing that it would:

[...] give the mandate I need to negotiate with Brussels an arrangement that commands a majority in this House—one that ensures we leave with a deal and addresses the House’s concerns, while guaranteeing no return to the hard border between Northern Ireland and Ireland.⁴²

She said that she would seek to negotiate with the EU “a significant and legally binding change to the withdrawal agreement”, and “not a further exchange of letters”.⁴³ Mrs May had delayed the original date of the ‘meaningful vote’ while she sought assurances from the EU that the Northern Ireland backstop would not become a permanent arrangement, a key concern of critics of the withdrawal agreement. The EU offered some clarifications and assurances in an exchange of letters between Mrs May, Donald Tusk, President of the European Council, and Jean-Claude Juncker, President of the European Commission, published on 14 January 2019, but it was not prepared to make any changes to the negotiated text of the withdrawal agreement.⁴⁴

Theresa May acknowledged that negotiating the legally binding changes to the withdrawal agreement that she sought would “not be easy” as there was “limited appetite among our European partners” to re-open the withdrawal agreement.⁴⁵ However, she argued that by agreeing to the Brady amendment, the Commons would provide her with a mandate that would allow her to secure such a change. She rejected the suggestion that the EU would “simply [...] not budge under any circumstances”, arguing that it had

⁴¹ [HC Hansard, 29 January 2019, cols 784–7.](#)

⁴² *ibid.*, col 678.

⁴³ *ibid.*

⁴⁴ Department for Exiting the European Union, ‘[Exchange of Letters Between the UK and EU on the Northern Ireland Backstop](#)’, 14 January 2019. For a detailed analysis of the exchange of letters, see: House of Commons Library, [EU Assurances to the UK on Brexit](#), 16 January 2019.

⁴⁵ [HC Hansard, 29 January 2019, col 678.](#)

already made concessions and suggesting that it would do so again as “neither side in this negotiation wants to see the UK leave without a deal”.⁴⁶ She said that voting for the Brady amendment was “a vote to tell Brussels that the current nature of the backstop is the key reason the House cannot support this deal”.⁴⁷

Following the Commons’ approval of the Brady amendment, Mrs May said it was “now clear that there is a route that can secure a substantial and sustainable majority in this House for leaving the EU with a deal”.⁴⁸ She said she would take this mandate forward and seek to obtain legally binding changes to the withdrawal agreement to deal with concerns about the backstop, whilst guaranteeing no return to a hard border between Northern Ireland and Ireland.

However, MPs expressed concerns during the debate that the Brady amendment was not clear about what “alternative arrangements” should replace the Northern Ireland backstop. For example, Lady Sylvia Hermon (Independent MP for North Down) suggested that the wording was “nebulous”, and the Prime Minister had “a duty to spell out to this House before we vote what those alternative arrangements are”.⁴⁹ Jeremy Corbyn, Leader of the Opposition, said that there were some signs the EU could show “flexibility” if the UK’s red lines for the negotiation changed, but there was “still [...] no clarity” on what changes the Prime Minister wanted to make to the backstop, nor “which red lines will change to allow that to happen”.⁵⁰

Mrs May argued that the “crucial concept” within the Brady amendment was the concept of alternative arrangements, which had “already been accepted by the EU as a way out of the backstop”.⁵¹ She noted that the term “alternative arrangements” was already recognised in the withdrawal agreement and political declaration.⁵²

Two recitals at the beginning of the Northern Ireland protocol of the withdrawal agreement mention “alternative arrangements”:

RECALLING the Union’s and the United Kingdom’s intention to replace the backstop solution on Northern Ireland by a subsequent agreement that establishes alternative arrangements for ensuring the absence of a hard border on the island of Ireland on a permanent

⁴⁶ [HC Hansard, 29 January 2019, col 681.](#)

⁴⁷ *ibid*, col 682.

⁴⁸ *ibid*, col 788.

⁴⁹ *ibid*, col 674.

⁵⁰ *ibid*, col 690.

⁵¹ *ibid*, col 680.

⁵² *ibid*, col 675.

footing.⁵³

and:

RECALLING that the Joint Report from the negotiators of the European Union and the United Kingdom Government on progress during phase I of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union of 8 December 2017 outlines three different scenarios for protecting North-South cooperation and avoiding a hard border, but that this Protocol is based on the third scenario of maintaining full alignment with those rules of the Union's internal market and the customs union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement, to apply unless and until an alternative arrangement implementing another scenario is agreed.⁵⁴

The Government's 'explainer' document on the withdrawal agreement stated that the recitals recognised the UK and EU's common intention "that the backstop should be superseded by a subsequent agreement with alternative arrangements to achieve its objectives".⁵⁵ It also explained that the backstop was a guarantee that "even in the unlikely event that our future relationship with the EU is not in place by the end of the implementation period, there will be no hard border between Northern Ireland and Ireland or a splitting of the UK customs territory".⁵⁶

The political declaration also recalls the parties' "determination to replace the backstop solution on Northern Ireland by a subsequent agreement that establishes alternative arrangements for ensuring the absence of a hard border on the island of Ireland on a permanent footing".⁵⁷ It also refers to the parties considering "facilitative arrangements and technologies" when "developing any alternative arrangements for ensuring the absence of a hard border on the island of Ireland on a permanent footing".⁵⁸ It gives the following examples of "facilitative arrangements and technologies":

[...] mutual recognition of trusted traders' programmes,
administrative cooperation in customs matters and mutual assistance,

⁵³ HM Government, [Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 25 November 2018, p 301.

⁵⁴ *ibid*, p 303.

⁵⁵ HM Government, [Explainer for the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), 14 November 2018, p 40.

⁵⁶ *ibid*, p 39.

⁵⁷ HM Government, [Political Declaration Setting Out the Framework for the Future Relationship Between the European Union and the United Kingdom](#), 25 November 2018, p 5.

⁵⁸ *ibid*, p 7.

including for the recovery of claims related to taxes and duties, and through the exchange of information to combat customs fraud and other illegal activity.⁵⁹

Mrs May also said that other MPs had suggested ways out of the backstop such as making it time limited or securing a unilateral exit clause.⁶⁰ She stated that the Government would “study closely” such proposals.⁶¹ Prior to the ‘meaningful vote’, when updating the Commons on the assurances she had received from the EU about the backstop, Mrs May said that the EU was not prepared to agree to proposals such as a unilateral exit mechanism or a time limit to the backstop, and that attempting to make such changes to the withdrawal agreement “would have risked other EU member states attempting to row back on the significant wins we have already achieved, such as on control over our waters or on the sovereignty of Gibraltar”.⁶²

Mrs May also said that she was “engaging [...] sincerely and positively” with a “serious proposal” put forward by Nicky Morgan (Conservative MP for Loughborough), Kit Malthouse (Conservative MP for North West Hampshire and Minister of State for Housing, Communities and Local Government), Steve Baker (Conservative MP for Wycombe) and Jacob Rees-Mogg (Conservative MP for North East Somerset).⁶³

Writing in the *Telegraph*, Nicky Morgan and Steve Baker described their plan as follows:

For those who voted Leave, the backstop drove a stake through the heart of their dream of an independent trade and regulatory policy for the UK. So our plan replaces it with a new backstop protocol. It would solve people’s concerns about a hard border in Northern Ireland without pre-empting negotiations on our future relationship or putting in danger our precious Union. In fact, it would give us all an incentive to agree a trade deal with the EU more quickly.

And for those who voted Remain, the Implementation Period is key. If we left without a deal at the end of March, there might not be one and our colleagues are not reassured that World Trade Organisation rules provide all the answers. So our plan will deliver a smooth transition with an additional year of the implementation period, making it last until no later than the end of December 2021.

⁵⁹ HM Government, [Political Declaration Setting Out the Framework for the Future Relationship Between the European Union and the United Kingdom](#), 25 November 2018, p 7.

⁶⁰ [HC Hansard, 29 January 2019, cols 680.](#)

⁶¹ *ibid*, cols 680–1.

⁶² [HC Hansard, 14 January 2019, col 826](#)

⁶³ [HC Hansard, 29 January 2019, cols 679.](#)

We believe this combination of measures can command a majority in the Commons. Parliament and our country are united in wanting a deal.

But if a deal can't be agreed, we have a workable Plan B: a triple safety net that will guarantee continuity if we leave the EU without a Withdrawal Agreement. It includes bilateral cooperation on security as well as a UK offer of a 'GATT 24' WTO-compliant standstill on trade with no tariffs, no quantitative restrictions and no new non-tariff barriers. And we will offer to pay our financial contributions and international public law liabilities in return for an implementation period (again, no later than December 2021).⁶⁴

However, doubts have been expressed about the feasibility of the proposals, dubbed the 'Malthouse Compromise'. The House of Commons Library noted that key elements of the first part of the plan—to replace the backstop with an acceptable indefinite solution—were criticised when they first set out in a paper entitled *A Better Deal*, published in December 2018 and supported by the Democratic Unionist Party (DUP) and the European Research Group (ERG), a group of backbench Conservative MPs:⁶⁵

In summary, *A Better Deal* argues for a time-limit on a 'backstop' of 10 years, as opposed to the indefinite backstop in the Withdrawal Agreement. It suggests this 'backstop' will avoid a hard border through the conclusion of a free trade agreement (rather than a single customs territory) and the operation of mutual recognition of standards, customs facilitation processes, and promises to not put in place border infrastructure. The [Malthouse Compromise] adds to this a longer transition period, so as to give more time for negotiations that would make the 10-year backstop unnecessary anyway.

A Better Deal was not well received by border experts. However, the substance of the proposals—that the way to avoid a "hard border" is by ensuring the UK recognises the EU's rules and the EU recognises the UK's rules, and to use technology instead of physical checks—were not new in December 2018. 'Max Fac', as it was known when it was one of the two options that the UK Government was pitching to Brussels, was dismissed by the EU [...]⁶⁶

⁶⁴ Steve Baker and Nicky Morgan, '[Our Compromise Can Command a Majority](#)', *Telegraph* (£), 29 January 2019.

⁶⁵ House of Commons Library, '[The 'Malthouse Compromise': What is 'Plan C'?](#)', 29 January 2019.

⁶⁶ *ibid.*

With regard to the ‘Plan B’ element of the backstop, the House of Commons Library noted:

Key to this proposal is a so-called ‘interim free trade agreement’, which proponents argue will allow the UK and the EU to keep trading as if the UK is a Member State while negotiating a future trade agreement. The majority of trade experts believe that WTO law does not actually allow this. Even if the EU supports ‘Plan B’, it is likely there will be problems with it under WTO law.⁶⁷

5.3 Spelman Amendment: Rejecting No Deal

The Commons also voted by 318 to 310—a majority of eight—in favour of amendment moved by Dame Caroline Spelman (Conservative MP for Meriden) to reject the UK leaving the EU without a withdrawal agreement and framework for a future relationship.⁶⁸ Dame Caroline said that she had tabled the amendment because “a no-deal Brexit would have not just a huge economic cost, but a huge human cost”.⁶⁹ She argued that taking no deal off the table could enable the Government to obtain concessions from the EU:

The Government say that it is not their policy to leave with no deal, so let us rule it out. The threat of no deal has been used as a stick to get more concessions, but in my view that card has played out. It has not secured the needed changes, as on the backstop, for example. So as a former negotiator, I would flip that card round the other way as a carrot, offering to take no deal off the table in return for concessions that will get the deal over the line.⁷⁰

Jeremy Corbyn said that the Labour Party backed amendments that “attempt to rule out this Government’s reckless option of allowing the UK to crash out without a deal”, which “everyone bar the Prime Minister accepts [...] would be disastrous”.⁷¹

The Prime Minister said that she “appreciated[d] the spirit” of Dame Caroline’s amendment, as she also wanted to avoid leaving without a deal.⁷² However, she argued that “unless we are to end up with no Brexit at all, the only way to avoid no deal is to agree a deal”.

Although the Commons agreed to the Spelman amendment, it does not bind

⁶⁷ House of Commons Library, [‘The ‘Malthouse Compromise’: What is ‘Plan C?’](#), 29 January 2019.

⁶⁸ [HC Hansard, 29 January 2019, cols 779–83](#).

⁶⁹ *ibid*, col 719.

⁷⁰ *ibid*, col 720.

⁷¹ *ibid*, col 688.

⁷² *ibid*, col 670.

the Government or the EU, or change the law. The debate motion as amended by the Brady and Spelman amendments became a resolution of the House of Commons. In a recent report on the status of resolutions of the House of Commons, the Public Administration and Constitutional Affairs Committee concluded that they have political significance, but not legal force:

Resolutions of the House of Commons are the expression of the will of the elected representatives of the United Kingdom. Resolutions by themselves may not have legal effect, but they can have political effect. As such, resolutions should be treated seriously by the Government acknowledging that the Government must retain the confidence of the House of Commons to remain in office.⁷³

A resolution of the House of Commons does not bind the EU to a particular course of action, such as agreeing to extend the article 50 negotiating period or to amending the withdrawal agreement. Nor can a resolution of the House of Commons prevent the EU treaties ceasing to apply to the UK on 29 March 2019, which is what happens by default under article 50 unless the two-year negotiating period is extended with the unanimous agreement of the EU member states, or the UK revokes its withdrawal notification. The provisions of the EUWA establish 29 March 2019 as exit day in domestic law; this is not changed by the Commons agreeing to the Spelman amendment.

In response to the Spelman amendment being agreed, the Prime Minister accepted that the Commons had “reconfirmed its view that it does not want to leave the EU without a withdrawal agreement and future framework”.⁷⁴ She repeated that she did not want to leave without a deal, but she pointed out that “simply opposing no deal is not enough to stop it”. She said the Government would now “redouble” its efforts to get a deal the Commons could support.

5.4 Amendments Defeated

The other amendments selected by the Speaker for decision by the Commons were all defeated, as follows:

Amendment (a) *Jeremy Corbyn (Leader of the Opposition)*

Amendment (a) would have required the Government to secure sufficient time for Parliament to consider and vote on options to prevent the UK leaving the EU with no deal, with those options to include: negotiating

⁷³ House of Commons Public Administration and Constitutional Affairs Committee, [Status of Resolutions of the House of Commons](#), 7 January 2019, HC 1587 of session 2017–19, p 12.

⁷⁴ [HC Hansard, 29 January 2019, col 788](#).

changes to the withdrawal agreement and political declaration to secure a permanent customs union with the EU, a strong relationship with the single market, and dynamic alignment on rights and standards to command a majority in the Commons; and legislating to hold a public vote on a deal or proposition that has commanded a majority in the Commons.

Defeated: 327 votes to 296 (a majority of 31).⁷⁵

Amendment (o) Ian Blackford (Westminster Leader of the SNP)

Amendment (o) called for the Government to seek an extension of the article 50 negotiating period; agreed that leaving with no deal should be ruled out; and recognised that Scotland should not be taken out of the EU against its will.

Defeated: 327 votes to 39 (a majority of 288).⁷⁶

Amendment (g) Dominic Grieve (Conservative MP for Beaconsfield)

Amendment (g) would have enabled the House of Commons, rather than the Government, to control the scheduling of business for six Tuesdays in February and March. Mr Grieve explained that his amendment would have meant there would be “a motion in neutral terms to start the day which is about looking at Brexit and what is going on, then members of parliament can table amendments for consideration which can be turned into resolutions of the House”.⁷⁷

Defeated: 321 votes to 301 (a majority of 20).⁷⁸

Amendment (b) Yvette Cooper (Labour MP for Normanton, Pontefract and Castleford)

Amendment (b) would have ensured parliamentary time for Yvette Cooper’s private member’s bill to be debated on 5 February, if a business motion was tabled by at least ten MPs representing at least four different parties. Ms Cooper’s bill provided that if the Commons did not approve a deal by 26 February 2019, it would have to

⁷⁵ [HC Hansard, 29 January 2019, cols 757–61.](#)

⁷⁶ [ibid](#), cols 762–4.

⁷⁷ ‘Grieve Explains How His Amendment Would Work’ [entry at 12:37] in Andrew Sparrow, ‘May Set to Reject Calls for Free Vote on Amendment Designed to Block No-Deal Brexit—As It Happened’, *Guardian*, 22 January 2019.

⁷⁸ [HC Hansard, 29 January 2019, cols 765–9.](#)

decide no later than 26 February 2019 whether to direct the Prime Minister to seek an extension of the article 50 negotiating period until 31 December 2019. If the Commons decided in favour of extending article 50, the bill would oblige the Prime Minister to make the request to the EU.⁷⁹

Defeated: 321 votes to 298 (a majority of 23).⁸⁰

Amendment (j) Rachel Reeves (Labour MP for Leeds West)

Amendment (j) would have required the Prime Minister to seek an extension of the article 50 negotiating period if the Commons had not approved a deal by 26 February 2019.

Defeated: 322 votes to 290 (a majority of 32).⁸¹

6. Prime Minister Sets Out Next Steps, January 2019

During and after the debate, Theresa May set out the further steps she intended to take. Stating that the Brady amendment gave her a mandate to seek legally binding changes to the withdrawal agreement on the Northern Ireland backstop, she said that she and her colleagues would talk to the EU about how to address the Commons' views.⁸²

Mrs May said that she intended to bring a revised deal back to the Commons for “a second meaningful vote” as soon as possible.⁸³ She said that if the House did not support that deal, the Government would table an amendable motion for debate the next day. Additionally, she said that if the Government had not brought a revised deal back to the Commons by 13 February 2019, it would make a statement and table an amendable motion for debate the next day.⁸⁴

Mrs May repeated that the cross-party talks she had held since losing the ‘meaningful vote’ had shown her that the Government needed to be “more flexible, open and inclusive” in engaging the Commons in its approach to

⁷⁹ The House of Commons Library briefing [European Union \(Withdrawal\) \(No 3\) Bill 2017–19](#) (23 January 2019), contains further information about Ms Cooper’s bill. Without an amendment to the Commons’ usual rules for the scheduling of business, the bill is unlikely to secure parliamentary time to make further progress.

⁸⁰ [HC Hansard, 29 January 2019, cols 770–4.](#)

⁸¹ *ibid.*, cols 775–8.

⁸² *ibid.*, col 788.

⁸³ *ibid.*, col 671.

⁸⁴ *ibid.*

negotiating a future partnership with the EU.⁸⁵ In a previous statement to the House, she had given an undertaking to consult the Commons on the negotiating mandate, including “harnessing the knowledge of its select committees”, and proposed delivering confidential committee sessions to “ensure Parliament has the most up to date information while not undermining the negotiations”.⁸⁶ She said that the Secretary of State for Exiting the European Union would work further on this issue in the coming week.⁸⁷

The Prime Minister also reiterated her intention to “embed the strongest possible protections for workers’ rights and the environment” so that there would be no lowering of standards in relation to employment, the environment or health and safety after Brexit.⁸⁸ She said that the Government would ensure that after exit day, the Commons had the opportunity to consider any new EU measure that strengthens any of those protections. She said that the Government would consider legislation “where necessary” to ensure that these commitments were binding. She promised that the Secretary of State for Business, Energy and Industrial Strategy would “intensify” work with MPs and trade unions on this matter.⁸⁹

In light of the Commons’ approval of the Spelman amendment, Mrs May said she would invite Dame Caroline, Jack Dromey (Labour MP for Birmingham, Erdington)—a co-signatory to that amendment—and other MPs who had also tabled amendments rejecting no deal to discussions with her on how to avoid a no-deal exit by securing an agreement.⁹⁰

Mrs May also repeated her offer to Jeremy Corbyn to meet to “see whether we can find a way forward”.⁹¹ When Mrs May invited the leaders of other political parties to meet her after she lost the ‘meaningful vote’, Mr Corbyn stated that the Labour Party would not engage in talks with the Government until it “remove[d], clearly and once and for all, the prospect of the catastrophe of a no deal”.⁹² In response to the Prime Minister’s renewed invitation, Mr Corbyn said that now the Commons had “emphatically voted to reject the no-deal option that the Prime Minister was supporting”, he was prepared to meet her to put forward Labour’s point of view about the kind

⁸⁵ [HC Hansard, 29 January 2019, col 677.](#)

⁸⁶ [HC Hansard, 21 January 2019, cols 26–7.](#) In the repeat of the statement in the Lords, Baroness Evans of Bowes Park, Leader of the House of Lords, stated that the Government would seek to extend this confidential access to documents to Lords committees as well ([HL Hansard, 21 January 2019, col 566](#)).

⁸⁷ [HC Hansard, 29 January 2019, col 788.](#)

⁸⁸ *ibid*, cols 677–8.

⁸⁹ *ibid*, col 788.

⁹⁰ *ibid*.

⁹¹ *ibid*.

⁹² [HC Hansard, 16 January 2019, col 1273.](#)

of agreement it wanted with the EU.⁹³

7. EU Response, January 2019

Shortly after the Commons debate concluded on 29 January 2019, a spokesman for Donald Tusk, President of the European Council, issued a statement.⁹⁴ It “welcome[d] and share[d] the UK Parliament’s ambition to avoid a no deal scenario”. It also restated the EU’s position that the withdrawal agreement was “the best and only way to ensure an orderly withdrawal”, that “the backstop is part of the withdrawal agreement and the withdrawal agreement is not open for renegotiation”. However, the EU would be “prepared to reconsider its offer and adjust the content and the level of ambition of the political declaration, whilst respecting its established principles” if the UK’s intentions for the future partnership changed. The statement said that the EU “would stand ready” to consider any “reasoned request” from the UK for an extension to the article 50 negotiating period. At the same time, it would continue its preparations for all outcomes, including a no-deal scenario, and would continue with its ratification processes for the withdrawal agreement. The statement “urge[d] the UK Government to clarify its intentions with respect to its next steps as soon as possible”.

Speaking in a European Parliament debate on Brexit on 30 January 2019, Jean-Claude Juncker, President of the European Commission, said that the votes in the Commons did not change the fact that the withdrawal agreement was “the best and only deal possible”, and it would not be renegotiated.⁹⁵ He said the debate had shown that the Commons “is against many things”, “against a no-deal Brexit” and “against the backstop”, but the EU still did “not know what exactly the House of Commons is actually for”. He explained that “the concept of ‘alternative arrangements’ is not new” and recalled that in their exchange of letters with the Prime Minister before the ‘meaningful vote’, he and President Tusk had committed to exploring it further as a matter of priority. However, he argued that “a concept is not a plan. It is not an operational solution”. He said that he would continue to be in close contact with the Prime Minister and would listen to her ideas, but he would make clear to her the EU’s position.

In the same debate, Michel Barnier, the EU’s chief Brexit negotiator, defended the backstop, describing it as a “realistic solution” and “pragmatic

⁹³ [HC Hansard, 29 January 2019, col 789.](#)

⁹⁴ [‘Backstop Not Open for Renegotiation’, Says EU](#), in Andrew Sparrow, [‘As It Happened—MPs Vote for Brady’s Brexit Amendment to Renegotiate Backstop’](#), *Guardian*, 29 January 2019.

⁹⁵ European Commission, [‘Speeches by President Juncker and Chief Negotiator Michel Barnier at the Plenary Session of the European Parliament on the Occasion of the Debate on the United Kingdom’s Withdrawal from the EU’](#), 30 January 2019.

response to the unique situation on the island of Ireland”.⁹⁶ He said it had taken two years to find a solution which resolved several demands—both sides wanted to avoid the return of a hard border in Ireland; the UK wanted to keep Northern Ireland and Great Britain in a single customs territory; and the EU wanted to preserve the integrity of its single market. Mr Barnier reiterated that the EU would “do nothing to weaken [its] single market”, but it was “open to alternative arrangements”. However, he stated that “nobody today—on either side—is able to clarify precisely what these alternative arrangements are operationally and how they would effectively achieve the objectives of the backstop”. He rejected the suggestion of introducing a time limit or a unilateral exit mechanism to the backstop, saying that it would “remove the meaning of the backstop, which is an insurance policy”.

8. Recent Developments, February 2019

8.1 Work on ‘Alternative Arrangements’ Proposals

According to press reports, the Prime Minister has tasked Stephen Barclay, Secretary of State for Exiting the European Union, to work on proposals for ‘alternative arrangements’, including chairing a working group made up of MPs involved with the Malthouse Compromise proposal.⁹⁷

Geoffrey Cox, the Attorney General, has reportedly been asked by the Prime Minister to come up with ideas for a time limit or unilateral exit mechanism from the backstop and to advise MPs on whether these proposals would be legally binding. Mr Cox is scheduled to meet his Irish counterpart, Seamus Woulfe, for discussions on 8 February 2019.⁹⁸

8.2 Prime Minister’s Northern Ireland Speech

On 5 February 2019, the Prime Minister made a speech in Belfast. She said she knew that many people in Northern Ireland and across the island of Ireland were worried about what Parliament’s rejection of the withdrawal deal would mean for them.⁹⁹ She therefore affirmed her commitment to the people of Northern Ireland, to the Belfast/Good Friday Agreement and her “unshakeable” commitment to “delivering a Brexit that ensures no return to a hard border”. She said she had agreed to the backstop in the withdrawal agreement because she “accepted the need for an insurance policy or

⁹⁶ European Commission, [‘Speeches by President Juncker and Chief Negotiator Michel Barnier at the Plenary Session of the European Parliament on the Occasion of the Debate on the United Kingdom’s Withdrawal from the EU’](#), 30 January 2019.

⁹⁷ George Parker, [‘Theresa May is Warned of ‘Trouble Ahead’ by Tory Eurosceptics’](#), *Financial Times* (£), 3 February 2019. For further information about the Malthouse Compromise, see section 5.2 of this briefing.

⁹⁸ *Telegraph* (£), [‘Brexit Latest News: Theresa May Set to Meet Irish PM Leo Varadkar for Talks on Backstop’](#), 8 February 2019.

⁹⁹ Prime Minister’s Office, [‘PM Speech in Belfast: 5 February 2019’](#), 5 February 2019.

bridging arrangement to guarantee no hard border” if the future relationship between the UK and the EU was not ready in time at the end of the transition period, and recognised that “such a policy had to deliver legal certainty”.

She said she knew that the prospect of changing the backstop and reopening the withdrawal agreement “creates real anxieties” in Northern Ireland and Ireland, and so she was “determined to work towards a solution that can command broader support from across the community in Northern Ireland”. She emphasised that while she had said technology could “play a part” and the Government was looking at “alternative arrangements” they must be ones that “can be made to work for the particular circumstances of Northern Ireland”.

Answering questions after her speech, Mrs May made clear that she was seeking changes to the backstop, not to remove completely an ‘insurance policy’ against a return to a hard border:

I’m not proposing to persuade people to accept a deal that does not contain that insurance policy for the future. What Parliament has said is that they believe there should be changes made to the backstop. And it is in that vein, in that light, that we are working with politicians across Westminster, across the House of Commons—but also we will be working with others, with the Irish Government and with the EU—to find a way that enables us to maintain our commitments that we have set very clearly for no hard border, but to do it in a way that provides a withdrawal agreement and a political declaration for the future that can command support across the House of Commons, and therefore that we will be able to ratify with the European Union.¹⁰⁰

8.3 Prime Minister’s Visit to Brussels

Mrs May travelled to Brussels on 7 February 2019 for meetings with Jean-Claude Juncker, President of the European Commission, Donald Tusk, President of the European Council, Antonio Tajani, President of the European Parliament and Guy Verhofstadt, the European Parliament’s Brexit Coordinator. Mrs May and President Juncker released a joint press statement, in which they said their talks had been “held in a spirit of working together”.¹⁰¹ The joint statement reported that the Prime Minister had described to President Juncker the “context in the UK Parliament” and the “motivation” behind the Commons vote “seeking a legally binding change to the terms of the backstop”. She raised with President Juncker “various

¹⁰⁰ Andrew Sparrow, [‘Brexit: May Says She Wants Changes to the Backstop, Not Removal—Politics Live’](#) [see entry at 15:41], *Guardian*, 5 February 2019.

¹⁰¹ Prime Minister’s Office, [‘Joint Statement on Behalf of the Prime Minister and President Juncker’](#), 7 February 2019.

options for dealing with these concerns in the context of the withdrawal agreement in line with her commitments to the Parliament”.

According to the joint statement, President Juncker underlined that the EU27 would not reopen the withdrawal agreement, which was “a carefully balanced compromise between the European Union and the UK, in which both sides have made significant concessions to arrive at a deal”. However, President Juncker expressed his openness to add wording to the political declaration in order to be “more ambitious in terms of content and speed when it comes to the future relationship”. President Juncker highlighted that any solution would have to be agreed by the EU27 member states and the European Parliament.

The joint statement described the discussions as “robust but constructive”. It concluded by saying that Mrs May and President Juncker had agreed their teams should hold talks as to whether a way through could be found that would “gain the broadest possible support in the UK Parliament” while respecting the EU’s negotiating guidelines agreed by the European Council. The joint statement said that Mrs May and President Juncker will meet again before the end of February to take stock of these discussions.

Mrs May is due to meet the Irish Taoiseach, Leo Varadkar, on 8 February 2019 for talks about the backstop.¹⁰² Stephen Barclay, the Secretary of State for Exiting the European Union, is due to meet Michel Barnier, the EU’s chief Brexit negotiator, on 11 February 2019 to discuss ‘alternative arrangements’ to the backstop.¹⁰³

8.4 Letter from Jeremy Corbyn

Following their meeting in the last week of January, Jeremy Corbyn wrote to the Prime Minister on 6 February 2019, setting out what he described as a “constructive” proposal, which aimed to secure “a sensible agreement that can win the support of Parliament and bring the country together”.¹⁰⁴ Mr Corbyn argued in his letter that without changes to the Government’s negotiating red lines, Labour did not believe that “simply seeking modifications to the existing backstop terms is a credible or sufficient response to the scale of [the Government’s] defeat in Parliament last month”. He reiterated that the Government should change its red lines and seek significant changes to the political declaration to deliver a closer economic relationship with the EU; this, he said, would “ensure that any

¹⁰² *Telegraph* (£), [‘Brexit Latest News: Theresa May Set to Meet Irish PM Leo Varadkar for Talks on Backstop’](#), 8 February 2019.

¹⁰³ Sky News, [‘Theresa May Heads Home as EU Says No Breakthrough in Sight’](#), 7 February 2019.

¹⁰⁴ Labour Party, [‘Jeremy Corbyn Lays Out Labour’s Five Brexit Demands in Letter to Theresa May’](#), 6 February 2019.

backstop would be far less likely to be invoked”.

Mr Corbyn set out in the letter five changes to the political declaration that Labour wanted to see enshrined in law:

- A permanent and comprehensive UK-wide customs union. This would include alignment with the union customs code, a common external tariff and an agreement on commercial policy that includes a UK say on future EU trade deals. We believe that a customs union is necessary to deliver the frictionless trade that our businesses, workers and consumers need, and is the only viable way to ensure there is no hard border on the island of Ireland. As you are aware, a customs union is supported by most businesses and trade unions.
- Close alignment with the single market. This should be underpinned by shared institutions and obligations, with clear arrangements for dispute resolution.
- Dynamic alignment on rights and protections so that UK standards keep pace with evolving standards across Europe as a minimum, allowing the UK to lead the way.
- Clear commitments on participation in EU agencies and funding programmes, including in areas such as the environment, education, and industrial regulation.
- Unambiguous agreements on the detail of future security arrangements, including access to the European Arrest Warrant and vital shared databases.¹⁰⁵

Recalling the Commons’ approval of the Spelman amendment, he also said “all necessary steps must be taken” to avoid a no deal outcome.

Downing Street has said that ministers were looking “with interest” at Mr Corbyn’s letter.¹⁰⁶

9. Role of the House of Lords

The House of Lords debate on 13 February 2019 follows earlier indications from Baroness Evans of Bowes Park, Leader of the House, that the Lords would have the opportunity to consider and respond to any decisions taken by the House of Commons following the Government’s loss of the ‘meaningful vote’. After the Prime Minister’s statement on next steps on 21 January 2019, Baroness Smith of Basildon, Leader of the Opposition,

¹⁰⁵ Labour Party, [‘Jeremy Corbyn Lays Out Labour’s Five Brexit Demands in Letter to Theresa May’](#), 6 February 2019.

¹⁰⁶ *Telegraph* (£), [‘Brexit Latest News: Theresa May Set to Meet Irish PM Leo Varadkar for Talks on Backstop’](#), 8 February 2019.

sought assurances from Baroness Evans that the Lords would have the opportunity to consider the outcome of any votes that might take place in the Commons on 29 January 2019 and any comments made by the Prime Minister in response.¹⁰⁷ Baroness Evans said that “as always”, the Lords would “respond to any decisions made in the other place”, and the Government would work with the usual channels to ensure that there were “timely opportunities” to do so.¹⁰⁸ She expected discussions on this would begin once it was clear what had happened in the Commons on 29 January 2019.

Speaking in the Lords debate on 28 January 2019, Baroness Evans made similar indications. She said it was not her role “to speculate on the outcome of proceedings in the other place”, but she acknowledged that “the Government and this House will need to reflect on any decisions that are made tomorrow”.¹⁰⁹ She reiterated that:

This will not be the last time that the House of Commons is on the cusp of significant decisions which this House will want to have an opportunity to inform. I will do all I can, working with the other parties in this House, to ensure that happens.¹¹⁰

Should the Government reach a new or renegotiated deal with the EU, it would have to fulfil the requirements of section 13(1) of the EUWA before the UK could ratify a withdrawal agreement.¹¹¹ In addition to the requirement for the withdrawal agreement and political declaration to be approved by the House of Commons (in what has been dubbed ‘the meaningful vote two’) the Government would need to table a ‘take note’ motion in the Lords, as required by section 13(1)(c). The Lords would also have a role in passing the Act of Parliament required by section 13(1)(d) to provide for the implementation of a withdrawal agreement in domestic legislation.

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 (CRA) in relation to the withdrawal agreement. Part 2 of CRA makes provisions for the ratification of treaties, which includes a role for the House of Lords.

¹⁰⁷ [HL Hansard, 21 January 2019, col 564.](#)

¹⁰⁸ *ibid*, col 566.

¹⁰⁹ [HL Hansard, 28 January 2019, col 917.](#)

¹¹⁰ *ibid*.

¹¹¹ For a more detailed explanation of the requirements of section 13(1), see the House of Lords Library Briefing, [Withdrawal Agreement: Section 13\(1\)\(c\) of the European Union \(Withdrawal\) Act 2018](#) (4 January 2019).

Section 20(1) of CRAG sets out that a treaty is not to be ratified unless a minister has laid a copy before Parliament; that the treaty has been published in a way that the minister thinks appropriate; and that 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.¹¹² 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. Similarly, the minister may then lay another statement. In such a way the Commons theoretically has the power to delay ratification indefinitely. However, the House of Lords does not have this power. Should the Lords resolve against ratification and the Commons not resolve against ratification, then the treaty may be ratified “if a Minister of the Crown has laid before Parliament a statement indicating that the minister is of the opinion that the treaty should nevertheless be ratified and explaining why”.¹¹³

Should the Commons decline to approve a new or renegotiated deal in a second ‘meaningful vote’, the provisions of sections 13(4)–(6) of the EUWA would be engaged again, requiring the Government to make a statement within 21 days about how it intended to proceed and to make arrangements for debates in both Houses within seven sitting days of the statement. As noted above, the Prime Minister said that if she lost a second meaningful vote, she would hold a debate in the Commons the following day.¹¹⁴ She did not state explicitly when a debate would be held in the Lords, but there would be a requirement for the Government to comply with the timetable set out in section 13(4)–(6).

She also said that if the Government had not brought a revised deal back to the Commons by 13 February 2019, it would make a statement and table an amendable motion for debate the next day.¹¹⁵ She did not state explicitly what would happen regarding a Lords debate in these circumstances. The date of 13 February 2019 is a self-imposed deadline, not a statutory one under the EUWA.

¹¹² Under section 22 of CRAG, the normal procedure outlined in section 20 “does not apply to a treaty if a Minister of the Crown is of the opinion that, exceptionally, the treaty should be ratified without the requirements of that section having been met”. In such a case, either before or as soon as practicable after the treaty has been ratified, it must be published and laid before Parliament by the minister, along with a statement explaining why the treaty is being ratified outside this process. However, this exceptional procedure cannot be used if either House has already passed a resolution against ratifying the treaty (section 22(2)).

¹¹³ Constitutional Reform and Governance Act 2010, section 20(8).

¹¹⁴ [HC Hansard, 29 January 2019, col 671.](#)

¹¹⁵ *ibid.*