



## Further Article 50 Discussions with the EU Debate on 27 February 2019

### Summary

On 27 February 2019, the House of Lords is due to debate the Government's further discussions with the EU under article 50 of the Treaty on European Union. This follows a commitment made by the Prime Minister on 12 February 2019 that, if by 26 February 2019 the Government had not secured a majority in the House of Commons in a second 'meaningful vote', she would make a further statement in the Commons on 26 February 2019, and a debate on an amendable motion would take place in the Commons on 27 February 2019. At the time of writing this briefing, the exact wording of the motion for debate in each House is not known.

On 29 January 2019, the Commons voted by a majority of 16 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. On 14 February 2019, the Commons defeated by a majority of 45 a Government motion reiterating support for the approach to leaving the EU expressed in the 29 January resolution. The abstention of Conservative MPs who objected to wording in that resolution that rejected leaving the EU with no deal contributed to that defeat. However, the Prime Minister said she would continue to work to secure changes to the backstop on the basis of the 29 January resolution as it remained "Parliament's only positive expression of its desired means to achieve our exit from the EU".

Discussions with the EU have been ongoing, with the Prime Minister and President Juncker meeting most recently on 20 February 2019. Following the meeting the Prime Minister and President Juncker issued a joint statement in which they said that their meeting had been constructive, and they urged their respective teams to continue to explore options in a positive spirit. They agreed to meet again before the end of February.

On 13 February 2019, the Lords voted by a majority of 86 in favour of a Labour motion calling on the Government to take all steps necessary to ensure that the UK did not leave the EU on 29 March 2019 without an agreement ratified by both Houses and to ensure that a second 'meaningful vote' and corresponding take-note debate in the Lords took place before the end of February 2019.

This House of Lords Library Briefing updates an earlier briefing published in preparation for the Lords' take-note debate on the Brexit negotiations held on 13 February 2019. This new briefing repeats the content of the earlier briefing, with the addition of new material to provide an update on recent developments since 8 February 2019 and recent remarks made by ministers about the Lords' role in the next steps in the process.

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## 1. Introduction

On 27 February 2019, the House of Lords is due to debate the Government's further discussions with the EU under article 50 of the Treaty on European Union. This follows a commitment made by the Prime Minister on 12 February 2019 that, if by 26 February 2019 the Government had not secured a majority in the House of Commons in a second 'meaningful vote', she would make a further statement in the Commons on 26 February 2019, and a debate on that statement would take place in the Commons on 27 February 2019.<sup>1</sup> The Prime Minister gave a commitment that the Commons debate would be on an amendable motion. The selection of amendments 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.

This briefing has been published in preparation for the Lords debate. It focuses on developments in the Brexit process since the Government lost the 'meaningful vote' on 15 January 2019 on the deal it had agreed with the EU. It is an update of the briefing the House of Lords Library published on 8 February 2019 in preparation for a previous Lords debate on Brexit held on 13 February 2019, [Further Take-Note Debate on EU Withdrawal](#). It repeats the contents of the earlier briefing,<sup>2</sup> with the addition of new material in section 8 on developments since the publication of our last briefing on 8 February—an exchange of letters between the Prime Minister and the Leader of the Opposition; the Prime Minister's statement on 12 February; debates in both Houses on 13 and 14 February; further discussions with the EU about making legally binding changes to the Northern Ireland backstop; and the resignations of MPs from both main political parties critical of (among other things) their parties' handling of Brexit. Section 9 has been updated to highlight recent remarks made by Ministers about the role of the Lords in the next steps in the Brexit process. Section 10 has been added to list selected recent Brexit briefings by the House of Commons Library which may be of interest.

## 2. Sequence of Brexit Debates To Date

The forthcoming debates follow a series of earlier debates held in both Houses since the Government reached agreement in principle with the EU on a withdrawal agreement and political declaration under article 50 in November 2018. Debates took place in December 2018 and January 2019 to fulfil statutory requirements set out in section 13 of the European Union (Withdrawal) Act 2018 (the EUWA), which 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

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<sup>1</sup> [HC Hansard, 12 February 2019, col 733](#).

<sup>2</sup> Some section headings have been amended for clarity.

Commons. The most recent debates in each House, on 13 and 14 February 2019, were not required under the terms of the EUWA, but the Government had set itself a deadline to hold a debate in the Commons by 14 February 2019 if did not bring back a deal for a ‘meaningful vote’ before that date.

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 Prime Minister decided to delay the ‘meaningful vote’ in the Commons.<sup>3</sup>
- **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.<sup>4</sup>
- **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.<sup>5</sup> 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”.<sup>6</sup>
- **Commons: 9, 10, 11, 14 and 15 January 2019**—The House of Commons concluded its debate on the withdrawal agreement

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<sup>3</sup> 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.

<sup>4</sup> [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.

<sup>5</sup> [HL Hansard, 14 January 2019, col 118](#).

<sup>6</sup> [ibid](#), cols 119–22.

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.<sup>7</sup>

- **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—this is covered in more detail in section 3 of this briefing. The House agreed without division to the Government’s take note motion, and voted in favour of a separate motion moved by Baroness Smith of Basildon, Shadow Leader of the House of Lords, 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.<sup>8</sup> This debate is covered in more detail in section 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’— this is covered in more detail in section 3 of this briefing. 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).<sup>9</sup> 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).<sup>10</sup> This debate is covered in more detail in section 5 of this briefing.
- **Lords: 13 February 2019**—The House of Lords held a take note debate on the ongoing discussions with the EU under article 50. This debate was not a statutory requirement under the EUWA. 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’, 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.

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<sup>7</sup> [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).

<sup>8</sup> [HL Hansard, 28 January 2019, cols 98 and cols 118–22](#).

<sup>9</sup> [HC Hansard, 29 January 2019, cols 784–7](#).

<sup>10</sup> *ibid*, cols 779–83.

The Lords agreed without division to the Government's take note motion. The House voted by a majority of 86 in favour of a separate motion moved by Baroness Smith of Basildon, Shadow Leader of the House, calling on the Government to take all steps necessary to ensure that the UK did not leave the EU on 29 March 2019 without an agreement ratified by both Houses and to ensure that a second 'meaningful vote' and corresponding taken-note debate in the Lords took place before the end of February 2019.<sup>11</sup> This debate is covered in more detail in section 8.6 of this briefing.

- **Commons: 14 February 2019**—The House of Commons held a debate following a statement made by the Prime Minister on 12 February 2019 on progress made with the EU in seeking legally binding changes to the withdrawal agreement. This debate was not a statutory requirement under the EUWA, but after the previous Commons debate, the Prime Minister had set herself a deadline of 13 February 2019 for either bringing back a revised deal for a second 'meaningful vote' in the Commons, or making a statement and holding a debate by 14 February 2019. The Commons voted by a majority of 45 against the Government's motion.<sup>12</sup> This debate is covered in more detail in section 8.7 of this briefing.

The Prime Minister said that the Commons' support for the Brady amendment in the debate on 29 January 2019 gave her a mandate to reopen negotiations with the EU to seek legally binding changes to the withdrawal agreement, and she has pursued this course since then.<sup>13</sup> 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 (often referred to as a second 'meaningful vote'). A take note motion on the withdrawal agreement and political declaration would also need to be tabled in the Lords.

### 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.<sup>14</sup> Under section 13(1) of the European Union

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<sup>11</sup> [HL Hansard, 13 February 2019, cols 1937–8.](#)

<sup>12</sup> [HC Hansard, 14 February 2019, cols 1155–8.](#)

<sup>13</sup> [HC Hansard, 29 January 2019, col 788.](#)

<sup>14</sup> [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).

(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 controversial.<sup>15</sup> The Commons voted in favour of Mr Grieve’s amendment by 308 to 297, a majority of 11.<sup>16</sup> 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.<sup>17</sup>

The ‘meaningful vote’ was the largest government defeat in a century.<sup>18</sup> Following this, the Prime Minister said it was necessary to “confirm whether the Government still enjoys the confidence of the House”.<sup>19</sup> 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.<sup>20</sup> 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

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<sup>15</sup> 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.

<sup>16</sup> [HC Hansard, 9 January 2019, cols 386–90.](#)

<sup>17</sup> [HC Hansard, 15 January 2019, col 1126.](#)

<sup>18</sup> Philip Cowley, ‘[Could the Vote on May’s Final Deal End in an Historic Government Defeat?](#)’, *Prospect*, 11 January 2019.

<sup>19</sup> [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.

<sup>20</sup> [HC Hansard, 15 January 2019, col 1127.](#)

majority of 19.<sup>21</sup>

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.<sup>22</sup>

The Government made a further written statement on 24 January 2019 to “avoid any legal uncertainty” about whether it had complied with the provisions of section 13(11) of the EUWA.<sup>23</sup> Section 13(11) 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”.<sup>24</sup> 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.<sup>25</sup> On the basis of these discussions, she concluded that three “key changes” were needed in the Government’s approach:<sup>26</sup>

- 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.

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<sup>21</sup> [HC Hansard, 16 January 2019, cols 1269–73.](#)

<sup>22</sup> [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.

<sup>23</sup> House of Commons, ‘[Written Statement: Statement under Section 13\(11\)\(a\) of the European Union \(Withdrawal\) Act](#)’, 24 January 2019, HCWS1271.

<sup>24</sup> House of Commons, ‘[Written Statement: Statement under Section 13\(4\) of the European Union \(Withdrawal\) Act](#)’, 21 January 2019, HCWS1258.

<sup>25</sup> [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(11) of the EUWA.

<sup>26</sup> [HC Hansard, 21 January 2019, col 28.](#)

- 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) 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.<sup>27</sup>

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”.<sup>28</sup> The House agreed to Baroness Evans’s motion without division.<sup>29</sup>

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.<sup>30</sup> It was on

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<sup>27</sup> [HL Hansard, 28 January 2019, cols 916–86.](#)

<sup>28</sup> House of Lords, [Companion to the Standing Orders and Guide to the Rules of Proceedings](#), 2017, p 87, para 6.60.

<sup>29</sup> [HL Hansard, 28 January 2019, col 98.](#)

<sup>30</sup> [HL Hansard, 14 January 2019, cols 118–22.](#)

15 January 2019 that the Commons declined to approve the withdrawal agreement and political declaration.<sup>31</sup>

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”.<sup>32</sup> The Lords voted in favour of Baroness Smith’s motion by 283 to 131, a majority of 152.<sup>33</sup>

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.<sup>34</sup> 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.<sup>35</sup>

## 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.<sup>36</sup>

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.<sup>37</sup> This has the effect of making such motions

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<sup>31</sup> House of Commons, [Votes and Proceedings](#), 15 January 2019.

<sup>32</sup> [HL Hansard, 28 January 2019, col 921](#).

<sup>33</sup> *ibid*, cols 984–6.

<sup>34</sup> House of Lords, [Companion to the Standing Orders and Guide to the Rules of Proceedings](#), 2017, p 86, para 6.56.

<sup>35</sup> *ibid*, p 87, para 6.57.

<sup>36</sup> House of Commons, ‘[Standing Orders 2018](#)’, 1 May 2018.

<sup>37</sup> [HC Hansard, 4 December 2018, cols 741–5](#).

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.<sup>38</sup>

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

## **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”.<sup>39</sup>

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.<sup>40</sup>

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”.<sup>41</sup> 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.<sup>42</sup>

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<sup>38</sup> Jack Simson Caird, ‘[Brexit and the Speaker of the House of Commons: Do the Ends Justify the Means?](#)’, *Verfassungsblog*, 10 January 2019.

<sup>39</sup> [HC Hansard, 29 January 2019, cols 784–7.](#)

<sup>40</sup> *ibid.*, col 678.

<sup>41</sup> *ibid.*

<sup>42</sup> 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.

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.<sup>43</sup> 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 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”.<sup>44</sup> 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”.<sup>45</sup>

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”.<sup>46</sup> 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”.<sup>47</sup> 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”.<sup>48</sup>

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”.<sup>49</sup> She noted that the term “alternative arrangements” was already recognised in the withdrawal agreement and political declaration.<sup>50</sup>

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<sup>43</sup> [HC Hansard, 29 January 2019, col 678.](#)

<sup>44</sup> *ibid*, col 681.

<sup>45</sup> *ibid*, col 682.

<sup>46</sup> *ibid*, col 788.

<sup>47</sup> *ibid*, col 674.

<sup>48</sup> *ibid*, col 690.

<sup>49</sup> *ibid*, col 680.

<sup>50</sup> *ibid*, col 675.

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 footing.<sup>51</sup>

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.<sup>52</sup>

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”.<sup>53</sup> 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”.<sup>54</sup>

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”.<sup>55</sup> It also refers to the parties considering “facilitative arrangements and technologies” when “developing any alternative arrangements for ensuring the absence of a hard

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<sup>51</sup> 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.

<sup>52</sup> *ibid*, p 303.

<sup>53</sup> 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.

<sup>54</sup> *ibid*, p 39.

<sup>55</sup> 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.

border on the island of Ireland on a permanent footing”.<sup>56</sup> It gives the following examples of “facilitative arrangements and technologies”:

[...] mutual recognition of trusted traders’ programmes, administrative cooperation in customs matters and mutual assistance, 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.<sup>57</sup>

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.<sup>58</sup> She stated that the Government would “study closely” such proposals.<sup>59</sup> 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”.<sup>60</sup>

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).<sup>61</sup>

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

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<sup>56</sup> 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.

<sup>57</sup> *ibid.*

<sup>58</sup> [HC Hansard, 29 January 2019, cols 680.](#)

<sup>59</sup> *ibid.*, cols 680–1.

<sup>60</sup> [HC Hansard, 14 January 2019, col 826.](#)

<sup>61</sup> [HC Hansard, 29 January 2019, cols 679.](#)

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.

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).<sup>62</sup>

However, doubts were 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:<sup>63</sup>

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 [...]<sup>64</sup>

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<sup>62</sup> Steve Baker and Nicky Morgan, '[Our Compromise Can Command a Majority](#)', *Telegraph* (£), 29 January 2019.

<sup>63</sup> House of Commons Library, '[The 'Malthouse Compromise': What is 'Plan C'?](#)', 29 January 2019.

<sup>64</sup> *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.<sup>65</sup>

### 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.<sup>66</sup> 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”.<sup>67</sup> 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.<sup>68</sup>

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”.<sup>69</sup>

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.<sup>70</sup> 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 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

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<sup>65</sup> House of Commons Library, [‘The ‘Malthouse Compromise’: What is ‘Plan C?’](#), 29 January 2019.

<sup>66</sup> [HC Hansard, 29 January 2019, cols 779–83.](#)

<sup>67</sup> *ibid*, col 719.

<sup>68</sup> *ibid*, col 720.

<sup>69</sup> *ibid*, col 688.

<sup>70</sup> *ibid*, col 670.

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.<sup>71</sup>

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”.<sup>72</sup> 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 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

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<sup>71</sup> 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.

<sup>72</sup> [HC Hansard, 29 January 2019, col 788](#).

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).<sup>73</sup>

**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).<sup>74</sup>

**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”.<sup>75</sup>

Defeated: 321 votes to 301 (a majority of 20).<sup>76</sup>

**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 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,

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<sup>73</sup> [HC Hansard, 29 January 2019, cols 757–61.](#)

<sup>74</sup> [ibid, cols 762–4.](#)

<sup>75</sup> ‘[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.

<sup>76</sup> [HC Hansard, 29 January 2019, cols 765–9.](#)

the bill would oblige the Prime Minister to make the request to the EU.<sup>77</sup>

Defeated: 321 votes to 298 (a majority of 23).<sup>78</sup>

**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).<sup>79</sup>

## **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.<sup>80</sup>

Mrs May said that she intended to bring a revised deal back to the Commons for "a second meaningful vote" as soon as possible.<sup>81</sup> 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.<sup>82</sup>

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 negotiating a future partnership with the EU.<sup>83</sup> 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

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<sup>77</sup> 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.

<sup>78</sup> [HC Hansard, 29 January 2019, cols 770–4.](#)

<sup>79</sup> *ibid.*, cols 775–8.

<sup>80</sup> *ibid.*, col 788.

<sup>81</sup> *ibid.*, col 671.

<sup>82</sup> *ibid.*

<sup>83</sup> *ibid.*, col 677.

undermining the negotiations”.<sup>84</sup> She said that the Secretary of State for Exiting the European Union would work further on this issue in the coming week.<sup>85</sup>

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.<sup>86</sup> 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.<sup>87</sup>

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.<sup>88</sup>

Mrs May also repeated her offer to Jeremy Corbyn to meet to “see whether we can find a way forward”.<sup>89</sup> 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”.<sup>90</sup> 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 of agreement it wanted with the EU.<sup>91</sup>

## 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

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<sup>84</sup> [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](#)).

<sup>85</sup> [HC Hansard, 29 January 2019, col 788](#).

<sup>86</sup> *ibid*, cols 677–8.

<sup>87</sup> *ibid*, col 788.

<sup>88</sup> *ibid*.

<sup>89</sup> *ibid*.

<sup>90</sup> [HC Hansard, 16 January 2019, col 1273](#).

<sup>91</sup> [HC Hansard, 29 January 2019, col 789](#).

statement.<sup>92</sup> 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.<sup>93</sup> 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 response to the unique situation on the island of Ireland”.<sup>94</sup> 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

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<sup>92</sup> [‘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.

<sup>93</sup> 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.

<sup>94</sup> *ibid.*

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**

Following the debate on 29 January 2019, the Prime Minister 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.<sup>95</sup> Geoffrey Cox, the Attorney General, was 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.

### **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 the House of Commons’ rejection of the withdrawal deal would mean for them.<sup>96</sup> 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 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”.

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<sup>95</sup> 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.

<sup>96</sup> Prime Minister’s Office, [‘PM Speech in Belfast: 5 February 2019’](#), 5 February 2019.

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.<sup>97</sup>

### **8.3 Prime Minister’s Visit to Brussels on 7 February 2019**

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”.<sup>98</sup> 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 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

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<sup>97</sup> Andrew Sparrow, ‘[Brexit: May Says She Wants Changes to the Backstop, Not Removal—Politics Live](#)’ [see entry at 15:41], *Guardian*, 5 February 2019.

<sup>98</sup> Prime Minister’s Office, ‘[Joint Statement on Behalf of the Prime Minister and President Juncker](#)’, 7 February 2019.

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 would meet again before the end of February to take stock of these discussions.

#### **8.4 Exchange of Letters Between Jeremy Corbyn and the Prime Minister**

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”.<sup>99</sup> 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 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 to secure the party’s support for a deal:

- 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.

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<sup>99</sup> Labour Party, [‘Jeremy Corbyn Lays Out Labour’s Five Brexit Demands in Letter to Theresa May’](#), 6 February 2019.

- Unambiguous agreements on the detail of future security arrangements, including access to the European Arrest Warrant and vital shared databases.<sup>100</sup>

Recalling the Commons' approval of the Spelman amendment, Mr Corbyn also said "all necessary steps must be taken" to avoid a no deal outcome.

Previously, Labour had maintained that it could only support a deal that met six tests, which included delivering the "exact same benefits" as the UK's current membership of the single market and customs union, whilst also ensuring "fair management of migration".<sup>101</sup>

Mrs May replied to Mr Corbyn in a letter of 10 February 2019.<sup>102</sup> She said she was grateful to him for meeting her the previous week and for his offer of further discussions. As he had outlined his concerns about the possible indefinite nature of the backstop, she said she hoped their teams could discuss the exact nature of "alternative arrangements" that could command support in Parliament. Mrs May responded individually to each of the five points that Mr Corbyn had set out in his letter, pointing to some similarities in their approaches, and key differences such as in their respective policies on a customs union with the EU, and highlighting areas where she believed the EU's negotiating position would make Mr Corbyn's demands difficult to achieve:

- [...] the Political Declaration explicitly provides for the benefits of a customs union [...] However, it also recognises the development of the UK's independent trade policy beyond our economic partnership with the EU (paragraph 17). I am not clear why you believe it would be preferable to seek a say in future EU trade deals rather than the ability to strike our own deals? [...] I can reassure you that seeking frictionless trade in goods and agri-food products is one of our key negotiating objectives [...] The fundamental negotiating challenge here is the EU's position that completely frictionless trade is only possible if the UK stays in the single market. This would mean accepting free movement which Labour's 2017 general election manifesto made clear you do not support.
- The EU have said that the deal provides for the closest relationship possible outside the single market. [...] I am not sure what you mean when you say "shared institutions and obligations" but our teams can explore that.

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<sup>100</sup> Labour Party, '[Jeremy Corbyn Lays Out Labour's Five Brexit Demands in Letter to Theresa May](#)', 6 February 2019.

<sup>101</sup> Chris Morris, '[Reality Check: What is Labour's Brexit Plan?](#)', BBC News, 25 September 2018.

<sup>102</sup> BBC News, '[Theresa May's Letter to Jeremy Corbyn](#)', 11 February 2019.

- I have always been clear that Brexit should not be at the expense of workers' rights or environmental protections. However, the Government does not support automatically following EU rules in those areas because, given their importance, we believe these decisions should be taken in Parliament by our elected representatives. We have, however, made legally-binding commitments to no regression in these areas if we were to enter the backstop, [...] intend to build on these commitments in the future relationship [...] and are prepared to consider legislating to give these commitments force in UK law. In the interests of building support across the House, we are also prepared to commit to asking Parliament whether it wishes to follow suit whenever the EU changes its standards in these areas. And of course we don't need to automatically follow EU standards in order to lead the way [...]
- The Government supports participation in EU programmes in a number of areas as set out in paragraph 11 of the Political Declaration. We also want the closest possible relationship with EU agencies in the heavily regulated sectors, subject to us being outside the single market, and such cooperation is reflected as a shared aim in paragraph 24 of the Political Declaration.
- The Government also shares your ambition in relation to security arrangements [...] The negotiating challenge here is the EU's position that, as a third country outside of the Schengen area and without free movement, there are restrictions on the UK's ability to participate in some tools and measures. The Government does not believe it would be in the interests of either the UK or the EU and its member states to see a reduction in joint security capabilities. Labour's support for this position going into the next phase will I hope send a powerful signal that the EU should reconsider its stance.

### 8.5 Prime Minister's Statement on 12 February 2019

As previously noted, the Prime Minister had promised at the end of the Commons debate on 29 January 2019 that if she had not brought a deal back to the Commons for a second 'meaningful vote', she would make a further statement by 13 February 2019 and the Commons would have the opportunity to debate an amendable motion the following day.<sup>103</sup> Mrs May made her statement on 12 February 2019, a day earlier than her self-imposed deadline.<sup>104</sup>

She said she had told President Juncker, President Tusk and President Tajani in her meetings the previous week that the House of Commons wanted legally binding changes to the backstop through "alternative arrangements", a

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<sup>103</sup> [HC Hansard, 29 January 2019, col 671.](#)

<sup>104</sup> [HC Hansard, 12 January 2019, cols 731–4.](#)

legally binding time limit or a legally binding unilateral exit clause to the backstop. Mrs May said that, “as expected”, President Juncker maintained the EU’s position that it would not reopen the withdrawal agreement, but they agreed their teams would hold further talks to find a way forward. She planned to meet Mr Juncker again at the end of February to take stock of those discussions.

She confirmed that the Commons would have a chance to debate an amendable motion later that week on 14 February 2019, and also announced that if the Government had not secured a deal with the EU to bring back to the Commons for a second ‘meaningful vote’ by 26 February 2019, she would make another statement on that date, with debate to follow on a further amendable motion on 27 February 2019.

She said the talks were “at a crucial stage” and urged MPs to “all hold [their] nerve to get the changes that this House requires, and deliver Brexit on time”. In response, Jeremy Corbyn suggested she had “failed to answer even the most basic questions” about whether progress had been made on working up “alternative arrangements” and presenting them to the EU.<sup>105</sup> He accused her of having “just one real tactic: to run down the clock, hoping that Members of this House can be blackmailed into supporting a deeply flawed deal”.

When the statement was repeated in the House of Lords, Lord Hannay of Chiswick (Crossbench) expressed dismay that “in the whole of this statement there is not one word about the role of your Lordships’ House”.<sup>106</sup> Baroness Evans of Bowes Park, Leader of the House of Lords, gave her assurance that “the voice of your Lordships’ House will be heard”.<sup>107</sup>

## 8.6 Lords Debate on 13 February 2019

On 13 February 2019, a further take-note debate took place in the House of Lords. There was no statutory requirement under section 13 of the EUWA for this debate to take place, but opening the debate Lord Callanan, Minister of State at the Department for Exiting the European Union, said that “consistent with the approach taken throughout the process of exiting the EU”, it was right that the House of Lords “should have a chance to comment on and inform the process” ahead of the debate to be held in the Commons the following day.<sup>108</sup>

The House of Lords agreed without division to the Government’s motion that “this Houses takes note of the ongoing discussions with the European

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<sup>105</sup> [HC Hansard, 12 January 2019, col 734.](#)

<sup>106</sup> [HL Hansard, 12 February 2019, col 1781.](#)

<sup>107</sup> *ibid.*

<sup>108</sup> [HL Hansard, 13 February 2019, col 1852.](#)

Union under article 50 of the Treaty on European Union”.<sup>109</sup> The House then voted by 155 to 69 (a majority of 86) in favour of a separate motion moved by Baroness Smith of Basildon, Shadow Leader of the House, further to the Lords’ previous resolutions of 14 and 28 January 2019, calling on the Government to take all steps necessary to ensure that:

- the UK does not leave the EU on 29 March 2019 without an agreement ratified by both Houses of Parliament, and
- before the end of February 2019, motions are moved to fulfil the provisions of sections 13(1)(b) and (c) of the EUWA (ie, a second ‘meaningful vote’ in the Commons and a take-note debate on the deal in the Lords).<sup>110</sup>

Speaking to her motion, Baroness Smith of Basildon said she was seeking to find a way forward that could command broad support in the Lords.<sup>111</sup> She said Labour wanted to “rule out the catastrophe of crashing out on 29 March” and to ensure “sufficient time for proper consideration of the legislation that is needed or required to deliver Brexit”. She explained that this could include seeking an extension to the article 50 negotiating period, which she said would allow time to “develop the political declaration in vital areas that have not been given the attention they deserve, such as security cooperation”, and to pass the legislation necessary to give effect to the final withdrawal agreement.<sup>112</sup> She suggested that the part of her motion about having a second ‘meaningful vote’, and corresponding take-note debate in the Lords, by the end of February was necessary because “it is only by securing a binding vote that MPs can apply the brake before we career off the cliff edge”.<sup>113</sup> She accused the Prime Minister of “trying to run down the clock and force a deal between her deal and no deal”.

Lord Callanan said that the Government could not support a motion to take “all steps necessary” to avoid no deal unless the prospect of no Brexit was excluded as a means of avoiding no deal.<sup>114</sup> He maintained that the best way to avoid no deal was for MPs to vote for a deal. He said the Government did not agree with the timings set out in Baroness Smith’s motion, but would fulfil the steps under section 13(1) of the EUWA when it had secured the progress needed on the backstop. He repeated the Prime Minister’s commitment to make a statement in the Commons on 26 February 2019 if the Government had not secured a majority for a deal by then.

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<sup>109</sup> [HL Hansard, 13 February 2019, col 1936.](#)

<sup>110</sup> *ibid*, cols 1937–8.

<sup>111</sup> *ibid*, col 1855.

<sup>112</sup> *ibid*, col 1856.

<sup>113</sup> *ibid*, col 1857.

<sup>114</sup> *ibid*, col 1935.

## 8.7 Commons Debate on 14 February 2019

A further debate (again, not held under section 13 of the EUWA) took place in the Commons on 14 February on the following motion:

That this House welcomes the Prime Minister's statement of 12 February 2019; reiterates its support for the approach to leaving the EU expressed by this House on 29 January 2019 and notes that discussions between the UK and the EU on the Northern Ireland backstop are ongoing.

For reference, the full text of the resolution that the Commons had agreed on 29 January 2019, incorporating both the Brady amendment (about replacing the backstop) and the Spelman amendment (about rejecting no deal) was as follows:

Resolved, That this House, in accordance with the provisions of section 13(6)(a) and 13(11)(b)(i) and 13(13)(b) of the European Union (Withdrawal) Act 2018, has considered the Written Statement titled "Statement under Section 13(4) of the European Union (Withdrawal) Act 2018" and made on 21 January 2019, and the Written Statement titled "Statement under Section 13(11)(a) of the European Union (Withdrawal) Act 2018" and made on 24 January 2019; and rejects the United Kingdom leaving the European Union without a Withdrawal Agreement and a Framework for the Future Relationship; and 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.

Prior to the 14 February debate, it was reported that members of the European Research Group (a group of backbench Conservative MPs) were unhappy that by referring to the 29 January resolution, the Government's motion was endorsing taking no deal off the table.<sup>115</sup>

At the start of the debate, David Davis (Conservative MP for Haltemprice and Howden) asked Stephen Barclay to "be clear with the House that if the European Union does not agree to a deal that is acceptable to this House and the Government, we will still be leaving on 29 March?".<sup>116</sup> Mr Barclay said he was "very happy" to give that assurance.<sup>117</sup> In response to a further question from Tom Brake (Liberal Democrat MP for Carshalton and Wallington) about why the Government was observing one part of the 29 January resolution (replacing the backstop) but not the other (rejecting

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<sup>115</sup> Jonathan Isaby, '[Row Brewing Over Thursday's Government Motion Opposing a No-Deal Brexit](#)', Brexit Central, 13 February 2019.

<sup>116</sup> [HC Hansard, 14 February 2019, col 1069.](#)

<sup>117</sup> *ibid.*

leaving without a deal), Mr Barclay explained the Government's position that:

The short answer is that the House has said two different things. It passed by a big majority legislation on article 50, which many Members on both sides of the House voted for. It passed by a large margin legislation to say we are leaving the EU on 29 March and put that date on the face of the withdrawal bill [ie the EUWA]. The House also voted by a large margin to give the people the decision through the referendum. Frankly, the legislation takes precedence over the motion to which the right hon. Gentleman refers.

[...] The only way to avoid no deal—as the Prime Minister has repeatedly said, and as is backed up in legislation—is to either secure a deal on the terms that the Prime Minister has set out, with the mandate that the House gave her in response to the earlier motion, or to revoke article 50.<sup>118</sup>

Justine Greening (Conservative MP for Putney) maintained it was “fundamentally wrong and anti-democratic” of the Government to “pick and choose which votes they will support”.<sup>119</sup> Dame Caroline Spelman said that if the Government failed to give equal respect to the opinions expressed by the Commons in the resolution of 29 January, it would be “contemptuous of this House”.<sup>120</sup>

In response, Mr Barclay said that “of course” the Government respected the House, but he was trying to state that as a point of fact, “the legislative position as it currently stands is as set out following the vote to trigger article 50”.<sup>121</sup> Mr Barclay urged MPs to vote to “give the Government time to make good on [its] work” engaging with the EU to seek a legally binding change to the backstop, and to “hold [their] nerve, to deliver a deal that addresses the twin risks of no deal or no Brexit and to [...] deliver what people voted for”.<sup>122</sup>

Responding for the Opposition, Sir Keir Starmer, Shadow Secretary of State for Exiting the European Union, argued that two of the options set out by the Prime Minister for changing the backstop—a time limit and a unilateral exit mechanism—had already “been repeatedly ruled out by the EU for months”.<sup>123</sup> The third option—“alternative arrangements”—remained “undefined”, and given that people had been searching for suitable alternative arrangements for over a year, he believed the likelihood a solution could be

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<sup>118</sup> [HC Hansard, 14 February 2019, col 1070.](#)

<sup>119</sup> *ibid*, col 1073.

<sup>120</sup> *ibid*, col 1074.

<sup>121</sup> *ibid*.

<sup>122</sup> *ibid*, col 1077.

<sup>123</sup> *ibid*, col 1079.

found within the next few weeks was “very slim”.<sup>124</sup>

He explained that Labour had tabled an amendment intended to “put a hard stop” to the Government’s tactic of “running down the clock” to 29 March 2019. He said that this would ensure that on 27 February 2019, the Government would either have to put its deal to a vote or allow Parliament to decide what would happen next. He argued that other steps would have to be taken in addition to Labour’s amendment, including passing a private member’s bill tabled by Yvette Cooper (Labour MP for Normanton, Pontefract and Castleford), which he said would “provide a further safeguard against no deal” by allowing the House to decide whether the Government should seek an extension of the article 50 negotiating period if no deal had been agreed by 13 March 2019.<sup>125</sup>

The Speaker selected the Labour amendment and two others for the debate, one of which was subsequently withdrawn. Both amendments that were put to the vote were defeated:

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

Amendment (a) would have required that by 27 February 2019, the Government must either hold a second ‘meaningful vote’ or make a written statement declaring that there was no longer an agreement in principle with the EU, and then move an amendable motion on how it proposed to proceed.

Defeated: 322 votes to 306 (a majority of 16).<sup>126</sup>

**Amendment (i) *Ian Blackford (Westminster Leader of the SNP)***

Amendment (i) would have required the Government to immediately begin negotiations with the European Council to extend the article 50 negotiating period by at least three months and amend the EUWA (which sets 29 March 2019 as exit day in domestic legislation) accordingly.

Defeated: 315 votes to 93 (a majority of 222).<sup>127</sup>

The Speaker had also selected amendment (e) in the name of Anna Soubry (MP for Broxtowe, then a Conservative but now independent), instructing

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<sup>124</sup> [HC Hansard, 14 February 2019, cols 1079 and 1081–2.](#)

<sup>125</sup> *ibid*, col 1087. Further information about Ms Cooper’s bill is available in the following House of Commons Library publications: ‘[Yvette Cooper's Private Member's Bill Explained](#)’, and [European Union \(Withdrawal\) \(No. 4\) Bill](#), both published 19 February 2019.

<sup>126</sup> [HC Hansard, 14 February 2019, cols 1147–51.](#)

<sup>127</sup> *ibid*, cols 1152–4.

the Government to publish in full within seven days the most recent official Cabinet briefing on the implications for business and trade of a no-deal Brexit. At the end of the debate, Chris Heaton-Harris, Parliamentary Under Secretary of State for Exiting the European Union, said that David Lidington, Minister for the Cabinet Office, was happy to meet Ms Soubry to identify the information that she was referring to, and would then commit to publishing it.<sup>128</sup> On this basis, Ms Soubry decided not to move the amendment, although she said she would return to it in the debate on 27 February 2019 if the papers had not been published by then.<sup>129</sup>

The final vote which took place was on the Government's motion. The Government was defeated by 303 votes to 258, a majority of 45.<sup>130</sup> Steve Baker (Conservative MP for Wycombe, and deputy chair of the European Research Group) said that the Government's motion had united "both wings" of the Conservative Party in abstaining.<sup>131</sup> Five Conservatives voted against the Government and 67 did not vote on the motion.<sup>132</sup>

Speaking immediately after the vote, Jeremy Corbyn argued that the result showed "there is no majority for the Prime Minister's course of action in dealing with Brexit".<sup>133</sup> In his view, the Government could not continue "ignoring Parliament or ploughing on towards 29 March without a coherent plan".

In a letter to all Conservative MPs following the defeat, Mrs May wrote that while the vote had not been on a binding motion, the result was "nonetheless disappointing and has made our job more difficult".<sup>134</sup> She said that a combination of opposition MPs voting against the Government and Conservative MPs abstaining meant that "Parliament, in effect, agreed to nothing". She argued that it was "still the case that Parliament's only positive expression of its desired means to achieve our exit from the EU is the motion that was passed on 29 January". She said that "on the basis [of] that mandate, the Government will continue its work to secure changes to the backstop".

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<sup>128</sup> [HC Hansard, 14 February 2019, col 1144.](#)

<sup>129</sup> *ibid.*

<sup>130</sup> *ibid.*, cols 1155–8.

<sup>131</sup> George Parker, Jim Pickard and Henry Mance, '[Brexit Vote 'Shambles' Blows Hole in Theresa May's Authority](#)', *Financial Times* (£), 14 February 2019.

<sup>132</sup> The figure of 67 does not include the two tellers. Those who did not vote were not all necessarily abstaining because they disagreed with the motion; for example, an MP could be subject to a pairing arrangement because he or she is unable to attend a division due to ill health or other reasons.

<sup>133</sup> [HC Hansard, 14 February 2019, col 1158.](#)

<sup>134</sup> Conservative Home, '[History Will Judge Us All'—May's Letter to Tory MPs: Full Text](#)', 17 February 2019.

## 8.8 Further Discussions with the EU

The Prime Minister's letter also set out details of further discussions the Government planned with the EU for the week beginning 18 February 2019.<sup>135</sup> She said that she would meet President Juncker again, following further talks between their teams since the two had last met on 7 February. She had held conversations the previous week with the leaders of numerous EU member states and intended to speak to or meet the remainder as soon as possible. She said that Stephen Barclay, Secretary of State for Exiting the European Union, would meet Michel Barnier again to talk through the proposals put forward by the Alternative Arrangements Working Group, and that Geoffrey Cox, the Attorney General, would meet Michel Barnier and European Commission officials to discuss the backstop. She announced that later in the week, Mr Cox would make a speech "setting out in detail his thinking on what can be done to eliminate any legal risk that the backstop [might] be applied indefinitely".

Mr Barclay and Mr Cox met Michel Barnier on 18 February 2019. A spokesperson from the Department for Exiting the European Union described the meeting as "productive".<sup>136</sup> Mr Barclay said that the Attorney General had "shared his thinking in terms of the legal way forward" with Mr Barnier and EU officials.<sup>137</sup> After the meeting, the European Commission's chief spokesperson said that the EU "cannot accept a time limit or a unilateral exit clause".<sup>138</sup> He said that further talks would be held in the coming week "to see whether a way through can be found that could gain the broadest possible support in the UK Parliament and respect the guidelines agreed by the European Council".

Regarding "alternative arrangements", the Alternative Arrangements Working Group was set up to work on taking forward the proposals outlined in the so-called Malthouse compromise. However, when asked directly by proponents of that proposal during Commons debates in mid-February to confirm that the Malthouse compromise was now official government policy, neither Mrs May nor Mr Barclay explicitly gave such a confirmation. Mrs May acknowledged that "a number of alternative arrangements have been proposed over the past months", in respect of which there had been "some issues and some questions".<sup>139</sup> She highlighted that there were various ways of ensuring that the UK did not find itself in a permanent backstop—"one is to replace the backstop completely with

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<sup>135</sup> Conservative Home, "[History Will Judge Us All'—May's Letter to Tory MPs: Full Text](#)", 17 February 2019.

<sup>136</sup> Jon Stone, '[Brexit Breakthrough is 'In God's Hands', President Juncker Says Ahead of Talks with Theresa May](#)', *Independent*, 19 February 2019.

<sup>137</sup> James Rothwell, '[Brexit Breakthrough is in God's Hands, Says Jean-Claude Juncker](#)', *Telegraph* (£), 18 February 2019.

<sup>138</sup> Rowena Mason, Daniel Boffey and Jessica Elgot, '[Brexit Backstop: Theresa May to Put New Proposals to EU](#)', *Guardian*, 20 February 2019.

<sup>139</sup> *ibid*, col 740.

alternative arrangements; and another is to ensure that the backstop can never be permanent". Mr Barclay stated on 14 February 2019 that:

I have already confirmed to the House that [the Malthouse compromise] has been raised with Michel Barnier. I have given a commitment that it will be raised again in our next exchange. I have given a commitment that civil servants are engaging on this issue. I have also communicated the fact that the initial response from Michel Barnier was to raise concerns about the extent of concessions that would be required, but that is part of the discussion we are having.<sup>140</sup>

Mr Barclay also said that during their discussions, Michel Barnier had been "sceptical about the timetable" for implementing the Malthouse compromise.<sup>141</sup> According to press reports, Mr Barclay told a cabinet meeting on 19 February 2019 that it was too late for the proposal to be taken further at present, although it would form part of discussions on the future relationship.<sup>142</sup> Both sides have reportedly agreed to set up a taskforce to develop the proposals after 29 March 2019.<sup>143</sup>

In a speech on 19 February, Philip Hammond, Chancellor of the Exchequer, said that the Malthouse compromise was "a valuable effort" towards finding a legally binding way of ensuring the backstop would not persist indefinitely.<sup>144</sup> He said it built on an "important concession we gained in the withdrawal agreement, in being able to propose alternative arrangements to the backstop", and he urged that it should be "a major ongoing strand of work, continuing at pace during the implementation period" (or transition period as the EU calls it) provided for in the withdrawal agreement. However, he said it was "clear" that the EU would not consider replacing the backstop with such an alternative arrangement at the moment, as the details of the initiative were "still evolving" and would "require significant changes to EU legislation and customs practices that would need to be negotiated with EU member states and others who would be affected by them".

Mrs May, Mr Barclay and Mr Cox were all expected to be in Brussels for further meetings on 20 February 2019.<sup>145</sup> President Juncker said in a press conference on 19 February that there had not been "enough movement" for him to expect there would be a "concrete outcome" to his meeting with

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<sup>140</sup> [HC Hansard, 14 February 2019, cols 1076–7.](#)

<sup>141</sup> *ibid*, col 1075.

<sup>142</sup> James Blitz and Alex Barker, '[Theresa May Ditches Malthouse Plan Ahead of Talks in Brussels](#)', *Financial Times* (£), 20 February 2019.

<sup>143</sup> Oliver Wright, Francis Elliott and Bruno Waterfield, '[May Calms Brexiteers with Pledge to Keep their Backstop on the Table](#)', *Times* (£), 19 February 2019.

<sup>144</sup> HM Treasury, '[Chancellor's Speech at Make UK \(EEF\)](#)', 19 February 2019.

<sup>145</sup> Jon Stone, '[Brexit Breakthrough is 'In God's Hands', President Juncker Says Ahead of Talks with Theresa May](#)', *Independent*, 19 February 2019.

Mrs May.<sup>146</sup> Following the meeting the Prime Minister and President Juncker issued a joint statement in which they said that their meeting had been constructive and they urged their respective teams to continue to explore options in a positive spirit.<sup>147</sup> Both reconfirmed their commitments to avoiding a hard border on the island of Ireland and to “respect the integrity of the EU’s internal market and of the United Kingdom”. The role of alternative arrangements in replacing the backstop in the future was also discussed. The Prime Minister and President Juncker tasked the Secretary of State for Exiting the European Union, Stephen Barclay, and the EU Commission’s Chief Negotiator, Michel Barnier, with “considering the process the European Commission and the UK will follow”. Mr Barclay and Mr Barnier would also follow up a discussion on whether additions or changes to the political declaration could be made that were consistent with the EU and UK Government positions. The Prime Minister and President Juncker agreed to talk again before the end of February.

In comments made to the European Economic and Social Committee in Brussels, President Juncker was reported as saying that he was not optimistic that a no deal scenario could be avoided:

If a no-deal would happen—and I can’t exclude this—this would have terrible economic and social consequences, both in Britain and on the continent, and so my efforts orient in a way that the worst can be avoided. But I am not very optimistic when it comes to this issue.<sup>148</sup>

The Prime Minister’s spokesperson was asked about Mr Juncker’s comments by journalists. The spokesperson was reported as saying that the talks on 20 February had been constructive and that both the UK and the EU’s aim was to agree a deal:

It is still very much the position of the EU that they want the UK to leave with a deal. That means everyone working together with energy in order to secure the assurances that parliament needs.<sup>149</sup>

## 8.9 MPs Resign to Form Independent Group

In late February, MPs from both main political parties resigned to sit as an independent grouping, citing their parties’ handling of Brexit amongst the reasons for their resignations.

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<sup>146</sup> Rowena Mason, Daniel Boffey and Jessica Elgot, ‘[Brexit Backstop: Theresa May to Put New Proposals to EU](#)’, *Guardian*, 20 February 2019.

<sup>147</sup> Prime Minister’s Office, ‘[Joint Statement on Behalf of Prime Minister May and President Juncker](#)’, 20 February 2019.

<sup>148</sup> Haroon Siddique, ‘[Politics Live: 21 February 2019](#)’, *Guardian*, 21 February 2019 [see entry at 10:45am].

<sup>149</sup> [ibid \[see entry at 12:16pm\]](#).

Seven Labour MPs—Luciana Berger, Ann Coffey, Mike Gapes, Chris Leslie, Gavin Shuker, Angela Smith and Chuka Umunna—resigned from the Labour Party on 18 February and formed a new independent group.<sup>150</sup> An eighth Labour MP, Joan Ryan, joined them the following day.<sup>151</sup> The group is not formally a new political party, although Mr Umunna said he hoped that it would be established as one by the end of the year.<sup>152</sup> Critical of Jeremy Corbyn’s leadership in general, members of the group cited Labour’s handling of Brexit as one of the reasons behind their split from the party. For example, in his resignation video message, Chris Leslie spoke of Labour’s “betrayal on Brexit”, arguing that “standing idly by while [...] livelihoods and future opportunities are put at risk by Brexit is a fundamental violation of Labour’s traditional values”.<sup>153</sup>

In response to the resignations, Jeremy Corbyn issued a statement in which he said that Labour had set out a “credible and unifying” plan as an alternative to the Conservatives’ “bungling” of Brexit.<sup>154</sup>

On 20 February, three Conservative MPs—Heidi Allen, Anna Soubry and Sarah Wollaston—resigned from the Conservative Party to join the independent group with the former Labour MPs.<sup>155</sup> In a joint letter to the Prime Minister, the three said they were leaving because of the party’s “shift to the right” and the Government’s “disastrous handling of Brexit”.<sup>156</sup> They criticised what they said was a “dismal failure to stand up to the hard line ERG” and the Prime Minister’s “false binary choice” between “a bad deal and no deal”.

In a statement issued in response to the resignations, Mrs May said the UK’s membership of the EU had been “a source of disagreement both in our party and our country for a long time”, and “[e]nding that membership after four decades was never going to be easy”.<sup>157</sup> However, she believed that “by delivering on our manifesto commitment and implementing the decision of the British people we are doing the right thing for our country”.

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<sup>150</sup> The Independent Group, ‘[Statement of Independence](#)’, 18 February 2019.

<sup>151</sup> Joan Ryan, ‘[Personal Twitter Account](#)’, 19 February 2019.

<sup>152</sup> Jessica Elgot, ‘[Chuka Umunna Hopes New Party Will Be Created by End of Year](#)’, *Guardian*, 19 February 2019.

<sup>153</sup> Chris Leslie, ‘[Personal Twitter Account](#)’, 18 February 2019.

<sup>154</sup> Labour Party, ‘[Statement from Jeremy Corbyn](#)’, 18 February 2019.

<sup>155</sup> BBC News, ‘[Independent Group: Three MPs Quit Tory Party to Join](#)’, 20 February 2019.

<sup>156</sup> Anna Soubry, ‘[Personal Twitter Account](#)’, 20 February 2019.

<sup>157</sup> Andrew Sparrow, ‘[Anna Soubry, Sarah Wollaston and Heidi Allen Quit Conservative Party](#)’, *Guardian*, 20 February 2019 [see entry at 11:26].

## 9. Role of the House of Lords

### 9.1 Informing the Debate

Throughout this sequence of Brexit debates, Ministers in the Lords have given assurances that, in addition to the House's statutory role set out in section 13 of the EUWA, opportunities would be given for the Lords to express its view.

For example, speaking in the Lords debate on 28 January 2019, Baroness Evans of Bowes Park, Leader of the House of Lords, said:

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.<sup>158</sup>

Lord Callanan, Minister of State at the Department for Exiting the European Union, said that “consistent with the approach taken throughout the process of exiting the EU”, it was right that the House of Lords “should have a chance to comment on and inform the process” in advance of the Commons holding a debate the following day.<sup>159</sup>

### 9.2 Time to Scrutinise Legislation

Ministers have also sought to address concerns that have been expressed about the time remaining for scrutinising and passing legislation in time for exit day on 29 March 2019. For example, Lord Butler of Brockwell (Crossbench) suggested on 12 February 2019 that it was “clear [...] that it is quite impossible for Parliament to pass the primary and secondary legislation needed to have a comprehensive system of law if we leave the EU on 29 March 2019”.<sup>160</sup> Baroness Evans of Bowes Park maintained that “good progress” was being made.<sup>161</sup> She promised that when tabling legislation in the Lords, the Government would continue to discuss it with the usual channels “in a constructive manner” to “ensure that we can give this House time to scrutinise legislation as it wishes”. She said that this would include ensuring that the House of Lords had “sufficient time” to scrutinise the withdrawal agreement bill that would be needed to implement a withdrawal agreement in domestic law, although she said the timing of this would depend on the bill passing through the Commons first.<sup>162</sup>

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<sup>158</sup> [HL Hansard, 28 January 2019, col 917.](#)

<sup>159</sup> [HL Hansard, 13 February 2019, col 1852.](#)

<sup>160</sup> [HL Hansard, 12 February 2019, col 1783.](#)

<sup>161</sup> *ibid.*

<sup>162</sup> *ibid.*, col 1786.

### 9.3 Role under the European Union (Withdrawal) Act 2018

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.<sup>163</sup> 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.

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. The Prime Minister has said that if she lost a second ‘meaningful vote’, she would hold a debate in the Commons the following day.<sup>164</sup> 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 sections 13(4)–(6).

### 9.4 Constitutional Reform and Governance Act 2010

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

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.<sup>165</sup> Should the

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<sup>163</sup> 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).

<sup>164</sup> [HC Hansard, 29 January 2019, col 671](#).

<sup>165</sup> 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)).

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”.<sup>166</sup>

However, Theresa May has suggested that if time was running short to lay the withdrawal agreement for at least 21 sitting days before exit day, the Government could use the withdrawal agreement bill (the legislation planned to implement the withdrawal agreement in domestic law) to modify the normal ratification requirements under CRAG:

[...] the European Union (Withdrawal) Act 2018 makes clear that the provisions of the 2010 Act apply to the withdrawal agreement and require it to be laid before Parliament for 21 sitting days. In most circumstances, that period may be important for the House to have an opportunity to study a piece of legislation, but in this instance, MPs will already have debated and approved the agreement as part of the meaningful vote. While we will follow normal procedure if we can, where there is insufficient time remaining following a successful meaning vote, we will make provision in the Withdrawal Agreement Bill, with Parliament’s consent to ensure that we are able to ratify on time to guarantee our exit in an orderly way.<sup>167</sup>

Lord Callanan, Minister of State for Exiting the European Union, observed that such a change would require the agreement of the Lords, although like the Prime Minister, he suggested that scrutiny under CRAG might not be so important since the withdrawal agreement would also be scrutinised under other procedures:

This would of course require agreement in both Houses; noble Lords will no doubt want to consider the arguments carefully. What is important is that Parliament has the opportunity for ample time to scrutinise, debate and vote on the withdrawal agreement. In the circumstance where the House of Commons had voted to pass that agreement, though, it is hard to see why Parliament would want to hold up our exit or to allow MPs or Peers to consider the treaty once

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<sup>166</sup> Constitutional Reform and Governance Act 2010, section 20(8).

<sup>167</sup> [HC Hansard, 12 February 2019, cols 744–5.](#)

more.<sup>168</sup>

Baroness Smith of Basildon, Shadow Leader of the House of Lords, has expressed Labour’s position that CRAG should not be “ripped up and tossed to one side”.<sup>169</sup>

## 10. Further Reading

The following recent House of Commons Library publications may also be of interest:

- [What if There’s No Brexit Deal?](#), 8 February 2019
- [Extending Article 50: Could Brexit Be Delayed?](#), 12 February 2019
- [‘What Legislation is Required for a No Deal Brexit?’](#), 15 February 2019
- [‘Yvette Cooper’s Private Member’s Bill Explained’](#), and [European Union \(Withdrawal\) \(No. 4\) Bill](#), both 19 February 2019
- [‘Extending Article 50 and European Parliament Elections’](#), 19 February 2019 (blog post)

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<sup>168</sup> [HL Hansard, 13 February 2019, col 1935.](#)

<sup>169</sup> [HL Hansard, 13 February 2019, col 1855.](#)