



Brexit: Recent Developments Debate on 11 March 2019

Summary

On 11 March 2019, the House of Lords is scheduled to hold a debate on the further discussions with the European Union under article 50 of the Treaty on European Union. This is the latest in a series of debates held in both Houses on the withdrawal agreement and political declaration the Government agreed with the EU in November 2018, which was rejected by the Commons in the ‘meaningful vote’ on 15 January 2019. This briefing covers developments since the publication of our last briefing, [Further Article 50 Discussions with the EU](#), on 21 February 2019.

The Prime Minister delivered her most recent statement, updating the Commons on the progress of negotiations with the EU, on 26 February 2019. This was debated in the Commons and a take-note debate took place in the Lords on 27 February 2019. In her statement, Mrs May committed to holding a second ‘meaningful vote’ in the House of Commons by 12 March at the latest. If the Government did not win a ‘meaningful vote’ by then, it would table a motion for debate on 13 March 2019, allowing the Commons to vote on whether it wished the UK to leave the EU without a deal. Should the Commons vote against no deal, it would be given the opportunity on 14 March 2019 to vote on requiring the Government to request a short, limited, extension to article 50. An amendment by Yvette Cooper (Labour MP for Normanton, Pontefract and Castleford) to add this commitment to the Government’s motion on 27 February was agreed on division by 502 votes to 20. Outside of statutory requirements under the European Union (Withdrawal) Act 2018, the Prime Minister has not made reference to a role for the Lords in her commitment of 26 February.

On 27 February 2019, the Commons also agreed without division to an amendment moved by Alberto Costa (Conservative MP for South Leicestershire). This requires the Government to seek joint agreement with the EU to adopt the citizens’ rights part of the withdrawal agreement and implement it as a separate agreement in order to guarantee the rights of EU citizens even in the event of no deal. The Commons rejected, by a majority of 83, Labour’s “alternative plan” for changes to the political declaration. In her statement the Prime Minister built on previous comments from 29 January to protect workers’ rights once the UK leaves the EU. The Government published further details of its proposals for this on 6 March 2019. On 26 February 2019, it also published its latest assessment on the potential impact of no deal on businesses.

The Prime Minister, the Secretary of State for Exiting the European Union and the Attorney General have continued to hold discussions with EU leaders and European Commission officials about making legal changes to ensure that the Northern Ireland backstop in the withdrawal agreement would not end up becoming a permanent arrangement. To date, a solution acceptable to both sides does not seem to have emerged, although the Attorney General emphasised that the negotiations would not be conducted in public.

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I. Introduction

On 11 March 2019, the House of Lords is scheduled to hold a debate on the further discussions with the European Union under article 50 of the Treaty on European Union. This is the latest in a series of debates held in both Houses on the withdrawal agreement and political declaration the Government agreed with the EU in November 2018. Some of these debates have been held under the provisions of section 13 of the European Union (Withdrawal) Act 2018, some following commitments made by the Prime Minister to report back to Parliament by self-imposed deadlines. A summary of the debates so far is given in the table at the end of this introductory section of the briefing.

The House of Lords Library has written a series of briefings to accompany the Lords debates:

- [Adjournment of the House of Lords Debate on the Withdrawal Agreement and Political Declaration](#), 11 December 2018
- [Withdrawal Agreement: Section 13\(1\)\(c\) of the European Union \(Withdrawal\) Act 2018](#), 4 January 2019
- [Further Debate for the Purposes of Section 13 of the European Union \(Withdrawal\) Act 2018](#), 24 January 2019
- [Leaving the European Union: Recent Developments and Debates under Section 13 of the European Union \(Withdrawal\) Act 2018](#), 31 January 2019
- [Further Take-Note Debate on EU Withdrawal](#), 8 February 2019
- [Further Article 50 Discussions with the EU](#), 21 February 2019

This House of Lords Library Briefing focuses on developments since the last briefing was published on 21 February 2019. It covers:

- The Prime Minister's latest statement to the House of Commons on 26 February in which she promised to hold a second meaningful vote by 12 March 2019 at the latest; to hold a vote on whether to leave without a deal by 13 March 2019 at the latest if the Government has not won a 'meaningful vote' by 12 March 2019; and if the Commons rejects leaving with no deal, to bring forward a motion on 14 March 2019 on whether to seek a "short, limited" extension to the article 50 negotiating period (section 2.1).
- A vote by the House of Commons on 27 February 2019 to confirm these commitments in a resolution (section 2.1).
- The Commons' rejection, by a majority of 83, of Labour's "alternative plan" for changes to the political declaration, and Labour's subsequent commitment to support or table an amendment in favour of a second referendum (section 2.2).

- Agreement by the Commons on 27 February 2019 without division that the Government should seek a joint commitment with the EU to adopt the citizens' rights part of the withdrawal agreement regardless of the outcome of the negotiations as a whole, and the Government's subsequent attempts to engage with the EU on this matter (section 2.3).
- Commitments by the Government to ensure workers' rights post-Brexit, mentioned by Theresa May in her statement on 26 February and expanded on in documents published by the Department for Business, Energy and Industrial Strategy on 6 March 2019 (section 2.4).
- The progress of the Government's discussions with the EU about how to ensure that the Northern Ireland backstop in the withdrawal agreement could not become a permanent arrangement (section 3).
- The publication of a report by the Government on 26 February 2019 on the implications for trade and business of leaving the EU with no deal (section 4).
- The role of the House of Lords in the process of the UK's withdrawal from the EU, including the implications of the Prime Minister's 26 February statement for the House of Lords (section 5).

By way of background to these recent developments, Table I provides a summary of the debates in both Houses to date.

Table I: Summary of Debates in the House of Commons and House of Lords on the UK's Withdrawal from the EU, December 2018–February 2019

| House | Dates | Basis | Summary |
|---------|------------------------------|------------|--|
| Commons | 4, 5, 6 and 10 December 2018 | section 13 | The House of Commons held a debate for the purposes of section 13(1)(b) of the European Union (Withdrawal) Act 2018 (EUWA), which requires the House of Commons to approve the withdrawal agreement and political declaration as one of the steps necessary 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. ¹ |

¹ [HC Hansard 10 December 2018, col 23.](#)

| House | Dates | Basis | Summary |
|---------|-----------------------------------|------------|---|
| Lords | 5, 6 and 10 December 2018 | section 13 | 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. ² |
| Commons | 9, 10, 11, 14 and 15 January 2019 | section 13 | The House of Commons concluded its debate on the withdrawal agreement and political declaration for the purposes of section 13(1)(b) of the EUWA. The ‘meaningful vote’ took place on 15 January 2019, and the Commons voted by a majority of 230 not to approve the withdrawal agreement and political declaration. ³ |
| Lords | 9, 10 and 14 January 2019 | section 13 | 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. ⁴ 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”. ⁵ |
| Lords | 28 January 2019 | section 13 | The House of Lords held a further debate in line with the requirements of section 13 of the EUWA about what must happen in the event the Government loses a ‘meaningful vote’ on the withdrawal agreement and political declaration. The House agreed without division to the Government’s take-note motion, and voted in favour of a 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. ⁶ |

² 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.

³ [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).

⁴ [HL Hansard, 14 January 2019, col 118](#).

⁵ *ibid*, cols 119–22.

⁶ [HL Hansard, 28 January 2019, cols 98 and cols 118–22](#).

| House | Dates | Basis | Summary |
|---------|------------------|---------------|--|
| Commons | 29 January 2019 | section 13 | The House of Commons held a further debate in line with the requirements of section 13 of the EUWA about what must happen in the event the Government loses the 'meaningful vote'. The Commons voted by a majority of 16 in favour of a backbench amendment supported by the Government to replace the Northern Ireland backstop with "alternative arrangements to avoid a hard border" (the Brady amendment). ⁷ 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). ⁸ |
| Lords | 13 February 2019 | PM commitment | 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. 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 take-note debate in the Lords took place before the end of February 2019. ⁹ |
| Commons | 14 February 2019 | PM commitment | 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. ¹⁰ |

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

⁸ [ibid, cols 779–83.](#)

⁹ [HL Hansard, 13 February 2019, cols 1937–8.](#)

¹⁰ [HC Hansard, 14 February 2019, cols 1155–8.](#)

| House | Dates | Basis | Summary |
|---------|------------------|---------------|---|
| Commons | 27 February 2019 | PM commitment | <p>The House of Commons held a debate following a statement made by the Prime Minister on 26 February 2019 on progress made with the EU in reaching agreement on a deal that could command a majority in the House of Commons. 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 27 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 27 February 2019. In her statement on 26 February 2019, the Prime Minister committed to holding a second ‘meaningful vote’ in the House of Commons by 12 March at the latest. If the Government did not win a ‘meaningful vote’ by then, it would table a motion for debate on 13 March 2019, allowing the Commons to vote on whether it wished the UK to leave the EU without a deal. Should the Commons vote against no deal it would be given the opportunity on 14 March 2019 to vote on requiring the Government to request a short, limited, extension to article 50.</p> <p>The House agreed to an amendment by Yvette Cooper (Labour MP for Normanton, Pontefract and Castleford), to amend the Government’s motion on 27 February 2019 to this effect. This was passed by 502 votes to 20.¹¹ The House of Commons also accepted, without division, an amendment by Alberto Costa (Conservative MP for South Leicestershire), to require the Prime Minister to seek a joint UK-EU commitment on adopting part two of the withdrawal agreement on citizens’ rights, regardless of whether the UK left the EU without an agreement.¹²</p> |
| Lords | 27 February 2019 | PM commitment | <p>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. The Lords agreed without division to the Government’s take-note motion.</p> |

¹¹ [HC Hansard, 27 February 2019, cols 454–7.](#)

¹² [ibid](#), col 453.

2. Prime Minister's Statement and Commons Debate (26 and 27 February 2019)

2.1 Commitments Regarding Votes on No Deal and Extending Article 50

Prime Minister's Statement Sets Out Timetable for Commons Votes

In her statement to the Commons on 26 February 2019, the Prime Minister said she knew that MPs were “genuinely worried that time is running out” for Parliament to express its view on what should happen next if the Government did not hold a second ‘meaningful vote’ or were to lose such a vote.¹³ She also recognised that MPs were “deeply concerned by the effect of the current uncertainty on business”. She therefore made three commitments about the next steps in terms of parliamentary process, which she intended would provide reassurance:

First, we will hold a second meaningful vote by Tuesday 12 March at the latest. Secondly, if the Government have not won a meaningful vote by Tuesday 12 March, then they will, in addition to their obligations to table a neutral, amendable motion under section 13 of the European Union (Withdrawal) Act 2018, table a motion to be voted on by Wednesday 13 March, at the latest, asking this House if it supports leaving the EU without a withdrawal agreement and a framework for a future relationship on 29 March. So the United Kingdom will only leave without a deal on 29 March if there is explicit consent in this House for that outcome.

Thirdly, if the House, having rejected leaving with the deal negotiated with the EU, then rejects leaving on 29 March without a withdrawal agreement and future framework, the Government will, on 14 March, bring forward a motion on whether Parliament wants to seek a short, limited extension to article 50, and, if the House votes for an extension, seek to agree that extension approved by the House with the EU and bring forward the necessary legislation to change the exit date commensurate with that extension.¹⁴

There are several procedural points relating to this section of the Prime Minister's statement. Firstly, she referred to the Government's obligations under the EUWA in the case it had not won a ‘meaningful vote’ by 12 March 2019. A ‘meaningful vote’ is understood to be a vote by the House of Commons under section 13(1)(b) of the EUWA on whether or not to approve the withdrawal agreement and framework for the future relationship. The Government must obtain formal approval from the

¹³ [HC Hansard, 26 February 2019, col 166.](#)

¹⁴ *ibid*, cols 166–7.

Commons under section 13(1)(b) before a withdrawal agreement can be ratified as an international treaty. If the Government loses a ‘meaningful vote’, then under sections 13(3) to 13(5) of the EUWA, it has 21 days to make a written statement setting out how it proposes to proceed in relation to the article 50 negotiations. Under section 13(6) of the EUWA, it must also:

- (a) move a motion in neutral terms, to the effect that the House of Commons has considered the statement, in the Commons within seven Commons sitting days of making the statement.
- (b) Move a motion for the House of Lords to take note of the statement within seven Lords sitting days of making the statement.

Secondly, the Prime Minister asserted that the UK would “only leave without a deal on 29 March if there is explicit consent in this House [the Commons] for that outcome”.¹⁵ Leaving on 29 March 2019 is the default position in domestic and EU law. Under the terms of article 50 of the Treaty on European Union, the UK is set to leave the European Union on 29 March 2019—two years from the date it formally notified the European Council of its intention to leave—unless the other 27 EU member states and the UK unanimously agree to extend this period, or the UK revokes its notification of its intent to leave. Section 20(2) of the European Union (Withdrawal) Act 2018 (EUWA) sets 11pm on 29 March 2019 as exit day in domestic law.

The Government’s commitment is that if the Commons rejects a deal in a second ‘meaningful vote’ and also votes not to leave without a deal, the Government would then hold a vote on whether to request an extension to the article 50 period. If the Commons voted not to request an extension, then leaving on 29 March 2019 would remain the default legal position (even if the Commons had voted to reject leaving with no deal). If the Commons voted to request an extension but the UK and the EU27 did not reach unanimous agreement on the terms of an extension, then leaving on 29 March 2019 would also remain the default legal position. In either of these circumstances, leaving with no deal on 29 March 2019 could only be avoided if the UK agreed a deal with the EU or revoked its article 50 notification.

Thirdly, the House of Commons voted in a previous vote to reject leaving without a deal. On 29 January 2019, it agreed by 318 to 310—a majority of 8—to an amendment tabled 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.¹⁶ During the same debate, the Commons voted by 317 to 301—a majority of 16—in favour of

¹⁵ [HC Hansard, 26 February 2019, col 166.](#)

¹⁶ [HC Hansard, 29 January 2019, cols 779–83.](#)

an amendment moved by Sir Graham Brady (Conservative MP for Altrincham and Sale West) which expressed support for the withdrawal agreement if the Northern Ireland backstop was replaced with “alternative arrangements” to avoid a hard border.¹⁷

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

Resolutions of the House of Commons are the expression of the will of the elected representatives of the United Kingdom. Resolutions by themselves may not have legal effect, but they can have political effect. As such, resolutions should be treated seriously by the Government acknowledging that the Government must retain the confidence of the House of Commons to remain in office.¹⁸

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. Neither does it change domestic law.

In a subsequent Commons debate on 14 February 2019, the Government’s motion included wording about reiterating the Commons’ support for the approach to leaving the EU set out in the 29 January resolution. Supporters of the Spelman amendment were discontented as they believed that the Government, by holding discussions with the EU on making changes to the backstop whilst maintaining the UK would leave the EU on 29 March 2019 if no deal was agreed, was observing one part of the resolution (replacing the backstop) but not the other (rejecting no deal).¹⁹ Stephen Barclay, Secretary of State for Exiting the European Union, explained the Government’s position 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

¹⁷ [HC Hansard, 29 January 2019, cols 784–7.](#)

¹⁸ 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.

¹⁹ For further detail, see section 8.7 of House of Lords Library, [Further Article 50 Discussions with the EU](#) (21 February 2019).

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 50.²⁰

However, members of the European Research Group (a group of backbench Conservative MPs) were reportedly unhappy that by referring to the 29 January resolution in the motion for the 14 February debate, the Government was endorsing taking no deal off the table.²¹ The Government was defeated on its motion by 303 votes to 258, a majority of 45.²² 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.²³ Five Conservatives voted against the Government and 67 did not vote on the motion.²⁴

Yvette Cooper’s Private Member’s Bill

Continuing her statement on 26 February 2019, Mrs May said that the commitments she was now making all fitted the timescale of a private member’s bill tabled by Yvette Cooper (Labour MP for Normanton, Pontefract and Castleford).²⁵ This bill—the European Union (Withdrawal) (No. 4) Bill—was designed to set a ‘trigger date’ of 13 March 2019. If the Commons had not approved a deal by then, it would create obligations for what the Government would have to do next. These obligations have been summarised as follows by the House of Commons Library:

The Government would be allowed to choose between one of two courses of action. Under “track one” the Prime Minister can first ask the Commons to approve leaving the EU without a deal. If the Commons agrees, the legal default is that the UK leaves the EU without a deal on 29 March 2019.

²⁰ [HC Hansard, 14 February 2019, col 1070.](#)

²¹ Jonathan Isaby, ‘[Row Brewing Over Thursday’s Government Motion Opposing a No-Deal Brexit](#)’, Brexit Central, 13 February 2019.

²² [HC Hansard, 14 February 2019, cols 1155–8.](#)

²³ George Parker, Jim Pickard and Henry Mance, ‘[Brexit Vote ‘Shambles’ Blows Hole in Theresa May’s Authority](#)’, *Financial Times* (£), 14 February 2019.

²⁴ 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.

²⁵ [HC Hansard, 26 February, col 167.](#)

If the Commons rejects or amends that motion, or the Prime Minister decides against seeking approval for “no deal”, we move on to “track two”. The Prime Minister must bring forward a proposal to the Commons for extending article 50. The motion must say how long an extension the Prime Minister wants to ask for, and ask the Commons to “approve” her extension request plan.

MPs would have the opportunity to amend the date in the Prime Minister’s motion. If any resolution were to be adopted by the Commons, it would legally compel the Prime Minister to ask the European Council for an extension to the date specified by MPs.

Nothing in this bill would prevent the Prime Minister from seeking an article 50 extension if MPs did not demand her to do so. If the Government secured an approval motion for a deal at any time on or after 13 March but before 29 March, the bill (and any instruction given by Parliament under it) would also cease to have effect. This would return full legal discretion to the Prime Minister as to whether and until when to seek an extension (eg to provide more time to pass the withdrawal agreement bill and to ratify the treaty).²⁶

This bill followed two previous private members’ bills tabled by the same cross-party group of MPs, one in the name of Nick Boles (Conservative MP for Grantham and Stamford) and one in the name of Yvette Cooper. Both of these aimed to provide a route by which Parliament could instruct the Government to seek an extension of article 50 in certain circumstances.²⁷ During the Commons debate on 29 January 2019, Yvette Cooper moved an amendment that would have secured parliamentary time in the Commons for the second of these private member’s bills; the amendment was defeated by 321 votes to 298, a majority of 23.²⁸

It was anticipated that Ms Cooper and Sir Oliver Letwin (Conservative MP for West Dorset) would table an amendment in the Commons debate on 27 February 2019 seeking to secure parliamentary time in the Commons for Ms Cooper’s new bill to be debated. According to press reports, up to 15 ministers, including Cabinet ministers, were prepared to resign in order to support such an amendment.²⁹ Press reports also speculated that a number of ministers, including Cabinet ministers, would resign unless

²⁶ House of Commons Library, ‘[Yvette Cooper’s Private Member’s Bill Explained](#)’, 19 February 2019. See also: House of Commons Library, [European Union \(Withdrawal\) \(No 4\) Bill 2017–19](#), 19 February 2019.

²⁷ For further details, see: House of Commons Library, [European Union \(Withdrawal\) \(No. 2\) Bill 2017–19](#), 18 January 2019; and [European Union \(Withdrawal\) \(No. 3\) Bill 2017–19](#), 23 January 2019.

²⁸ [HC Hansard, 29 January 2019, cols 770–4](#).

²⁹ Steven Swinford and Anna Mikhailova, ‘[Prime Minister Warned 15 Remain Ministers Prepared to Quit if No-Deal Brexit Remains on the Table](#)’, *Telegraph* (£), 25 February 2019.

Mrs May ruled out a no-deal exit.³⁰

Government Policy on Leaving with No Deal or Extending Article 50

Mrs May said in her statement on 26 February 2019 that although she was making a commitment to hold a vote on 14 March about extending article 50 if the Commons had rejected her deal and rejected leaving with no deal, she wished to “be clear” that she did not want to see an extension to article 50.³¹ She believed the “absolute focus” should remain on working to get a deal and leaving on 29 March 2019. She said that any extension should be short—no longer than the end of June. She also argued that any extension would “almost certainly have to be a one-off” because if the UK had not taken part in the European Parliament elections, it would be “extremely difficult to extend again”.³² She therefore maintained that an extension would “create a much sharper cliff edge in a few months’ time”, without taking no deal off the table. She reiterated that only revoking article 50, which she said she “shall not do”, or agreeing a deal, could take no deal off the table.

Following the statement, a number of MPs asked whether the Government would support leaving with no deal or requesting an extension to article 50 should these votes arise. Mrs May repeated the Government’s commitments to hold the votes in the circumstances she had outlined but did not give a commitment about what the Government’s policy would be in those votes.³³

Jeremy Corbyn welcomed moves to take no deal off the table, but questioned what the purpose of extending article 50 would be if the Government had no clear plan about what it would do given additional time:

Any extension is necessary only because of the Prime Minister’s shambolic negotiations and her decision to run down the clock, but until the Prime Minister is clear about what alternative she would put forward in those circumstances, then she is simply continuing to run down the clock. She promises a short extension, but for what?³⁴

Some members of Mrs May’s own party were critical of the announcement

³⁰ See, for example: George Parker, Laura Hughes and Alex Barker, ‘[Theresa May Poised to Open the Way for Delaying Brexit](#)’, *Financial Times* (£), 26 February 2019.

³¹ [HC Hansard, 26 February 2019, col 167](#).

³² Elections to the European Parliament are scheduled to take place between 23 and 26 May 2019, with the newly elected European Parliament due to sit on 2 July 2019. The implications of this for the possibility of extending article 50 are explored in House of Commons Library, ‘[Extending Article 50 and European Parliament Elections](#)’ (19 February 2019) and ‘[Extending Article 50: Could Brexit Be Delayed?](#)’ (12 February 2019).

³³ [HC Hansard, 26 February 2019, col 175](#) (response to Yvette Cooper), col 182 (responses to Vicky Ford and Owen Smith), col 184 (response to Jess Phillips), col 188 (response to Stella Creasey) and col 193 (response to Ian Murray).

³⁴ *ibid*, cols 170–1.

to allow votes on leaving without a deal, and if that was rejected, on extending article 50. For example, David Davis, a former Secretary of State for Exiting the European Union, argued that it sent “the wrong message to the EU” and “may harm our negotiating position”.³⁵ Jacob Rees-Mogg, chair of the European Research Group of Conservative MPs, said that an extension to article 50 to remove the Northern Ireland backstop from the withdrawal agreement would be “acceptable”, but that any delay “as a plot to stop Brexit altogether” would be “the most grievous error that politicians could commit”.³⁶

Commons Debate: Government Commitments Confirmed in Resolution

David Lidington, Minister for the Cabinet Office, provided further assurances to the Commons during the debate on 27 February 2019. He said that the Government would hold a vote on 13 March at the latest about whether the Commons supported leaving with no deal if the Government had not brought forward a further meaningful vote by 12 March, or if it had lost such a vote.³⁷ In her statement, the Prime Minister had said a vote on whether to leave with no deal would be held if the Government had “not won” a second meaningful vote by 12 March at the latest; Mr Lidington’s words indicated that “not won” could mean such a vote had either been lost or not held. Repeating the Prime Minister’s commitments about holding votes on leaving with no deal and on extending article 50, he emphasised that the Government would “stick by them, as we have stuck by previous commitments to make statements and table amendable motions by specific dates”.³⁸

Mr Lidington was also pressed by MPs on whether the Government would support leaving with no deal or requesting an extension to article 50 should these votes arise.³⁹ He declined to comment on “a hypothetical whipping decision on a hypothetical vote that the Government do not wish or intend us to confront”, arguing that it was “too early” to do so, since before that point could be reached, the Government’s “clear intention” was to invite the House to support a revised deal in a second ‘meaningful vote’.⁴⁰

A number of MPs asked questions about the length of a possible extension to article 50 and whether the Commons would have the opportunity to amend any proposed date. Hilary Benn (Labour MP for Leeds Central and chair of the House of Commons Exiting the European Union Committee)

³⁵ David Davis, [‘The Utter Folly of Defeatist Mrs May Taking No Deal Off the Table’](#), *Daily Mail*, 27 February 2019.

³⁶ Gordon Rayner and Steven Swinford, [‘Delaying Brexit is a ‘Plot to Stop It’ as May Caves in to Remainers’](#), *Telegraph* (£), 26 February 2019.

³⁷ [HC Hansard, 27 February 2019, col 377.](#)

³⁸ *ibid*, cols 377–8.

³⁹ *ibid*, cols 368, 374 and 375–6.

⁴⁰ *ibid*, cols 375–6.

asked whether the time period given in the motion for a debate on 14 March about seeking an extension would be amendable.⁴¹ Mr Lidington said that it would be a matter for the Speaker as to whether a given motion was amendable and which amendments were selected.⁴² He also pointed out that if a vote on whether to extend article 50 was taking place because the Government had lost a second ‘meaningful vote’, the Government would also be under an obligation to table a motion under section 13(3)–(6) of the EUWA. Section 13(6)(a) of the EUWA specifies that this motion should be “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.⁴³

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.⁴⁴ This has the effect of making such motions amendable.

Yvette Cooper and Liz Kendall (Labour MP for Leicester West) asked what would happen if the Commons voted in favour of extending article 50 but there was then a disagreement between the Government and the EU about the length or terms of an extension.⁴⁵ They sought clarification as to whether the Commons would have a chance to consider any proposed changes to the extension for which it had voted. Nick Boles noted that Ms Cooper’s bill made specific provision that in circumstances where the European Union proposed an extension period that differed from what the Commons had agreed to, the Commons would have the opportunity to consider that revised proposal.⁴⁶ He argued it was “extremely important” to have the same provision confirmed by the Government, otherwise supporters of Ms Cooper’s bill would press the amendment to secure parliamentary time for it. Mr Lidington said he could not envisage circumstances in which “if a period had been agreed with the European Union or had the potential to be agreed, the Government would not bring it back to the House”.⁴⁷ He also suggested that if the Government did not bring it back, MPs would do so anyway by amending the motion the Government would have to table under section 13(6)(a) of the EUWA after

⁴¹ [HC Hansard, 27 February 2019, col 367.](#)

⁴² *ibid.*

⁴³ House of Commons, ‘[Standing Orders 2018](#)’, 1 May 2018.

⁴⁴ [HC Hansard, 4 December 2018, cols 741–5.](#)

⁴⁵ [HC Hansard, 27 February 2019, col 378.](#)

⁴⁶ *ibid.*, col 379.

⁴⁷ *ibid.*, col 380.

losing a second ‘meaningful vote’.

A cross-party amendment to the debate motion had been tabled in the name of Dame Caroline Spelman seeking to secure parliamentary time on 28 February 2019 for Yvette Cooper’s private member’s bill. Following the Prime Minister’s statement and Mr Lidington’s further assurances about the Government’s intentions, Dame Caroline said she would not press the amendment.⁴⁸ Yvette Cooper said that the Government’s changed position on the next steps if no deal had been agreed by the middle of March was “clearly a result of our cross-party bill and cross-party pressure”.⁴⁹ She said that the cross-party group supporting her bill would keep it “in reserve” although they would not press the amendment to secure parliamentary time for it.⁵⁰ However, she said she intended to press another amendment which would incorporate the commitments the Prime Minister made in her statement into a House of Commons resolution “to have confirmation and clarity of what the Prime Minister said as part of the motion”.⁵¹ She continued to urge ministers how the Government would vote in any division on whether to leave with no deal or whether to request an extension of article 50.

Stephen Barclay indicated that the Government would accept Ms Cooper’s amendment, although he argued it was “no longer necessary” given the commitments the Prime Minister had made.⁵² The Commons agreed to Yvette Cooper’s amendment by 502 votes to 20 (a majority of 482).⁵³

A Scottish National Party (SNP) amendment which would have resolved that the Commons was determined not to leave the EU without a deal “under any circumstances and regardless of any exit date” was defeated by 324 votes to 288.⁵⁴ Stephen Gethins, the SNP’s foreign affairs spokesperson, declared that the amendment was “simple and straightforward: it would take no deal off the table altogether”.⁵⁵ David Lidington argued that although he understood the political motives behind the amendment, it could have “no effect in terms of European law and the implications of the article 50

⁴⁸ [HC Hansard, 27 February 2019, col 399.](#)

⁴⁹ *ibid*, col 411.

⁵⁰ *ibid*, col 412.

⁵¹ The full text of the wording added by Ms Cooper’s amendment to the Commons resolution of 27 February 2019 is: “and further notes in particular the commitment of the Prime Minister made in this House to hold a second meaningful vote by 12 March and if the House, having rejected leaving with the deal negotiated with the EU, then rejects leaving on 29 March without a withdrawal agreement and future framework, the Government will, on 14 March, bring forward a motion on whether Parliament wants to seek a short limited extension to article 50, and if the House votes for an extension, seek to agree that extension approved by the House with the EU, and bring forward the necessary legislation to change the exit date commensurate with that extension”.

⁵² [HC Hansard, 27 February 2019, col 442.](#)

⁵³ *ibid*, cols 454–7.

⁵⁴ *ibid*, cols 450–3.

⁵⁵ *ibid*, col 399.

process” and “ignore[d] the legal reality” that once article 50 had been triggered, the only way to avoid no deal was to agree a deal or revoke article 50 altogether.⁵⁶

EU Response

Donald Tusk, President of the European Council, said he thought that with no majority in the Commons for a deal, it would be a “rational solution” to extend the article 50 negotiation period to avoid a “chaotic Brexit”.⁵⁷ He made these comments the day before Mrs May’s statement about holding a vote on requesting an extension to article 50 if the Commons rejected a deal and rejected leaving with no deal.

An extension would require the unanimous agreement of the EU27 member states. Responding to Mrs May’s statement, German Chancellor Angela Merkel said that: “If Britain needs more time we will not say no”.⁵⁸ However, the French President Emmanuel Macron indicated that he might not accept an extension “without a clear understanding of the aim that’s being pursued”, suggesting that any request to consider prolonging the negotiations would need to be “justified by new choices on the part of the British”.⁵⁹ Pedro Sanchez, the Spanish Prime Minister, struck a similar note, explaining that any extension request “must have a certain perspective of resolution”.⁶⁰ He said that “prolonging uncertainty by postponing deadlines is not a reasonable nor desirable alternative”. Similarly, the Austrian Chancellor, Sebastian Kurz, said:

If this extension should take place it is also necessary to ask the question: what is the goal for the time frame, what good does this extension do? Does it ensure that we will be able to finish all the work? But if this is the way out to prevent a hard Brexit then we will support this path.⁶¹

Ministerial Resignation

George Eustice, Minister of State at the Department for Environment, Food and Rural Affairs, resigned on 28 February, citing “the decision this week to

⁵⁶ [HC Hansard, 27 February 2019, col 382.](#)

⁵⁷ European Council, [‘Remarks by Donald Tusk at the Press Conference After the EU-LAS Summit in Egypt’](#), 25 February 2019.

⁵⁸ Victor Mallet, George Parker, Laura Hughes and Alex Barker, [‘Emmanuel Macron Throws Doubt on Theresa May’s Brexit Plan’](#), *Financial Times* (£), 27 February 2019.

⁵⁹ *ibid.*

⁶⁰ Daniel Boffey, Sam Jones and Angelique Chrisafis, [‘France Will Block Brexit Delay Without ‘New Choice’ by UK’](#), *Guardian*, 27 February 2019.

⁶¹ Daniel Boffey, [‘Any Extension of Article 50 Must be a One-Off, Brussels to Insist’](#), *Guardian*, 28 February 2019.

allow the postponement of our exit from the EU”.⁶² He said that: “Since Parliament is now in direct control of events, I want to be free to participate in the critical debate that will take place in the weeks ahead”. He said he continued to support the withdrawal agreement, but he feared that “developments this week will lead to a sequence of events culminating in the EU dictating the terms of any extension requested and the final humiliation of our country”.

2.2 Labour Position: Support for Second Referendum after Defeat of its “Alternative Plan”

On 25 February 2019, Labour announced that it would table an amendment to the Government’s motion for the Commons debate on 27 February 2019 to “seek to enshrine Labour’s five Brexit demands in law” and to make its “credible alternative plan” the Government’s negotiating objective.⁶³ The announcement summarised Labour’s five demands for changes to the political declaration as follows:

- A permanent and comprehensive customs union with the EU;
- close alignment with the single market underpinned by shared institutions and obligations;
- dynamic alignment on rights and protections;
- commitments on participation in EU agencies and funding programmes, including in areas such as the environment, education, and industrial regulation; and
- unambiguous agreements on the detail of future security arrangements, including access to the European Arrest Warrant and vital shared databases.

These are the same five points that Jeremy Corbyn set out in his letter to Theresa May of 6 February 2019, outlining what changes would be necessary to the political declaration to secure Labour’s support for a deal.⁶⁴

In the same announcement, Labour also said it would back an amendment to secure parliamentary time for Yvette Cooper’s private member’s bill “to take no deal off the table” and would “put forward or support an amendment in favour of a public vote to prevent a damaging Tory Brexit”.⁶⁵

⁶² Politics Home, [‘Read in Full: George Eustice’s Letter of Resignation as Fisheries Minister’](#), 28 February 2019.

⁶³ Labour Party, [‘Labour to Table Amendment to Make Its Credible Alternative Plan the UK’s Brexit Negotiating Position’](#), 25 February 2019.

⁶⁴ For further information, see section 8.4 of House of Lords Library, [Further Article 50 Discussions with the EU](#), 21 February 2019.

⁶⁵ Labour Party, [‘Labour to Table Amendment to Make Its Credible Alternative Plan the UK’s Brexit Negotiating Position’](#), 25 February 2019. Following assurances from the Government, Dame Caroline Spelman did not move her amendment relating to parliamentary time for Ms Cooper’s bill—see section 2.1 of this briefing.

Keir Starmer, Shadow Secretary of State for Exiting the European Union, stated that if Parliament rejected Labour’s “alternative plan” for the deal the UK should seek with the EU, then “Labour will deliver on the promise we made at our annual conference and support a public vote”.⁶⁶ The motion agreed at Labour’s 2018 party conference included the following passage on Brexit:

Should Parliament vote down a Tory Brexit deal or the talks end in no-deal, conference believes this would constitute a loss of confidence in the Government. In these circumstances, the best outcome for the country is an immediate general election that can sweep the Tories from power.

If we cannot get a general election Labour must support all options remaining on the table, including campaigning for a public vote. If the Government is confident in negotiating a deal that working people, our economy and communities will benefit from they should not be afraid to put that deal to the public.⁶⁷

In the Commons debate on 27 February 2019, Labour moved an amendment that would have instructed the Government to negotiate with the EU to change the political declaration to secure Labour’s five demands, and to introduce primary legislation to give statutory effect to that negotiating mandate. Introducing the amendment, Keir Starmer argued that the Government had made no progress in agreeing changes to the withdrawal agreement and political declaration with the EU since losing the meaningful vote on 15 January.⁶⁸ He urged MPs to “stop deluding [themselves] that it will change in the next 14 days”.⁶⁹ He suggested that instead of “plough[ing] on with the failed deal in the usual blinkered way, and eventually put[ting] the same deal” back to the Commons, the Prime Minister should “drop her red lines” and negotiate changes that were “credible with the EU and could command a majority in this House”.⁷⁰ In his view, the changes to the political declaration set out by Labour would offer a credible alternative:

I have never pretended that it will be the easiest negotiation in history, but I know that that kind of deal—delivering a close economic relationship with the EU—would prevent a hard border in Northern Ireland, reduce the pressure on the backstop and could be negotiated. The EU has said as much in recent weeks. We have heard in meetings with EU counterparts and in public that the customs union/single market alignment proposal is credible. The EU has said it is a promising

⁶⁶ Keir Starmer, ‘[Personal Twitter Account](#)’, 25 February 2019.

⁶⁷ Labour List, ‘[Labour’s Composite Conference Motion in Full](#)’, 26 September 2018.

⁶⁸ [HC Hansard, 27 February 2019, col 384](#).

⁶⁹ *ibid*, col 385.

⁷⁰ *ibid*, col 386.

basis for negotiations.⁷¹

Responding to Labour’s amendment, David Lidington, Minister for the Cabinet Office, repeated the points that Theresa May had made in response to Jeremy Corbyn’s letter.⁷² Mr Lidington argued that, other than the call for a permanent customs union with the EU, the political declaration already provided for much of what Labour was seeking, and where it did not, the EU’s position would not accommodate what Labour wanted.⁷³ For example, he suggested that a closer relationship with the single market than the one offered by the Government’s deal would not be possible unless the UK stayed within the single market, which would mean accepting free movement and EU state aid rules, which Labour did not want. Mr Lidington therefore declared that Labour’s position was “ambiguous about what a ‘close relationship’ really means”.

Keir Starmer rejected the argument that the political declaration already offered what Labour was calling for. For example, he said that the Government’s assertion that the political declaration provided the benefits of a customs union rested on the provisions of the backstop, which the Government itself characterised as “hopefully never to be used; only an insurance policy”.⁷⁴

Labour’s amendment was defeated by 323 to 240 votes (a majority of 83).⁷⁵ In response to the defeat, Jeremy Corbyn issued a statement saying that Labour would now “back a public vote in order to prevent a damaging Tory Brexit or a disastrous no-deal outcome”.⁷⁶ However, the statement also said that Labour would continue to pursue other options, including “a close economic relationship based on our credible alternative plan or a general election”.

During the debate, Keir Starmer had set out further information about the conditions for a referendum that Labour would pursue if its amendment were defeated:

Labour will support or table an amendment in favour of a public vote. That public vote would include a credible leave option and remain. It could be attached to the Prime Minister’s deal—what I have called a lock against a damaging Tory Brexit—or it could be attached to any deal that managed to win a majority in the House of Commons.⁷⁷

⁷¹ [HC Hansard, 27 February 2019, col 390.](#)

⁷² For further information, see section 8.4 of House of Lords Library, [Further Article 50 Discussions with the EU](#), 21 February 2019.

⁷³ [HC Hansard, 27 February 2019, cols 382–3.](#)

⁷⁴ *ibid*, col 387.

⁷⁵ *ibid*, cols 445–8.

⁷⁶ Labour Party, ‘[Jeremy Corbyn Responds to Tonight’s Brexit Votes](#)’, 27 February 2019.

⁷⁷ [HC Hansard, 27 February 2019, col 392.](#)

The Shadow Chancellor, John McDonnell, said that Labour would table an amendment on a second referendum when the second ‘meaningful vote’ took place.⁷⁸

2.3 Citizens’ Rights: Costa Amendment

In the debate on 27 February 2019, the Commons agreed without division to an amendment moved by Alberto Costa (Conservative MP for South Leicestershire) for the Government to seek a joint EU-UK commitment to adopt the citizens’ rights part of the withdrawal agreement and ensure its implementation prior to Brexit whatever the outcome of the negotiations on other aspects of the withdrawal agreement.⁷⁹ Mr Costa left his position as a Parliamentary Private Secretary (PPS) in line with a convention that PPS is expected to resign if they table an amendment to a government motion.⁸⁰

During her statement to the Commons the previous day, the Prime Minister addressed the issues raised by this amendment, arguing that the EU would not agree to a separate agreement on citizens’ rights:

As I set out last September, following the Salzburg summit, even in the event of no deal, the rights of the 3 million EU citizens living in the UK will be protected. That is our guarantee to them. They are our friends, our neighbours and our colleagues. We want them to stay. But a separate agreement for citizens’ rights is something the EU has been clear it does not have the legal authority for. If it is not done in a withdrawal agreement, these issues become a matter for member states, unless the EU was to agree a new mandate to take that forward.

At the very start of this process, the UK sought to separate out that issue, but the EU has been consistent on it. However, my right hon. Friend the Foreign Secretary has written to all his counterparts, and we are holding further urgent discussions with member states to seek assurances on the rights of UK citizens. I urge all EU countries to make this guarantee and end the uncertainty for these citizens. I hope that the Government’s efforts can give the House and EU citizens here in the UK the reassurances they need and deserve.⁸¹

Stijn Smismans, Professor of European Law at Cardiff University, whom Mr Costa consulted about the amendment, described as “confusing” Mrs May’s statement that the EU did not have “legal authority” to make a

⁷⁸ Kate Devlin and Henry Zeffman, ‘[John McDonnell Sets Out Plan for New Vote](#)’, *Times* (£), 28 February 2019.

⁷⁹ [HC Hansard, 27 February 2019, col 453.](#)

⁸⁰ *ibid*, col 421.

⁸¹ [HC Hansard, 26 February 2019, cols 167–8.](#)

separate agreement on citizens' rights.⁸² Professor Smismans argues that a separate agreement under article 50 to ringfence citizens' rights is legally possible, but the European Commission has not been mandated by the European Council to negotiate such an agreement.⁸³ He suggested that the European Council could revise its mandate at any time, and that with the agreement of the European Council and the UK, the existing citizens' rights text could be lifted out of the withdrawal agreement into a separate agreement. He contrasted this with what would happen in the case of no deal:

A UK-EU agreement then becomes very difficult. Article 50 will no longer be possible as [the] legal basis.

Such an agreement would be a 'mixed agreement' requiring ratification in all 27 national parliaments; and it is highly unlikely the EU would have legal competence to cover all the rights currently protected in the withdrawal agreement. Hence one will (largely) depend on national solutions.⁸⁴

He suggested that Mrs May was confusing the EU's legal authority to conclude a citizens' rights deal under article 50 with its legal authority post-Brexit. He argued that all that would be required to ring-fence citizens' rights in separate agreement was for the Government to ask the European Council to do agree to do so, as proposed by the Costa amendment.

Speaking to his amendment in the debate, Mr Costa welcomed the unilateral efforts the Government had undertaken to secure citizens' rights if there was no withdrawal agreement, but said it did not go far enough.⁸⁵ He argued there was "no legal hurdle at all" to securing a separate agreement on citizens' rights with the EU and urged the Government to "do everything they reasonably can to seek consensus from the European Council and get a legal mandate from the European Commission to carve out those rights".

David Lidington, Minister for the Cabinet, repeated the arguments made by the Prime Minister the previous day:

We should not [...] underestimate the challenge in reaching a joint UK-EU commitment, as the amendment calls for, to ring-fence the agreement on citizens' rights. The European Union has been very consistent in saying to us that its legal mandate is clear that nothing is

⁸² Stijn Smismans, '[Personal Twitter Account](#)', 26 February 2019. Speaking to his amendment, Alberto Costa said that he had consulted Professor Smismans about the EU's authority in this matter ([HC Hansard, 27 February 2019, col 420](#)).

⁸³ Stijn Smismans, '[Brexit: A Separate Citizens' Rights Agreement Under Article 50 TEU](#)', Eutopia Law Blog, 16 June 2017; and '[Personal Twitter Account](#)', 26 February 2019.

⁸⁴ Stijn Smismans, '[Personal Twitter Account](#)', 26 February 2019.

⁸⁵ [HC Hansard, 27 February 2019, col 420](#).

agreed until everything is agreed, and that its view, if these issues were not addressed in the withdrawal agreement, is that there are significant legal problems for the EU in protecting these rights since, in those circumstances, some of these issues would fall within the competence of member states and not of the EU institutions.⁸⁶

Nevertheless, Mr Lidington acknowledged that the Government shared a “common goal” and the same “political objectives” as Mr Costa, and on that basis would accept his amendment.⁸⁷ Stephen Barclay, Secretary of State for Exiting the European Union, later assured Mr Costa that the Government would write to the EU institutions “in the coming days” to pursue the matter.⁸⁸

However, in a press conference the following day, Mina Andreeva, the Commission’s deputy chief spokesperson, rejected the prospect of a standalone agreement on citizens’ rights, stating: “We will not negotiate mini deals because negotiating such mini deals outside the withdrawal agreement would imply that the negotiations have failed”.⁸⁹ She emphasised that the European Commission had proposed a number of contingency measures specifically to address citizens’ rights in a no-deal scenario, and welcomed the UK’s commitment to safeguard the rights of EU27 citizens in the UK if there was no withdrawal agreement, but argued that “the best guarantee for protecting citizens’ rights is the withdrawal agreement”.

Stephen Barclay wrote to Michel Barnier, the EU’s chief Brexit negotiator, about citizens’ rights on 4 March 2019. He acknowledged the comments the Commission spokesperson had made, and noted that the Prime Minister had alluded in her statement to the “significant challenges related to concluding a ring-fenced agreement”, but explained that he was writing to seek Mr Barnier’s formal views on the proposal.⁹⁰ The letter welcomed the progress made by EU member states to provide public reassurances on how they would protect the rights of UK nationals in the EU whatever the outcome of negotiations. However, he said the Government had “particular concerns” in relation to healthcare arrangements, which are not covered by the current proposals published by the European Commission. He proposed that he could discuss the ring-fencing proposal in more detail with Mr Barnier at their next meeting.

⁸⁶ [HC Hansard, 27 February 2019, col 381.](#)

⁸⁷ *ibid.*

⁸⁸ *ibid*, col 441.

⁸⁹ European Commission, ‘[EC Midday Press Briefing](#)’, 28 February 2019 [video].

⁹⁰ Department for Exiting the European Union, ‘[Costa Amendment: Letter to the EU Institutions](#)’, 5 March 2019.

2.4 Workers' Rights

In her statement on 26 February 2019, the Prime Minister stated that the Government was working to build support in the Commons for the withdrawal agreement. She said that this included ensuring that leaving the EU would not lead to the lowering of standards in relation to workers' rights.⁹¹ Mrs May said that the Government would commit to giving Parliament a vote on whether it wished to implement changes in UK law whenever EU standards on workers' rights and health and safety were "judged to have been strengthened".⁹² The Government would consult with businesses and trade unions when it looked at EU legislation and was deciding how the UK should respond. The Prime Minister said that the Government would legislate to give its commitments on "non-regression and future developments force in UK law".⁹³ She said that the Government would "shortly be bringing forward detailed proposals to ensure that, as we leave the EU, we not only protect workers' rights but continue to enhance them".⁹⁴ This built on comments made by the Prime Minister in her statement on 29 January 2019, when she said that the Government would not allow leaving the EU to result in any lowering of standards in relation to employment⁹⁵ and that the Government was "looking at when legislation would be appropriate and where it would be necessary".⁹⁶

On 6 March 2019, the Department for Business, Energy, and Industrial Strategy (BEIS) published draft clauses designed to implement the Government's commitments on workers' rights.⁹⁷ BEIS has summarised the new measures as follows:

- Parliament to be given a vote on adopting future EU rules on workers' rights.
- Government will consult with trade unions and businesses on future workers' rights proposals.
- Proposals include introducing a single enforcement body to protect vulnerable and agency workers.
- New parliamentary power builds on the Government's *Good Work Plan*, announced last year.⁹⁸

⁹¹ [HC Hansard, 26 February 2019, col 166.](#)

⁹² *ibid.*

⁹³ *ibid.*

⁹⁴ *ibid.*

⁹⁵ [HC Hansard, 29 January 2019, col 677.](#)

⁹⁶ *ibid.*, col 680.

⁹⁷ Department for Business, Energy, and Industrial Strategy, [Protecting and Enhancing Worker Rights after the UK Withdrawal from the European Union](#), 6 March 2019, CP66.

⁹⁸ Prime Minister's Office, 10 Downing Street, and Department for Business, Energy, and Industrial Strategy, [Press Release: Workers' Rights to be Protected in UK Law](#), 6 March 2019.

The withdrawal agreement bill, the legislation that would implement the withdrawal agreement in UK domestic law, would be the legislative vehicle for at least some of these proposals:

Parliament will be given the right through the withdrawal agreement bill to consider any future changes in EU law that strengthen workers' rights or workplace health and safety standards, and vote on whether they too should be adopted into UK law.

The measures will require Parliament to be given regular updates on changes to EU legislation in this area and will give MPs a choice on the action Government will take in response, including whether MPs want to decide that the UK should remain aligned with the EU.⁹⁹

In a statement to the House of Commons, Greg Clark, Secretary of State for Business, Enterprise and Industrial Strategy, stated that the Government's draft clauses would be included in the withdrawal agreement bill.¹⁰⁰

The press release indicates that other provisions, such as "bringing a range of enforcement bodies under one roof" would be part of another "extra package of measures to strengthen enforcement of workers' rights".¹⁰¹ Proposals for a single labour market enforcement body would be brought forward in the coming months.

Government Draft Clauses

Draft clause 1 would introduce a requirement for Ministers in charge of a bill to make statements of non-regression. This would provide that a minister in charge of a relevant bill in either House, before second reading, must:

(a) make a statement to the effect that in the minister's view the provisions of the bill will not result in the law of the relevant part or parts of the United Kingdom failing to confer any pre-exit EU workers' right (a "statement of non-regression"), or

(b) make a statement to the effect that although the minister is unable to make a statement of non-regression the government nevertheless

⁹⁹ Prime Minister's Office, 10 Downing Street, and Department for Business, Energy, and Industrial Strategy, '[Press Release: Workers' Rights to be Protected in UK Law](#)', 6 March 2019.

¹⁰⁰ [HC Hansard, 6 March 2019, col 980](#).

¹⁰¹ Prime Minister's Office, 10 Downing Street, and Department for Business, Energy, and Industrial Strategy, '[Press Release: Workers' Rights to be Protected in UK Law](#)', 6 March 2019.

wishes the House to proceed with the bill.¹⁰²

Draft clause 1(2) would require the minister to consult representatives of workers and employers and any other persons deemed appropriate before making a statement under clause 1(1)(a) or (b). Exceptions are provided for by clause 1(4) in the case of urgency or if the bill had already passed one House unamended. A relevant bill is one which relates to pre-exit EU workers' rights and extends to England and Wales or Scotland (or both).

In his statement to the House of Commons announcing the publication of the draft clauses, Greg Clark, Secretary of State for Business, Energy and Industrial Strategy, explained the operation of the second draft clause:

Parliament will be given the opportunity, at least every six months, to consider any changes to EU workers' rights, and health and safety standards in the workplace. This will be reported to Parliament through a document that has, again, been subject to consultation with employers and trade unions, and which will be scrutinised by the relevant Select Committees of this House, subject to their agreement. The Government will be required to table an amendable motion on their intended course of action on those new EU rules. For example, the Government may set out that they intend to legislate to give effect to those commitments or that they intend to give effect to them in a different way, or that they do not intend to give effect to them, setting out their rationale.¹⁰³

Responses to the Proposals

Responding to the statement, Rebecca Long Bailey, Shadow Secretary of State for Business, Energy and Industrial Strategy, thanked Greg Clark for engaging with Labour and trade unions in recent weeks. However, she argued that "sadly the proposals, as drafted, do not yet provide a full guarantee or assurance for UK workers".¹⁰⁴ She said she hoped Labour would be able to work with the Government to address concerns. She cited the TUC as stating that:

In the face of a government determined to reduce rights, these measures would in no meaningful way compensate for the loss of the protections that currently exist.¹⁰⁵

¹⁰² Department for Business, Energy, and Industrial Strategy, *Protecting and Enhancing Worker Rights after the UK Withdrawal from the European Union*, 6 March 2019, CP66, draft clause 1(1).

¹⁰³ [HC Hansard, 6 March 2019, col 981.](#)

¹⁰⁴ *ibid*, col 982.

¹⁰⁵ *ibid*.

Ms Long Bailey said the “assessment of less favourability” would be one made by parliamentary majority and not what she described as the “objective standards of the UK courts”.¹⁰⁶ She also expressed concern that the provisions could be repealed by future “hostile” governments.¹⁰⁷ Ms Long Bailey also explained why she believed the clauses did not provide a guarantee of workers’ rights:

[A]s drafted, the content of the proposed statement of compatibility and irregular parliamentary assessment of less favourability are not capable of legal challenge by any UK worker. Of course, the process outlined in the draft clauses could be subject to a judicial review, but simply issuing a statement and laying a motion are hardly rocket science. What will not be possible, however, is a challenge to the contents of a statement of compatibility or an approved parliamentary motion to accept a Government assessment.¹⁰⁸

She also expressed concern that the commitments did not apply to secondary legislation, arguing that “the bulk of UK legislation to implement EU law is actually done by way of secondary legislation”.¹⁰⁹

Mr Clark responded saying that he welcomed the tone in which Ms Long Bailey had approached discussions. He also stated he was open to working with MPs, and Ms Long Bailey, “to see which of [her] observations can be accommodated, subject to the general approach we wish to take”.¹¹⁰

3. Discussions with the EU on the Northern Ireland Backstop

Since deferring the original date for the ‘meaningful vote’ in December 2018, the Prime Minister has been engaged in discussions with the EU about possible ways of ensuring that the Northern Ireland backstop arrangements in the withdrawal agreement could not endure indefinitely. Mrs May took the Commons vote on 29 January 2019 in favour of an amendment tabled by Sir Graham Brady (Conservative MP for Altrincham and Sale West) to replace the backstop with “alternative arrangements to avoid a hard border” as a parliamentary mandate to seek legally binding changes to the withdrawal agreement.¹¹¹ She has indicated that in addition to pursuing “alternative arrangements”, other ways of ensuring that the backstop could not become permanent would be to secure a time limit or a unilateral exit mechanism.¹¹² However, the EU has consistently maintained that the text of the withdrawal agreement is not open for renegotiation and that it will not accept a time

¹⁰⁶ [HC Hansard, 6 March 2019, col 982.](#)

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*, col 983.

¹¹⁰ *ibid.*, col 984.

¹¹¹ [HC Hansard, 29 January 2019, col 788.](#)

¹¹² *ibid.*, cols 680–1.

limit or unilateral exit clause.¹¹³ It has also expressed doubts about the feasibility of developing alternative arrangements.¹¹⁴

Theresa May held further talks with EU leaders in the margins of the EU-Arab League Summit in Sharm el-Sheikh on 24 and 25 February 2019. In a press statement after the summit, Mrs May said that there was “still more work to do” but she had sensed in her conversations with fellow leaders “a real determination to find a way through which allows the UK to leave the EU in a smooth and orderly way with a deal”.¹¹⁵

Mrs May updated the Commons on the state of the discussions in her statement of 26 February 2019. She said that in the fortnight since her previous Commons statement, she, Stephen Barclay, the Secretary of State for Exiting the European Union, and Geoffrey Cox, the Attorney General, had been “engaging in focussed discussions with the EU to find a way forward that will work for both sides”.¹¹⁶ She had discussed with Jean-Claude Juncker, President of the European Commission, on 20 February 2019 “the legal changes that are required to guarantee that the Northern Ireland backstop cannot endure indefinitely”. She said that Mr Barclay was following up with Mr Barnier “additions or changes” that could be made to the political declaration to “increase confidence in the focus and ambition of both sides in delivering the future partnership we envisage as soon as possible”. Unlike the withdrawal agreement, the political declaration is not a legally binding document.

Following the Commons’ vote for the Brady amendment, the Government established an Alternative Arrangements Working Group to examine the so-called Malthouse compromise proposal to replace the backstop.¹¹⁷ 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.¹¹⁸ Mrs May confirmed in her statement on 26 February 2019 that work on these alternative arrangement proposals was ongoing, and would run alongside negotiations on the future relationship:

[...] the UK and EU have agreed to consider a joint workstream to

¹¹³ See, for example: 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.

¹¹⁴ *ibid.*

¹¹⁵ Prime Minister’s Office, [‘Press Statement from the Prime Minister in Sharm el-Sheikh’](#), 25 February 2019.

¹¹⁶ [HC Hansard, 26 February 2019, col 165.](#)

¹¹⁷ For further information on the Malthouse compromise, see: House of Lords Library, [Further Article 50 Discussions with the EU](#), 21 February 2019.

¹¹⁸ James Blitz and Alex Barker, [‘Theresa May Ditches Malthouse Plan Ahead of Talks in Brussels’](#), *Financial Times* (£), 20 February 2019.

develop alternative arrangements to ensure the absence of a hard border in Northern Ireland. This work will be done in parallel with the future relationship negotiations and is without prejudice to them. Our aim is to ensure that, even if the full future relationship is not in place by the end of the implementation period, the backstop is not needed because we have a set of alternative arrangements ready to go [...]

President Juncker has already affirmed that the EU will give priority to this work, and the Government expect that this will be an important strand of the next phase. The Secretary of State for Exiting the EU will be having further discussions with Michel Barnier and we will announce details ahead of the next meaningful vote. We will also be setting up domestic structures to support this work, including ensuring that we can take advice from external experts involved in customs processes around the world from businesses that trade with the EU and beyond—and, of course from colleagues across the House. This will all be supported by civil service resource as well as funding from the Government to help develop, test and pilot proposals that can form part of these alternative arrangements.¹¹⁹

Iain Duncan Smith (Conservative MP for Chingford and Wood Green) and Owen Paterson (Conservative MP for North Shropshire), who have both been involved in the Alternative Arrangements Working Group, called on the Prime Minister to negotiate for a legally binding deadline by which the alternative arrangements must come into force, thereby removing the backstop.¹²⁰ Mr Paterson said that such a legally binding change in the text of the withdrawal agreement would enable many Conservative MPs to vote for it. Mrs May emphasised the Government's desire for the alternative arrangements to be "ready to go" by the end of the implementation period (or transition period as the EU refers to it) provided for in the withdrawal agreement, which is due to run until the end of 2020.¹²¹ However, she did not give any assurances about making changes to the withdrawal agreement as Mr Paterson called for.

Mrs May said in her statement that the UK and EU teams were continuing their work and had agreed to review progress again in the coming days.¹²² Stephen Barclay and Geoffrey Cox went to Brussels for further meetings with EU officials on 5 March 2019.¹²³ Ahead of the visit, a report in the *Telegraph* claimed that Mr Cox had "abandoned attempts" to secure a time limit or a unilateral exit mechanism from the backstop. The article said that

¹¹⁹ [HC Hansard, 26 February 2019, col 165](#). With regard to government funding to support the development of alternative arrangements, David Lidington said on 27 February 2019 that the Government had allocated £20 million for this ([HC Hansard, 27 February 2019, col 370](#)).

¹²⁰ [HC Hansard, 26 February 2019, cols 174 and 177](#).

¹²¹ *ibid*, col 178.

¹²² *ibid*, col 165.

¹²³ BBC News, ['Brexit: UK in Further Push for Deal with EU'](#), 5 March 2019.

Mr Cox was instead focusing on securing “an enhanced ‘arbitration mechanism’ that allows the UK or the EU to provide formal notice that the backstop should come to an end”.¹²⁴

Article 20 of the protocol on Ireland/Northern Ireland in the withdrawal agreement provides for a review mechanism whereby if, after the end of the transition period, either the UK or the EU consider that the backstop is “no longer necessary” to achieve its objectives and should cease to apply, it may notify the other party.¹²⁵ The joint committee—a body comprising representatives of the EU and the UK, established to oversee the implementation and application of the withdrawal agreement—would meet at ministerial level within six months of such a notification and could decide jointly that the protocol should cease to apply, in whole or in part. The *Telegraph* suggested that Mr Cox was seeking an “enhanced ‘arbitration mechanism’” whereby an independent arbitration panel would decide when the backstop should come to an end.¹²⁶

In response, Mr Cox sought to rebut parts of the article, tweeting that it:

[...] consists of misunderstood fag ends dressed up as facts. Some of it is accurate, much more of it isn't and what is not is far more significant than what is. Complex and detailed negotiations cannot be conducted in public.¹²⁷

Michel Barnier repeated in an interview on 2 March 2019 that the EU would not accept a time limit or a unilateral exit clause to the backstop.¹²⁸ He suggested instead that an interpretive document could set out the EU’s commitment to resolve the issue of the Ireland/Northern Ireland border through reaching agreement on the future relationship, and that such a document would have “a much greater power” if it were combined with a written commitment from the British. Article 31(2) of the Vienna Convention on the Law of Treaties provides that “any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty” and “any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty” shall comprise the context for how the treaty should be interpreted.¹²⁹

¹²⁴ Steven Swinford and Peter Foster, ‘[Attorney General Geoffrey Cox Abandons Time Limit and Unilateral Exit Clause for Brexit Backstop](#)’, *Telegraph* (£), 3 March 2019.

¹²⁵ 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, pp 328–9.

¹²⁶ Steven Swinford and Peter Foster, ‘[Attorney General Geoffrey Cox Abandons Time Limit and Unilateral Exit Clause for Brexit Backstop](#)’, *Telegraph* (£), 3 March 2019.

¹²⁷ Geoffrey Cox, ‘[Personal Twitter Account](#)’, 4 March 2019.

¹²⁸ Sarah Wheaton, ‘[Michel Barnier Says ‘Interpretive Document Could Solve Brexit Impasse](#)’, *Politico*, 2 March 2019.

¹²⁹ United Nations, [Vienna Convention on the Law of Treaties](#), 1969.

The European Commission's chief spokesman said in a press conference on 6 March 2019 that Michel Barnier had briefed EU commissioners following his meeting with Mr Cox. According to the spokesman, Mr Barnier had told them that:

[...] while the talks take place in a constructive atmosphere, discussions have been difficult. No solution has been identified at this point that is consistent with the withdrawal agreement, including the protocol on Ireland/Northern Ireland, which [...] will not be reopened.¹³⁰

There have been questions raised about the sequencing of any eventual changes or additions to the withdrawal agreement and political declaration. Any changes to the texts or to the European Commission's negotiating mandate would need to be agreed by the EU27 member states. EU27 leaders are next due to meet at a European Council meeting on 21 and 22 March 2019. According to press reports, Donald Tusk, President of the European Council, indicated to Mrs May when they met at Sharm el-Sheikh that EU leaders would not approve any changes unless she could show that she had a majority in the House of Commons for a concrete proposal.¹³¹ When asked at the Sharm el-Sheikh press conference whether EU leaders would have to agree changes to the withdrawal agreement first, or whether the 'meaningful vote' could come first, Mrs May said: "On the procedural point, it is possible to do it either way".¹³²

In the questions after Mrs May's Commons statement on 26 February 2019, Jeremy Corbyn questioned how this could work under the European Union (Withdrawal) Act:

[...] section 13 of the European Union (Withdrawal) Act states that the final agreement will be laid before this House before it can be voted on, so can the Prime Minister confirm how there can be a vote in this House if the EU has not yet agreed any final exit, or is the Prime Minister now saying that there will be no change to either the withdrawal agreement or to the political declaration, so we will be voting again on the same documents?¹³³

Mrs May replied:

He asked about the meaningful vote and whether new documents would be brought before the House. Of course, we are in discussions

¹³⁰ European Commission, '[Live: Read-Out of the College Meeting](#)', 6 March 2019 [video].

¹³¹ Tom McTague, '[EU Brexit Ultimatum to May: Prove You Have Parliament's Backing](#)', Politico (£), 24 February 2019.

¹³² Andrew Sparrow, '[Brexit: Labour Will Back Amendment for Second Referendum Says Corbyn](#)', *Guardian*, updated 26 February 2019, [see entry at 13:57].

¹³³ [HC Hansard, 26 February 2019, col 169.](#)

with the EU about changes—changes that this House said it wanted—to the Northern Ireland backstop. We are discussing those with the European Union. Any changes that are agreed with the European Union would be put before this House before the meaningful vote.¹³⁴

4. Government Report on Implications for Business and Trade of a No Deal Exit

On 26 February 2019, the Government published a report setting out its latest assessment of the implications of a no-deal scenario for business and international trade in the UK.¹³⁵ This was published in response to an amendment tabled by Anna Soubry (then Conservative, now Independent MP for Broxtowe) to a government motion on 14 February 2019.¹³⁶

Anna Soubry's amendment, which had cross-party support, sought to instruct the Government to publish "in full the most recent official briefing document, relating to business and trade, on the implications of a no-deal Brexit presented to Cabinet".¹³⁷ The Parliamentary Under Secretary of State for Exiting the European Union, Chris Heaton-Harris, said the Government was "very happy to meet [Anna Soubry] to identify the information that she wants published, and then to commit to publishing that information".¹³⁸ Ms Soubry withdrew her amendment. Speaking in the debate in the House of Commons on 27 February 2019, Anna Soubry said that she believed that the document published the previous day was an "accurate and fair summary" of papers she had seen.¹³⁹

The report restates the Government's policy of ensuring the UK leaves the EU with a negotiated withdrawal agreement. However, it summarises the Government's preparations for leaving without such an agreement, widely referred to as a no-deal scenario, and provides an assessment of the impact of this on trade for businesses. The report describes the impact of a no-deal scenario as "significant" in a number of areas and argues that part of this impact is inherent and part is due to the abrupt nature of a transition from membership to non-membership of the EU.¹⁴⁰ The Government also stated that "the late stage at which many parties are starting their preparations" was also a factor.¹⁴¹

¹³⁴ [HC Hansard, 26 February 2019, col 169.](#)

¹³⁵ HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019.

¹³⁶ House of Commons, [Written Statement: EU Exit Update](#), 26 February 2019, HCWS1361.

¹³⁷ House of Commons, [Order Paper](#), 14 February 2019, no 251, pp 8–9.

¹³⁸ [HC Hansard, 14 February 2019, col 1144.](#)

¹³⁹ [HC Hansard, 26 February 2019, col 377.](#)

¹⁴⁰ HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019, para 3.

¹⁴¹ *ibid.*

4.1 Government Preparedness Activity

The report outlined a range of activity within Government to prepare for the UK's exit from the EU. However, it also stated that the latest internal government-wide delivery reporting "reveals the scale of risk remaining in the limited time available".¹⁴² It stated that whilst government departments were on track for "just under 85 percent of no deal projects", within that, they were on track for "just over two thirds of the most critical projects". The report cited communications issues with third parties and a delayed response to the Government's acceleration of preparedness in December 2018:

The delays to no deal preparations are partly due to communications to third parties, including many businesses, not having the intended effect [see section 4.2], and also because the acceleration of preparedness since December is not yet bringing delivery of these preparations back on track where there has been prior slippage.¹⁴³

HM Treasury has made more than £4 billion available for the planning of the UK's withdrawal from the EU since 2016.¹⁴⁴ The report explained that this funding would apply regardless of whether the UK agrees a deal with the EU:

The Treasury has made in excess of £4bn available for EU Exit planning since 2016, £2bn of which was allocated in December 2018 to support core EU exit preparations for the 19-20 financial year. This funding will apply regardless of whether a deal is agreed, and is ring-fenced to specifically support EU exit.¹⁴⁵

The report also referenced the Government's progress in rolling over the EU's existing trade agreements (citing a figure of 40 such agreements), such that the UK could continue to benefit from these arrangements after exit. At the time of publication the UK had signed 'trade continuity agreements' with Switzerland, Chile, the Faroe Islands, members of the Eastern and Southern Africa (ESA) Economic Partnership Agreement, Israel and the Palestinian Authority.¹⁴⁶ The Government explained that it was continuing to work with other partners (for example, South Korea and Canada) but some of these agreements would not be in place before 29 March 2019. Specifically, "agreements which will clearly not be in place for exit day are Andorra, Japan, Turkey, and San Marino".¹⁴⁷ Excluding Japan and Turkey, UK trade with those countries with which the Government was seeking continuity

¹⁴² HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019, para 8.

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*, para 9.

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid.*, para 12.

¹⁴⁷ *ibid.*

agreements represented 11% of the UK's total trade. The report stated that the 20 "least valuable" trade agreements accounted for 0.8% of UK trade.

The Government also referenced an argument that the UK could rely on the provisions under article XXIV of the General Agreement on Tariffs and Trade (GATT) to ensure tariff-free trade with the EU for a ten-year period. The Government described this as a "misunderstanding of what the rules are".¹⁴⁸ The provisions of GATT XXIV have been cited by some MPs as a way of trying to maintain current trading arrangements between the UK and the EU, without a negotiated withdrawal agreement, whilst a future relationship is negotiated. For example, the 'Plan B' part of the Malthouse compromise would seek to use GATT XXIV as part of a "transitional standstill period".¹⁴⁹

4.2 Third Party Preparedness

The report expressed concern that the Government saw little evidence that businesses were preparing "in earnest" for a no-deal scenario, arguing that readiness amongst small and medium-sized enterprises in particular was low.¹⁵⁰ The Government used the example of Economic Operator Registration and Identification (EORI) number registrations. An EORI number is required to complete necessary customs documentation for the importation of goods. If the UK leaves the EU with no deal many UK businesses will need to apply the same processes to EU trade that apply when trading with the rest of the world, this includes requiring an EORI number.¹⁵¹ As an EORI number was "one of the most basic and straightforward" parts of most business preparations, the Government described it as a "generous indicator of overall readiness". It stated that as of February 2019 only 40,000 EORI registrations had taken place, against an estimated number of 240,000 EU-only trading businesses. However, the Government said there was capacity to register up to 11,000 businesses a day so "this position could change rapidly with behaviour change from businesses". The report stated that although the Government's short-term approach was to allow hauliers to enter the UK without stopping, such hauliers would be stopped if taking goods into France without the right paperwork. The Government said a lack of preparation for EU controls greatly increased the probability of disruption.

¹⁴⁸ HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019, para 14. For a further discussion of GATT article XXIV see: House of Commons Library, ['No-Deal Brexit and WTO: Article 24 Explained'](#), 4 February 2019.

¹⁴⁹ Conservative Home, ['The Malthouse Compromise: An Official Explainer in Full'](#), 3 February 2019.

¹⁵⁰ HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019, para 16.

¹⁵¹ HM Revenue and Customs, ['Guidance: Get a UK EORI Number to Trade Within the EU'](#), 4 March 2019.

The Government also expressed concern about the preparedness of UK citizens, particularly in relation to issues such as travelling to or living in the EU:

These range from renewing passports, to applying for a car insurance green card and International Driving Permit to drive in the EU. As of February 2019, despite a public information campaign encouraging the public to seek out the Government's advice on preparing for a 'no deal', noticeable behaviour change has not been witnessed at any significant scale.¹⁵²

The report stated that based on January 2019 survey data from the Department for Exiting the European Union, 55 percent of UK adults did not expect to be affected by a no-deal exit from the EU.

The Government has argued that this apparent lack of action was because most people did not see a no-deal outcome as sufficiently credible for them to take action or undertake any expenditure. It also believed that actions taken by the EU for no deal contingency planning were influencing the decisions of individuals and businesses in the UK. However, it said that such preparations would still leave gaps:

Preparations by businesses and citizens are also significantly influenced by actions taken by the EU Commission and member states. The UK Government has discussed no deal with the Commission, who have published three batches of 'no deal' legislation and their own preparedness notices. The unilateral contingency measures the EU has announced do mitigate some of the most acute immediate impacts, for example on aviation, road haulage, financial services and potentially citizens' rights. The EU has stressed, however, that the mitigations it is putting in place are only temporary, and some important gaps remain; perhaps most significantly on data adequacy and action to ensure smooth flow at the border.¹⁵³

4.3 Anticipated Effects of a No-Deal Scenario

The report also provided the Government's assessment of the "key areas of residual impact" of a no-deal scenario. This section of this briefing provides and overview of the report's findings.

¹⁵² HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019, para 17.

¹⁵³ *ibid*, para 19.

Economy

The report referred to two documents published in November, firstly the Government's long-term economic analysis and secondly the Bank of England's report on how the UK's withdrawal from the EU would affect the bank's delivery objectives for monetary and financial stability (published following a request from the House of Commons Treasury Committee).¹⁵⁴ In reference to the former, the Government stated that in an "smooth, orderly transition" to WTO rules, the UK economy would be 6.3% to 9% smaller after around 15 years.¹⁵⁵ It also argued that there would be significant variation across the UK, with the North East of England seeing the largest decrease: Wales -8.1%, Scotland -8.0%, Northern Ireland -9.1% and the North East of England -10.5%. The analysis did not account for any short-term disruptions which the Government argued would be likely to have additional short- and long-term economic impacts in the case of an "immediate no-deal scenario". However, the Government cautioned that because of the complexity of the issue the data was presented as ranges and should be interpreted with care.

Border Controls

The report also stated that UK citizens could be treated as third-country nationals by EU member states, be subject to full Schengen checks and be unable to use e-gates, all of which could lead to delays in entering these countries.¹⁵⁶

The report stated that HM Revenue and Customs (HMRC) has estimated that the administrative burden on businesses from customs declarations would be approximately £13 billion per year (based on data from 2016 and not accounting for any behavioural changes).¹⁵⁷

The Government said that additional customs controls could cause disruption, especially those imposed by EU member states. The report explains that the Government has made progress in phasing entry summary declarations and transitional simplified procedures to avoid disruption. However, whilst some member states had started to put in additional infrastructure to implement customs controls at borders, the work was "at an early stage and even when completed would lead to new burdens, and

¹⁵⁴ HM Government, [EU Exit: Long-Term Economic Analysis, November 2018](#), November 2018, Cm 9742; HM Government, [EU Exit: Long-Term Economic Analysis: Technical Reference Paper](#), November 2019; and Bank of England, [EU Withdrawal Scenarios and Monetary and Financial Stability: A Response to the House of Commons Treasury Committee](#), November 2018,

¹⁵⁵ HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019, para 21.

¹⁵⁶ *ibid*, para 25.

¹⁵⁷ *ibid*.

would not be the same as the fully free-flowing border in place today”.¹⁵⁸ The Government argued that third country rules applied to UK-bound goods from the EU would mean that these goods would be unable to leave port until the correct paperwork had been provided and the goods had been customs cleared. In its worst-case planning assumptions, the Government stated that as a result of French checks and a lack of readiness by businesses “the flow of goods through the short channel crossings (Dover and Eurotunnel) could be very significantly reduced for months”. However, the Government did not expect ‘day one’ disruption to be at the most severe end of its planning assumptions because of a willingness by France to facilitate cross-border flows.¹⁵⁹

The report used food supply as an example of the impact of delays in goods crossing the Channel, stating that 30% of the UK’s food comes from the EU.¹⁶⁰ However, the Government argued that the UK’s food supply was “diverse, resilient and sourced from a wide variety of countries” such that delays would not lead to an overall shortage of food in the UK. Whilst the report stated that less than one in ten food items would be directly affected by delays in the short channel crossings, at this time of year (March) the UK is particularly reliant on fresh fruit and vegetables from these crossings. Therefore, in the absence of other action from government, the report warned that some food prices were likely to increase, and consumer behaviour could “exacerbate, or create, shortages in this scenario”. The report also expressed concern that “as of February 2019, many businesses in the food supply industry are unprepared for a no-deal scenario”. To mitigate against a lack of business readiness the report outlined that the Government would be implementing temporary changes to requirements:

In order to mitigate against the lack of business readiness for no deal, the Government has announced transitional simplified procedures for EU trade at roll-on roll-off ports, which will make it easier for traders importing from the EU to comply with customs requirements immediately after EU Exit. HMRC has also published its intention to phase in entry summary declarations for imports from the EU over six months following 29 March 2019, rather than requiring these from day 1 of exit.¹⁶¹

Tariffs

The report stated that the impact of tariff and non-tariff barriers in a no-deal scenario was likely to be “severe” in a number of areas.¹⁶² For example, it

¹⁵⁸ HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019, para 27.

¹⁵⁹ *ibid*, para 28.

¹⁶⁰ *ibid*, para 29.

¹⁶¹ *ibid*, para 30.

¹⁶² *ibid*, para 31.

argued that the “EU would introduce tariffs of around 70% on beef and 45% on lamb exports, and 10% on finished automotive vehicles”.¹⁶³ However, because of the unprecedented nature of a no-deal scenario it was “impossible to accurately predict the ability of businesses to adapt”.

The report also looked at tariffs in relation to the automotive industry. It stated that 42.8% of UK vehicle production was exported to the EU27, at that no deal as a “major concern for the industry” due to tariffs which would be applied on exports to the EU.¹⁶⁴ The report explained that “this would be 10% on finished vehicles, and around 2.5–4% on components”. The Government said that other factors would affect the impact of no deal on the industry, costs could rise for consumers:

Although wider macroeconomic effects will influence how the sector is affected, low operating margins may mean that in many cases extra costs could be likely to be passed on to consumers at the showroom.¹⁶⁵

The report also argued that the “just-in-time” production model used by the industry would also be disrupted by delays at the border.

The report stated that the Government would legislate to implement tariffs in the event of no deal:

The Government will bring forward secondary legislation and set out the UK import tariff in a no deal scenario soon, in line with the provisions in the Taxation (Cross-border Trade) Act. The Government is committed to an open and liberal economy that works for everyone. There needs to be a balance between protecting consumers and downstream users from the possible price impacts of a no deal scenario and avoiding the exposure of industries to unfair competition. Further details will be announced in due course.¹⁶⁶

Speaking to the BBC’s Today Programme on 6 March 2019, Greg Clark, Secretary of State for Business, Energy and Industrial Strategy, indicated that the tariffs would be published were the House of Commons to vote on, or before, 13 March 2019, to leave the EU without a deal:

In the event that we don’t have a deal then of course Parliament will then have a debate as to whether we apply for an extension of the article 50 period. So this would only arise if we leave without a deal on

¹⁶³ HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019, para 32.

¹⁶⁴ *ibid*, para 33.

¹⁶⁵ *ibid*.

¹⁶⁶ *ibid*, para 34.

29 March. And so, in those circumstances the work is continuing on developing and finalising those tariff schedules but they would be published [...] once we knew that we were leaving without a deal on 29 March.¹⁶⁷

Northern Ireland

The report argued that the impact on Northern Ireland would be more severe than on Great Britain and would last for longer. It referred to the Government's commitment to avoid a hard border "in any scenario".¹⁶⁸ The Government would be publishing further details of its "immediate, temporary", arrangements for trade between Northern Ireland and Ireland, shortly.¹⁶⁹ The Government argued that businesses in Northern Ireland could fail or relocate to Ireland if they were unable to prepare for a no-deal Brexit in time. It cited several examples as to why this was a risk, including the particular reliance on cross-border supply chains in Northern Ireland; its reliance on SMEs (which constitute 75% of all private sector employment); and its disproportionately large agri-food sector. The Government would seek the continuation of the single electricity market (SEM) but this would rely on cooperation with Ireland and the EU, which was "not within the UK's gift to unilaterally control or mitigate".¹⁷⁰ The report also stated that whilst the Government was committed to restoring the Northern Ireland Executive, this could become more challenging in a no-deal scenario.

Services Sectors and Regulated Industries

The report also covered possible impacts on the UK's service sectors with case-study paragraphs on legal services and financial services. The Government stated that the UK would risk a loss of market access and increase in non-tariff barriers.¹⁷¹ In the case of legal services the report stated that UK nationals would be treated by the EU in the same way as third country nationals with regards to recognition of their professional qualifications. The report argued that this would lead to a loss in the automatic right to provide short term "fly in fly out" services and the loss of rights of audience in EU courts. In the case of financial services, companies providing such services could lose their regulatory permissions to conduct cross-border business. Although the report stated that the European Commission and some member states were taking action in some areas to mitigate disruption risks, it also said it was "unclear how comprehensive member state actions to mitigate certain risks will be by March". Additionally, the report said the Commission had stated that it was "only

¹⁶⁷ BBC Radio 4, 'Today Programme', 6 March 2019, (audio: 1:15:08–1:15:47)

¹⁶⁸ HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019, para 35.

¹⁶⁹ *ibid*, para 36.

¹⁷⁰ *ibid*, para 38.

¹⁷¹ *ibid*, para 39.

focusing on areas in its self-interest, for EU financial stability, and that any decisions taken may be conditional and time-limited”.¹⁷²

In terms of goods, the report stated that for harmonised goods subject to EU common rules, “the continuity approach means some form of continued recognition of EU product requirements and associated compliance activity would continue for a limited period after the UK has left the EU in a no deal scenario”.¹⁷³ Such sectors included chemicals, aerospace, medicines and the automotive industry. However, it also argued that existing licences and authorisations for UK authorities would likely not be acceptable to EU member states “beyond the short-term unilateral commitments made by the EU”.¹⁷⁴ The report looked in particular at the chemicals sector and said that its supply chains were “highly integrated within the EU, and products will cross borders a number of times before becoming final products, making them vulnerable to delays at the border”.¹⁷⁵ It also stated that in a no-deal scenario UK companies would only be able to sell into the EU providing they had transferred their existing registration to an EU-based entity.

Trade in non-harmonised goods would be governed by the principle of mutual recognition, for example a UK business selling goods to the EU would have to conform to the domestic requirements of the first member state that it exports to. Therefore, such businesses may have to track multiple domestic requirements, or they would have less choice in where they could initially export to. Such sectors included furniture, sports equipment and bicycles. However, the report argued that non-harmonised goods represented a minority of UK-EU trade at 26.8% of UK exports and 16.8% of imports from the EU, and that it was “likely” that only a subset of this was reliant on the mutual recognition principle.¹⁷⁶ The Government therefore argued that “other factors being equal” the majority of non-harmonised trade in goods would likely continue.

Personal Data

The transfer of personal data would also be affected in a no-deal scenario. The report explained that the UK would need to seek adequacy decisions from the EU but that the EU would not start this process until the UK was a third country. Therefore, in a no-deal scenario “there would be a gap in the lawful free flow of personal data while the assessment takes place”.¹⁷⁷ The report stated that other alternative legal bases existed which would enable the continued legal flow of data in the absence of adequacy. However, it

¹⁷² HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019, para 41.

¹⁷³ *ibid*, para 43.

¹⁷⁴ *ibid*, para 44.

¹⁷⁵ *ibid*, para 45.

¹⁷⁶ *ibid*, para 46.

¹⁷⁷ *ibid*, para 47.

recommended that:

To prepare for a no-deal scenario, many UK businesses need to work with their EU partners to secure a legal basis for the continued transfer of personal data from the EEA to the UK. Businesses are at varied levels of readiness and the Government is engaging widely to increase awareness of actions that businesses can take.¹⁷⁸

Citizens

In terms of citizens' rights, the report explained that there would be additional barriers preventing UK nationals from "interacting seamlessly with the EU in the way they do currently" and that:

Although most member states have now announced unilateral arrangements for resident UK nationals, the offers do vary. The Government is encouraging member states to reciprocate the rightly generous offer that the UK has made to resident EU nationals, but in the absence of an arrangement of this sort UK nationals would see changes ranging from the administrative to more profound effects, such as the potential need to arrange for healthcare cover.¹⁷⁹

The report also said that whilst the effects of no deal on Scotland, Wales and Northern Ireland was likely to be similar the UK as a whole, there were specific issues that could impact Scotland, Wales and Northern Ireland:

- a) Impact on the UK's agriculture, forestry or fishing industries would have particular effects in Scotland. Office for National Statistics (ONS) figures demonstrate that these three industries account for 1.21 percent of Scotland's economy, compared to 0.46 percent of England's.
- b) Around 92 percent of Welsh lamb exports by value go to the EU. Consequently, disruption to animal exports would likely be felt strongly by the Welsh lamb industry.
- c) Impacts on the UK's food and drink sector would be more pronounced in Wales, Scotland, and particularly Northern Ireland, where the sector comprises 5.07 percent of the economy, compared to 1.38 percent for England.¹⁸⁰

The report said that the Government was also working closely with British Overseas Territories, Crown Dependencies, and Gibraltar to prepare for all outcomes, including a no-deal scenario.

¹⁷⁸ HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019, para 47.

¹⁷⁹ *ibid*, para 48.

¹⁸⁰ *ibid*, para 49.

The Government concluded by stating that whilst it had accelerated its no-deal preparations since September 2018 it was unable to unilaterally mitigate the effects of no deal:

Even where it can take unilateral action, the lack of preparation by businesses and individuals is likely to add to the disruption experienced in a no deal scenario.¹⁸¹

5. Role of the House of Lords

5.1 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.¹⁸²

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.¹⁸³

5.2 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”.¹⁸⁴ Baroness Evans of Bowes Park maintained that “good

¹⁸¹ HM Government, [Implications for Business and Trade of a No Deal Exit on 29 March 2019](#), 26 February 2019, para 51.

¹⁸² [HL Hansard, 28 January 2019, col 917](#).

¹⁸³ [HL Hansard, 13 February 2019, col 1852](#).

¹⁸⁴ [HL Hansard, 12 February 2019, col 1783](#).

progress” was being made.¹⁸⁵ 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.¹⁸⁶

The issue of the timetabling of legislation was also raised in the House of Lords on 26 and 27 February 2019. On 26 February 2019, Baroness Evans of Bowes Park repeated the Prime Minister’s statement (of the same date) in the House of Lords. The Lords then debated a take-note motion the next day, on 27 February 2019.¹⁸⁷

Responding to the repeat of the Prime Minister’s statement in the House of Lords, Baroness Hayter of Kentish Town, Shadow Spokesperson for Exiting the European Union, expressed concern that whether the Commons voted to accept or try to block no deal, “legislation will [...] be required with great speed, at the very least to change by SI the exit date to allow for an article 50 extension”.¹⁸⁸ Baroness Hayter stated that other legislation would be likely and that this would demand “careful unhurried scrutiny”. She asked the Leader of the House of Lords to commit to “allowing proper time for scrutiny and debate and consultation with relevant stakeholders on the detail of legislation”.¹⁸⁹

Responding to Baroness Hayter, Baroness Evans stated that the Government had not sought, and would not seek, to “railroad” bills through the House of Lords.¹⁹⁰ She said that the Lords must still scrutinise legislation whilst ensuring it is passed:

I think that all noble Lords would agree that we must balance the need to ensure that vital legislation sent to us from the other place is passed within a reasonable time, and the need to ensure that this House has adequate time to scrutinise it in the usual manner.¹⁹¹

Baroness Evans said that the Government was aware of the constraints on the parliamentary timetable and that the Government would not be

¹⁸⁵ [HL Hansard, 12 February 2019, col 1783.](#)

¹⁸⁶ *ibid*, col 1786.

¹⁸⁷ This was: Lord Callanan to move that this House takes note of the further discussions with the European Union under article 50 of the Treaty on European Union.

¹⁸⁸ [HL Hansard, 26 February 2019, col 146.](#)

¹⁸⁹ *ibid*.

¹⁹⁰ *ibid*, col 148.

¹⁹¹ *ibid*.

“unrealistic or unreasonable in what we ask the House to do”.¹⁹² The Government would continue to work with the usual channels to achieve cross-party consensus “as we move forward”.

In the debate the following day on 27 February 2019, Lord Newby, Liberal Democrat Leader in the House of Lords, argued that were the Commons to approve a deal on 12 March 2019, there would only be two weeks for Parliament to pass the legislation required to implement it in domestic law. He argued that Baroness Evans’ comments on 26 February 2019 gave a “misleading impression”, asserting that the House of Lords would have to depart from usual practice to scrutinise the legislation before 29 March 2019:

Will the minister acknowledge that we would have to break our normal rules in considering legislation if we were to get the bill through in time.¹⁹³

Responding for the Government, Lord Keen of Elie, Advocate General for Scotland, said that, as with secondary legislation, the Government was confident that primary legislation required for the UK’s withdrawal from the EU would be delivered. Lord Keen explained that business in both Houses was being scheduled to facilitate this. As Baroness Evans had done on 26 February, Lord Keen also argued that there was a need to balance scrutiny with timetabling:

I acknowledge that there will be a need to balance the requirement to pass vital legislation sent to us by the Commons with the need to ensure that this House has adequate time to scrutinise such legislation.¹⁹⁴

Lord Newby asked whether the Government intended for Parliament to pass the “Agriculture Bill, the Fisheries Bill, the immigration Bill and the Trade Bill” by 29 March 2019.¹⁹⁵ Lord Keen replied that it was the Government’s intention that “all necessary legislation will be taken through in time for exit day, and we will deliver the business as required in both Houses”.¹⁹⁶

5.3 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

¹⁹² [HL Hansard, 26 February 2019, col 148.](#)

¹⁹³ [HL Hansard, 27 February 2019, col 250.](#)

¹⁹⁴ *ibid*, col 290.

¹⁹⁵ *ibid*.

¹⁹⁶ *ibid*.

the UK could ratify a withdrawal agreement.¹⁹⁷ 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. Prime Minister has said that if she lost a second ‘meaningful vote’, she would hold a debate in the Commons the following day.¹⁹⁸ 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). These are statutory obligations separate from the political commitments the Prime Minister made on 26 February 2019.

5.4 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.¹⁹⁹ Should the Commons resolve against ratification, the minister may lay a statement indicating that the minister is of the opinion that the treaty should nevertheless be ratified and explaining why. A second period of 21 sitting

¹⁹⁷ 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).

¹⁹⁸ [HC Hansard, 29 January 2019, col 671](#).

¹⁹⁹ 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)).

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”.²⁰⁰

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.²⁰¹

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 more.²⁰²

²⁰⁰ Constitutional Reform and Governance Act 2010, section 20(8).

²⁰¹ [HC Hansard, 12 February 2019, cols 744–5.](#)

²⁰² [HL Hansard, 13 February 2019, col 1935.](#)

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".²⁰³

5.5 Prime Minister's 26 February 2019 Statement: Extending Article 50

In her statement on 26 February 2019, the Prime Minister stated that she would hold a second 'meaningful vote' by 12 March 2019 and should the Commons vote against it the House would be given the opportunity to vote whether to leave the EU without a deal. Should the House resolve against leaving with no deal, then the Government would table a motion for debate on 14 March 2019 on whether Parliament wanted to seek a short, limited extension to article 50.

Mrs May made no explicit reference to the role of the House of Lords in the process she set out. However, the Lords would have a role in scrutinising any legislative vehicle used to amend exit day in the UK's domestic legislation, namely the EUWA. In the Commons debate on 27 February 2019, Stephen Doughty (Labour MP for Cardiff South and Penarth) sought clarification about how the Government would legislate to change exit day if an extension to article 50 were agreed with the EU, and whether the dates in that legislation would be amendable.²⁰⁴

Section 20(2) of the EUWA defines exit day in domestic law as 11pm on 29 March 2019. Section 20(4) provides that a Minister of the Crown may by regulations amend the definition of 'exit day' to ensure that the date and time specified in the definition are the day and time that the Treaty on European Union and the Treaty on the Functioning of the European Union cease to apply to the UK. Paragraph 14 of schedule 7 of the Act provides that such regulations would have to be an affirmative instrument requiring the approval of both Houses of Parliament. Neither House of Parliament has the power to amend statutory instruments (unless provision to do so is specifically made in the parent Act).

David Lidington said that it was not possible to go into detail at this stage on the form of any legislation as it "would depend a bit on what the outcome of the negotiations with the European Union itself had led to".²⁰⁵ However, he noted that if it were secondary legislation, the normal constraints on amendments would apply, and both Houses would have a veto.²⁰⁶

²⁰³ [HL Hansard, 13 February 2019, col 1855.](#)

²⁰⁴ *ibid.*

²⁰⁵ [HC Hansard, 27 February 2019, col 380.](#)

²⁰⁶ *ibid.*