



Motions Pursuant to Section 2(2)(b) of the European Union (Withdrawal) (No. 2) Act 2019 and Section 13(6)(b) of the European Union (Withdrawal) Act 2018 Debate on 8 January 2020

On 8 January 2020, the House of Lords is due to debate two motions moved by Lord Callanan, Minister of State at the Department for Exiting the European Union:

That this House, for the purposes of section 2(2)(b) of the European Union (Withdrawal) (No. 2) Act 2019, takes note of the *Report Under Section 2(1) of the European Union (Withdrawal) (No. 2) Act 2019*, published on 8 November 2019.

That this House, in accordance with the provisions of section 13(6) of the European Union (Withdrawal) Act 2018, takes note of the written statement titled 'Statement under section 13(4) of the European Union (Withdrawal) Act 2018', made on 8 November 2019.

These two items of business are expected to be taken together. Similar motions are also due to be debated in the House of Commons on the same day.

Summary

The European Union (Withdrawal) (No. 2) Act 2019, also known as the Benn Act, placed a requirement on the Government to report to Parliament on the progress of negotiations with the EU if the article 50 period was extended beyond 31 October 2019. Section 13 of the European Union (Withdrawal) Act 2018 (EUWA 2018) placed a requirement on the Government to make a statement about how it proposed to proceed if it put a Brexit withdrawal deal to the House of Commons but failed to gain the Commons' approval. Both these requirements were triggered following events on 19 October 2019. The House of Commons voted to withhold approval of the Government's revised withdrawal agreement and political declaration until implementing legislation was passed. As required by the Benn Act, the Government sent a letter to the EU requesting an extension of the article 50 period until 31 January 2020. This extension was formally agreed between the UK and the EU on 28 October 2019. The Government published the report required under the Benn Act and the statement required under EUWA 2018 on 8 November 2019. The documents note that no further negotiations with the EU on the UK's withdrawal have taken place since the revised withdrawal agreement was agreed with the EU on 17 October 2019. Formal negotiations on the future relationship will not begin until the UK has left the EU. The Government intends to repeal section 13 and the Benn Act through provisions in the European Union (Withdrawal Agreement) Bill.

Nicola Newson | 3 January 2020

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I. Statutory Requirements

I.1 European Union (Withdrawal) (No. 2) Act 2019: The Benn Act

The European Union (Withdrawal) (No. 2) Act 2019 sought to prevent a no-deal Brexit in October 2019, unless the House of Commons had specifically approved such an outcome. This Act is also referred to as the Benn Act after Hilary Benn (Labour MP for Leeds Central), the backbench MP who introduced it in the Commons. The legislation received royal assent in September without support from the Government. At the time the Benn Act was passed, the default legal position was that the UK would leave the EU on 31 October 2019 with no deal unless:

- the UK and the EU ratified a withdrawal agreement; or
- the UK and the EU agreed to extend the article 50 negotiating period; or
- the UK revoked its notification under article 50 of its intention to leave the EU.

The Benn Act placed an obligation on the Prime Minister to request an extension to article 50 by 19 October 2019 if by that date the Commons had not approved either a deal or leaving with no deal.

The Benn Act also set out requirements for the Government to report back to Parliament on the progress of negotiations with the EU if the article 50 period was extended:

- Section 2(1): In the event of an extension, the Government must publish a report by 30 November 2019 explaining what progress has been made in negotiations on the UK's relationship with the EU.
- Sections 2(2) and 2(3): Within five calendar days, the report must be debated in both Houses of Parliament. The debate in the Commons must be on a motion to approve the report. The Lords debate must be on a take-note motion.
- Section 2(4): If the Commons rejects or amends the motion to approve the report, then the Government must publish a further report by 10 January 2020, setting out a plan for further negotiations on the UK's relationship with the EU. This must be debated within five calendar days.
- Section 2(5): The Government must make a further report at least every 28 calendar days starting on 7 February 2020 "until either an agreement with the European Union is reached or until otherwise indicated by a resolution of the House of Commons".

I.2 European Union (Withdrawal) Act 2018

Section 13 of the EUWA 2018 sets out requirements for parliamentary approval of the outcome of negotiations with the EU held under article 50. One of these requirements is that the Government cannot ratify a withdrawal agreement with the EU unless both the agreement and the framework for the future relationship have been approved by the House of Commons. This requirement is set out section 13(1)(b). This is what is commonly referred to as the 'meaningful vote'.

Section 13 also sets out what must happen if the Government puts a deal to the House of Commons but fails to gain its approval. In those circumstances, section 13(4) obliges the Government to make a

written statement within 21 days about how it proposes to proceed. Under section 13(6), it must also table a debate in both Houses within seven sitting days of making the statement.

2. Events Leading to the Motions for Debate

2.1 Commons Withholds Parliamentary Approval of Revised Brexit Deal

The UK reached agreement with the EU on a revised deal on 17 October 2019. Both Houses of Parliament sat on 19 October 2019 to consider the new deal. The Government moved a motion in the Commons inviting the Commons to approve the deal. However, the Commons voted by 322 to 306, a majority of 16, to withhold approval “unless and until implementing legislation is passed”.¹

2.2 Article 50 Extension Agreed

As the Government had failed to secure Commons approval for the deal by the 19 October 2019 deadline set in the Benn Act, it was required by the Benn Act to send a letter to the European Council requesting an extension of article 50 until 31 January 2020. This letter was sent on 19 October 2019.²

Boris Johnson, the Prime Minister, explained in a separate letter to Donald Tusk, then President of the European Council, that he still intended to press ahead with ratification of the withdrawal agreement by introducing the necessary legislation.³ The Government introduced a European Union (Withdrawal Agreement) Bill on 21 October 2019. The House of Commons voted by 329 to 299, a majority of 30, to give the bill its second reading on 22 October 2019.⁴ However, the Commons then defeated the Government’s programme motion for the bill by 322 votes to 308, a majority of 14.⁵ The bill was unable to proceed further.

On 28 October 2019, the European Council agreed to the UK request to extend the article 50 period to 31 January 2020. It said this was “with a view to allowing for the finalisation of the ratification of the withdrawal agreement”.⁶ As required by the terms of the Benn Act, Boris Johnson confirmed the UK’s formal agreement to the extension.⁷

2.3 Publication of Report and Statement

The extension of the article 50 period triggered the requirement in the Benn Act for the Government to publish a report by 30 November 2019 on the progress of negotiations. The Government’s failure to gain the Commons’ approval for the revised deal during the 19 October sitting triggered the

¹ [HC Hansard, 19 October 2019, col 649–52.](#)

² Prime Minister’s Office, ‘[Letters from the UK to the EU Council](#)’, 19 October 2019.

³ Prime Minister’s Office, ‘[Prime Minister’s Letter to President Donald Tusk](#)’, 19 October 2019.

⁴ [HC Hansard, 22 October 2019, cols 917–20.](#)

⁵ *ibid*, cols 923–6.

⁶ European Council, ‘[European Council Decision Taken in Agreement with the United Kingdom Extending the Period Under Article 50\(3\)TEU](#)’, 28 October 2019.

⁷ Prime Minister’s Office, ‘[Prime Minister’s Letter to President Donald Tusk](#)’, 28 October 2019.

requirement in the EUWA 2018 for the Government to make a statement within 21 days (by 9 November 2019) on how it proposed to proceed.

The Government published the required documents on 8 November 2019:

- [Report under Section 2\(1\) of the European Union \(Withdrawal\) \(No. 2\) Act 2019](#)
This noted that there had been no further negotiations with the EU following the agreement reached on a revised withdrawal agreement and political declaration on 17 October 2019.
- [Statement under Section 13\(4\) of the European Union \(Withdrawal\) Act 2018](#)
This noted that the Government had no plans for further negotiations and the European Council decision on the extension excluded any re-opening of the withdrawal agreement.

The documents relate to negotiations under article 50 of the Treaty on European Union on the UK's withdrawal from the EU. The formal phase of negotiations on the future relationship between the UK and the EU will not begin until the UK has left the EU.

Under the statutory timetables, the report under the Benn Act should have been debated within five calendar days of its publication, and the statement under the EUWA 2018 should have been debated within seven sitting days of publication. However, following the passage of the Early Parliamentary General Election Act 2019, Parliament was dissolved on 6 November 2019, in preparation for the general election.

Since the election, the Government has introduced a new version of the European Union (Withdrawal Agreement) Bill to implement the withdrawal agreement in domestic law. The Commons voted by 358 to 234, a majority of 124, to give the bill its second reading on 20 December 2019.⁸ The Commons voted by 353 to 243, a majority of 110, in favour of the Government's programme motion for the bill.⁹ The bill will have two days in committee of the whole House in the Commons, and one day for the remaining stages. Second reading is scheduled to take place on 13 January 2020 in the House of Lords.

3. Repeal of the Statutory Requirements

The Government intends to repeal the provisions that have triggered the motions for debate, so there will be no future requirements for reports or statements. The European Union (Withdrawal Agreement) Bill, which is currently before the House of Commons, contains the following provisions:

- Clause 31 would repeal section 13 of the EUWA 2018. The Government has said that this is to ensure that the withdrawal agreement can be ratified "in a timely and orderly manner" and to remove provisions that are no longer needed.¹⁰

⁸ [HC Hansard, 20 December 2019, cols 217–21.](#)

⁹ *ibid*, cols 223–6.

¹⁰ [Explanatory Notes to the European Union \(Withdrawal Agreement\) Bill](#), p 64.

- Clause 36(f) would repeal the Benn Act. The Government has said that this is because the principal duty in the Act of seeking an extension by 19 October 2019 has been fulfilled and no longer has any legal effect. It is repealing the remaining reporting and parliamentary debate obligations as they are “no longer necessary”.¹¹

4. Key Documents

- Department for Exiting the European Union, [Report under Section 2\(1\) of the European Union \(Withdrawal\) \(No. 2\) Act 2019](#), 8 November 2019
- Department for Exiting the European Union, [Statement under Section 13\(4\) of the European Union \(Withdrawal\) Act 2018](#), 8 November 2019

¹¹ [Explanatory Notes to the European Union \(Withdrawal Agreement\) Bill](#), p 66.