The Government has been saying since October 2016 that Parliament will have a vote on the Brexit deal it negotiates with the EU. For a long time this was no more than a stated intention. However, during the passage of the EU Withdrawal Act, the cornerstone of the Government’s programme of Brexit legislation, the Government agreed to change its original proposed procedure for Parliament’s consideration of the Brexit deal. Following negotiations with a group of pro-EU Conservative MPs, led by Dominic Grieve, Section 13 of the bill now gives Parliament a ‘meaningful vote’ on the deal.

Section 13 of the EU Withdrawal Act says the Government will not be able to ratify the Withdrawal Agreement unless four conditions have been met:

1. The documents and an associated statement have been published.
2. “The negotiated Withdrawal Agreement and the framework for the future relationship have been approved by a resolution of the House of Commons on a motion moved by a minister of the Crown”.
3. A subsequent debate has taken place in the House of Lords.
4. Parliament has passed legislation to implement the Withdrawal Agreement.

This gives Parliament a much stronger role in the ratification of the Withdrawal Agreement than under normal parliamentary procedure set out in the 2010 Constitutional Reform and Governance Act. Under the Constitutional Reform and Governance Act, Parliament has 21 sitting days to vote against the ratification of a treaty but there is no obligation on the Government to schedule time for a vote.

The Government has confirmed that the 2010 Constitutional Reform and Governance Act will also apply to the Withdrawal Agreement, in addition to the provisions under Section 13.

Parliament can try to direct the Government after rejecting the deal, but amendments to a motion would have no legal effect

On 15 January, MPs voted against the Government’s Brexit deal 432-202. Under the timetable outlined in the EU Withdrawal Act, if the Government loses a vote on the approval motion, ministers have 21 days to make a statement to Parliament outlining their next steps. It must then move a motion on that statement within seven sitting days, allowing MPs to debate and vote on the Government’s ‘plan B’.

However, this timetable has since been accelerated after MPs passed an amendment to the supplementary business motion (which outlined the procedure for the meaningful vote debate), requiring the Government to table a motion within three sitting days of defeat. This motion will then need to be voted on within seven sitting days (currently scheduled for the 29 January) and can be amended by MPs to express an alternative to the Government’s plan. While any such amendments would not be legally binding on the Government, they would be politically significant.

This is why a group of former ministers – led by Nick Boles Conservative MP – from across the political parties have come up with a different plan to try and legally direct the Government. They plan to table an amendment to the Government’s plan B motion which would temporarily suspend certain parliamentary Standing Orders (rules) to allow backbenchers to take control of parliamentary time (probably for a day). During this time MPs plan on trying to pass a new piece of legislation – introduced by Yvette Cooper Labour MP – which would require the Prime Minister to seek a nine-month extension of Article 50 until December 2019 if the House of Commons has not approved a deal by 11 February.

If MPs were to support this amendment and the subsequent legislation, this would place a legal requirement on the Government to act.

If the Government renegotiates the deal, it still needs to get Parliament’s approval

If, following discussions with MPs or the parliamentary debate on its next steps plan, the Government renegotiates the deal, it still needs to get Parliament’s approval in a second meaningful vote.

In theory, the Prime Minister could bring forward the same deal again if she believed the parliamentary arithmetic had moved significantly in her favour – although given the size of the defeat in the first meaningful vote, this seems unlikely.
However, parliamentary rules usually prohibit a motion being brought forward that is, in substance, the same question that has been decided by the House earlier in the parliamentary session. From a technical perspective, putting the unamended deal to the Commons again would seem to fall foul of this rule.

On the other hand, others suggest that the Government could to ask Parliament to approve the same deal, perhaps by amending the wording of the motion, or claiming that a change in political circumstances renders the second question different in substance to the first. In his evidence to the Exiting the EU Committee, David Natzler, Clerk of the House of Commons, suggested this option could be open to the Government, noting that the rule against considering the same matter twice was not designed to obstruct the will of the House.

Ultimately, whether the second motion is the same in substance to the first, and so whether it could be brought forward again during the same session, is for the Speaker to decide. In making this decision, the Speaker is likely to consider the mood of the House.

**Amendments to any future approval motion could lead to legal disputes**

If Parliament passes an amended motion to approve a deal, the Government will not be legally obliged to do what it asks. However, the Government’s ability to ratify the deal could be constrained if Parliament amends the motion to such an extent that it no longer expresses approval of the negotiated deal. It is likely that the Government would take legal advice on whether any amendments before the Commons would stop the UK from ratifying a deal, if they were passed. The Government could choose to make this advice available to the Commons, although this would not stop Parliament from obtaining conflicting advice, as MPs did in 1993 when they considered amendments to legislation approving the Maastricht Treaty.

If the motion were amended and MPs did believe that this stopped the Government from ratifying a deal under the terms of Section 13, then they could challenge the Government’s decision to ratify the Withdrawal Agreement before the High Court. (This would be the same for amendments to the legislation the Government brings forward to implement the Withdrawal Agreement, after the vote on the motion.)

**The Government does not need to pass an approval motion before it brings forward the EU Withdrawal Agreement Bill**

Before any deal can be ratified, the Government needs to implement the Withdrawal Agreement (but not the Political Declaration) into domestic law. The Government has said it intends to do this through the EU Withdrawal Agreement Bill.

The EU Withdrawal Act does not specify that the motion must be passed before the bill can be introduced. This was highlighted by Sir David Natzler, Clerk of the House of Commons, in evidence to the Exiting the EU Committee. The Government could therefore introduce the EU Withdrawal Agreement Bill before Parliament has signed off a deal through an approval motion. Indeed, the bill itself could include a clause that removes the need for a separate approval motion.

However, introducing the bill before Parliament has signed off the deal seems unlikely. First, the legislation has been drafted on the basis of the Government’s current deal and may need amending to reflect any changes to the Withdrawal Agreement – and the Government is usually keen to avoid amending its own legislation mid-passage. Second, the contents of the bill will lay bare the domestic legal consequences of the Withdrawal Agreement, potentially undermining attempts to bring MPs round to supporting a version of the Prime Minister’s deal.

If there isn’t enough time for the 21 sitting days needed before the Government can ratify a deal under the Constitutional Reform and Governance Act, it could include a proviso in the EU Withdrawal Agreement Bill to say its passage fulfils obligations on the Government set out in the Constitutional Reform and Governance Act. Even without such changes, the Constitutional Reform and Governance Act procedure can be avoided if a minister believes there is an exceptional case for doing so.

**Update date:**
Friday, January 18, 2019
Amendments to any future approval motion on the #Brexit deal could lead to legal disputes.


Govt does not need to pass approval motion before it brings forward Withdrawal Agreement Bill.