Parliament’s ‘meaningful vote’ on Brexit

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.

The Government cannot ratify any deal until Parliament has approved it

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.

On 15 January, MPs held a ‘meaningful vote’ on the Government’s deal with the EU, and rejected it by 432 votes to 202.

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

Following a subsequent debate and vote in the House of Commons on 29 January, Theresa May has said she wants to renegotiate aspects of her deal, in particular the Northern Ireland backstop. Whether or not she is successful, the Government cannot ratify a withdrawal agreement with the EU without parliamentary approval. There will therefore have to be a second ‘meaningful vote’ on the deal.

If it succeeds, the Government could then introduce the EU Withdrawal Agreement Bill and, provided that passes through both Houses, ratify the Withdrawal Agreement.

If the Government is unable to win the second meaningful vote, the Prime Minister could simply try to bring forward the same deal again if she believed the parliamentary arithmetic had moved in her favour – hoping either the threat of no deal, or no Brexit, will have brought more MPs on board.

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, the Government could 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 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. 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 provision 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.

Another option for the Government would be to request an extension to Article 50 to ensure there is sufficient time for ratification.

Further information

Read our explainer on how MPs voted on amendments to the Prime Minister’s Plan B motion on 29 January.

Update date:
Tuesday, February 5, 2019