

Parliament's 'meaningful vote' on Brexit ^[1]



The Government has been saying since October 2016 ^[2] 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 ^[3], the cornerstone of the Government's programme of Brexit legislation, the Government agreed to important changes to 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 ^[4] of the EU Withdrawal Act now gives Parliament a 'meaningful vote' on the deal.

The Government cannot now ratify the deal until Parliament has approved it ^[5]

Section 13 ^[4] 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 a much stronger role to Parliament in the ratification of the Withdrawal Agreement than it would have had under normal parliamentary procedure set out in the Constitutional Reform and Governance Act (CRAG) 2010. Under the 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 ^[6] that the Constitutional Reform and Governance Act will also apply to the Withdrawal Agreement, in addition to the provisions under Section 13.

But the Government has delayed the meaningful vote ^[7]

The Government agreed the Withdrawal Agreement ^[8] and the political declaration ^[9] on the framework for the future relationship with the EU on 25 November. It then passed a business motion to schedule a five-day debate, at the end of which Parliament would be able to vote to approve or reject the deal.

Before the business motion was introduced, there was controversy around how the Government would schedule the debate, and whether it would allow votes on any amendments **before** a vote on the Government's motion. The Government followed recommendations made by the Institute for Government ^[10], the Commons Exiting the EU Committee and the Procedure Committee by scheduling five days of debate. Parliament was then due to vote on up to six amendments before voting on the Government's approval motion as amended (or not, if amendments hadn't passed).

The Government decided to delay the vote after three days of debate. Theresa May ^[11] told the Commons this was because, if the Government proceeded with the vote, it would lose. She said she had listened to the House and wanted to address MPs' concerns about the deal with the EU, particularly around the Northern Ireland backstop ^[12].

The Government was criticised for using a mechanism to change the timetable that did not require the consent of the House – i.e. not having a vote on whether to have the meaningful vote. The Speaker John Bercow said it would have been "infinitely preferable" for the Government to let the House express a view on whether the vote should go ahead. He also pointed out ^[13] that a large number of members had spoken in the debate and, although it was within the Government's power to delay, he described it as "deeply discourteous" to the House.

Any amendments tabled to the motion no longer apply; MPs will have to either re-table them or table new ones when the motion returns. Most of the amendments that had been tabled largely avoided setting out alternatives to the Government's deal. Instead, MPs focused on procedural questions relating to withdrawal, for example expressing opposition to a 'no deal' exit. The other key amendment, tabled by backbencher Hugo Swire on behalf of the Government, would have given Parliament a vote to approve implementation of the Northern Ireland backstop. The Prime Minister told the Commons ^[11] the Government was looking at ways to ensure the backstop has "democratic legitimacy".

The meaningful vote has to take place before the UK leaves the EU on 29 March but, beyond that, there is no time limit in domestic law for the vote. There are only deadlines for the Government if there is no agreement 'in principle' with the EU (as we explore below). The Government has nevertheless committed to holding the meaningful vote by 21 January.

Parliament now has the power to give directions to the Government in a 'no deal' scenario, but they would have no legal effect ^[14]

The EU Withdrawal Act also sets out parliamentary procedure for a 'no deal' scenario. A 'no deal' Brexit for the purposes of the

legislation is carefully defined:

1. If Parliament has decided not to pass the Government's motion to approve the Withdrawal Agreement and future framework.
2. If, before 21 January 2019, the Government tells Parliament that no agreement can be reached.
3. If after 21 January 2019, no agreement has been reached.

In any of these instances, the Government would have to make a statement to Parliament setting out what it intended to do next.

Parliament would then have an opportunity to vote on those plans, on a motion expressed "in neutral terms". The motion could be "that this House has considered the Government's plans to leave the European Union without a Withdrawal Agreement", for example. This would be considered "neutral", as it does not express an opinion about those plans, one way or another.

When the EU Withdrawal Act passed, MPs debated whether such a motion would be amendable. This is because the Standing Orders of the Commons say that where, in the opinion of the Speaker, a motion is expressed "in neutral terms", no amendments to it may be tabled (Standing Order 24B).

However, it is now clear that any motions in these three scenarios will be amendable. This is because the House of Commons voted [321-299](#) ^[15] to pass a Dominic Grieve amendment to the business motion which outlined the procedure for the meaningful vote debate. This amendment would disapply Standing Order 24B to any motion tabled under Section 13 of the EU Withdrawal Act. The Government has now confirmed that it considers this amendment to apply to any subsequent votes, even though the meaningful vote debate has not been concluded. This effectively gives MPs a further meaningful vote in the event they vote down the deal, allowing them to express a view on what should happen next. While any such amendments would not be legally binding on the Government, they would be politically significant.

Amendments to the Government's approval motion could lead to legal disputes ^[16]

If Parliament passes an amended motion to approve the 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 make this advice available to the Commons if it chose to do so, although this would not stop MPs obtaining conflicting advice, as happened in 1993 when MPs considered amendments to legislation approving the Maastricht Treaty.

If the motion were amended and someone did believe that this stopped the Government from ratifying under the terms of Section 13, then [they could challenge](#) ^[17] 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.)

But the Government does not need to pass the motion before it brings forward the EU Withdrawal Agreement Bill ^[18]

Section 13 of the EU Withdrawal Act says that the motions need to be approved by the Commons and the EU Withdrawal Agreement Bill needs to pass through Parliament before the Government can to ratify the Withdrawal Agreement. But it does not specify that the motion has to be passed before the bill can be introduced. This was highlighted by Sir David Natzler, Clerk of the House of Commons, [in evidence](#) ^[19] to the Exiting the EU Committee.

It would be possible, therefore, for the bill to provide a way to ensure the Government is able to ratify, even if the motion has not passed or has been significantly amended in the House. Sir David suggested the EU Withdrawal Agreement Bill could include a retrospective provision to say that the passage of the bill would be sufficient in meeting the conditions set out in Section 13 of the EU Withdrawal Act. Another possibility would be to include a provision which repeals the relevant parts of Section 13 of the Act, or which explicitly gives the Government permission to ratify the agreement.

Of course, in either of these cases, the clause would have to be accepted by Parliament as the bill completes its passage.

If the timeframe gets very tight, the Government could also use the bill to manage the need for the Constitutional Reform and Governance Act procedure. If there isn't enough time for the 21 sitting days needed before the Government can ratify 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.

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- [6] <https://publications.parliament.uk/pa/cm201719/cmselect/cmexeu/1641/1641.pdf>
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[17] <https://ukconstitutionallaw.org/2018/10/24/robert-craig-and-gavin-phillipson-could-the-meaningful-vote-end-up-in-court/>
[18] <http://twitter.com/intent/tweet?text=The%20Govt%20does%20not%20need%20to%20pass%20the%20motion%20before%20it%20brings%20forward%20EU%20Withdrawal%20Agreement%20Bill>
[19] <http://data.parliament.uk/writtenevidence/committeeevidence/svc/evidencedocument/exiting-the-european-union-committee/the-progress-of-the-uks-negotiations-on-eu-withdrawal/oral/92186.html>