

Withdrawal Agreement Bill



Why is the Withdrawal Agreement Bill needed?

The UK needs a bill to implement the Withdrawal Agreement, which is a legally binding treaty setting out the negotiated terms of the UK's departure from the EU.

This is for two reasons:

1. **To meet our international obligations.** When the UK becomes party to an international treaty, the treaty does not automatically take effect in UK law. Instead, Parliament must legislate to give effect to the treaty.
2. **A full Act of Parliament is required by prior legislation** . Under the EU (Withdrawal) Act, Parliament must pass a further Act before the UK is allowed to ratify the treaty

What does the Withdrawal Agreement Bill say?

Subject

Transition period

What does the bill say?

EU law

Which clause?

During the transition period, almost all EU law will continue to apply in the UK. The bill achieves this by keeping parts of the European Communities Act in 1972 in force for the duration of the transition period. This is the statute that has given effect to EU law during the UK's membership of the EU.

1

Extending transition

What does the bill say?

The transition period is currently scheduled to end in December 2020. However, the transition can be extended once by up to two years, if the UK and EU jointly decide to do so before 1 July 2020.

The bill provides that a minister can only agree an extension of the transition period with the EU if the House of Commons has approved such an extension. The bill does not provide for the House of Commons to decide whether or not an extension should be asked for in the first place.

Which clause?

30

New EU laws

What does the bill say?

The bill specifies a process for scrutinising any EU laws which are made during the transition. If the European Scrutiny Select Committee of MPs decides that a new EU law "raises a matter of vital national interest" to the UK, it can ask for a debate on the issue in the House of Commons. The government must then make time for that debate within 14 sitting days, but MPs are not able to stop those rules entering into force.

Which clause? 29

Negotiations on the future relationship

The bill provides that the government can only negotiate with the EU on the future UK-EU relationship if the government has obtained Parliament's approval for its negotiating objectives. Once those objectives have been approved, the government must seek to achieve them.

What does the bill say?

The bill also says that the government's negotiating objectives must be consistent with the Political Declaration of 17 October 2019. This declaration says that the UK and the EU should have a free trade agreement.

During the negotiations, a government minister must lay a report before both Houses of Parliament every three months stating progress made against the negotiating objectives.

The government will not be able to ratify the future relationship treaty until it has been laid before Parliament and MPs have voted to approve it.

Which clause? 31

EU law and parliamentary sovereignty

The bill provides that the Withdrawal Agreement itself will be enforceable by the UK courts, including after the end of the transition period. This means that the courts will also enforce any rules of EU law incorporated into the Withdrawal Agreement.

What does the bill say?

In addition, the bill attempts to give the Withdrawal Agreement "supremacy" over UK law, by saying that all domestic enactments have effect "subject to" the provisions which give effect to the agreement. The bill uses exactly the same language to give effect to the Withdrawal Agreement that the European Communities Act 1972 used to give effect to EU law. The most likely upshot of this is that if, in future, Parliament passed a statute inconsistent with the agreement, the courts would disapply the statute in favour of the agreement - unless Parliament explicitly told them to do the reverse.

Which clause? 5

The bill also "recognises" that Parliament is sovereign, even though some EU law and the agreement itself will have supremacy over statutes passed by Parliament. However, this "parliamentary sovereignty" clause is unlikely to have any legal effect.

What does the bill say? 36

Citizens' rights

What does the bill say?

The bill gives ministers several powers to make secondary legislation which would give effect to the citizens' rights part of the Withdrawal Agreement. In addition, the bill provides for the creation of an Independent Monitoring Authority (IMA), as required by the agreement, to monitor the government's compliance with its obligations. The budget of and public appointments to the IMA will be decided by a minister.

The bill also provides for ministers to make provisions for a statutory appeals process against government decisions on individual cases using secondary legislation.

Which clause? 7-15

Divorce bill / financial settlement

What does the bill say? The bill authorises HM Treasury to make payments to the EU out of Treasury funds until March 2021. From that point onwards, the government will need to raise money to make payments to the EU by asking Parliament for money each year, just as it has to ask Parliament for money for departmental spending.

Which clause? 20

Protocol on Northern Ireland

What does the bill say? The Protocol on Northern Ireland, which replaced the “backstop” in the previous Withdrawal Agreement, provides that Northern Ireland will continue to align with some EU rules, in order to avoid a hard border on the island of Ireland.

The bill gives ministers wide powers to implement the protocol by secondary legislation.

Other than that, the bill says very little about how the protocol arrangements will be implemented.

The bill also forbids the government from agreeing anything in the EU in the future that would alter the arrangements for North-South co-operation under the Good Friday Agreement.

Which clause? 21

Workers' rights

What does the bill say? When a minister introduces a bill which relates to EU-derived workers' rights, the bill provides that he or she must either make a statement that the bill does not remove any such right, or make a statement that, even though it does, the government wants to proceed with it anyway.

Which clause? 34, Schedule 5A

Meaningful vote

What does the bill say? Currently, the government must win a vote in the House of Commons on a motion to approve its deal before ministers are allowed to ratify it. This has become known as a “meaningful vote”. However, the bill would remove that requirement.

The bill would also disapply the requirement, under the Constitutional Reform and Governance Act 2010, for the ministers to lay a treaty before Parliament 21 days before they ratify it.

This means that, if the bill were to become law, the government would be allowed to ratify the Withdrawal Agreement (formally enter into the agreement on the UK's behalf) without doing anything else.

Which clause? 32-33

Retained EU law

What does the bill say? The bill amends provisions in the EU Withdrawal Act 2018 so that the ‘snapshot’ of EU law (and UK law implementing EU law) will be taken at the end of the implementation period, rather than on exit day. The bill also amends the EU Withdrawal Act 2018 powers to correct deficiencies in this body of ‘retained EU law’ and amends the point at which this power ceases so it can continue to be used until two years after the end of the transition period (rather than exit day). These provisions will allow the government to incorporate any new EU law that comes into effect during the transition period into domestic law at the end of the transition period.

Subject	What does the bill say?	Which clause?
Citizens' rights	<p>which would give effect to the citizens' rights part of the Withdrawal Agreement. In addition, the bill provides for the creation of an Immigration and Asylum Tribunal (IMA), as required by the agreement, to monitor the government's compliance with its obligations. The budget of and public appointments to the IMA will be decided by a minister.</p>	
Divorce bill / financial settlement	<p>The bill also provides for ministers to make provisions for a statutory appeals process against government decisions on individual cases using secondary legislation.</p> <p>The bill authorises HM Treasury to make payments to the EU out of Treasury funds until March 2021. From that point onwards, the government will need to raise money to make payments to the EU by asking Parliament for money each year, just as it has to ask Parliament for money for departmental spending.</p>	20
Protocol on Northern Ireland	<p>The Protocol on Northern Ireland, which replaced the "backstop" in the previous Withdrawal Agreement, provides that Northern Ireland will continue to align with some EU rules, in order to avoid a hard border on the island of Ireland.</p> <p>The bill gives ministers wide powers to implement the protocol by secondary legislation.</p> <p>Other than that, the bill says very little about how the protocol arrangements will be implemented.</p> <p>The bill also forbids the government from agreeing anything in the EU in the future that would alter the arrangements for North-South co-operation under the Good Friday Agreement.</p>	21
Workers' rights	<p>When a minister introduces a bill which relates to EU-derived workers' rights, the bill provides that he or she must either make a statement that the bill does not remove any such right, or make a statement that, even though it does, the government wants to proceed with it anyway.</p>	34, Schedule 5A
Meaningful vote	<p>Currently, the government must win a vote in the House of Commons on a motion to approve its deal before ministers are allowed to ratify it. This has become known as a "meaningful vote". However, the bill would remove that requirement.</p> <p>The bill would also disapply the requirement, under the Constitutional Reform and Governance Act 2010, for the ministers to lay a treaty before Parliament 21 days before they ratify it.</p>	32-33
Retained EU law	<p>This means that, if the bill were to become law, the government would be allowed to ratify the Withdrawal Agreement (formally enter into the agreement on the UK's behalf) without doing anything else.</p> <p>The bill amends provisions in the EU Withdrawal Act 2018 so that the 'snapshot' of EU law (and UK law implementing EU law) will be taken at the end of the implementation period, rather than on exit day. The bill also amends the EU Withdrawal Act 2018 powers to correct deficiencies in this body of 'retained EU law' and amends the point at which this power ceases so it can continue to be used until two years after the end of the transition period (rather than exit day). These provisions will allow the government to incorporate any new EU law that comes into effect during the transition period into domestic law at the end of the transition period.</p>	25-27

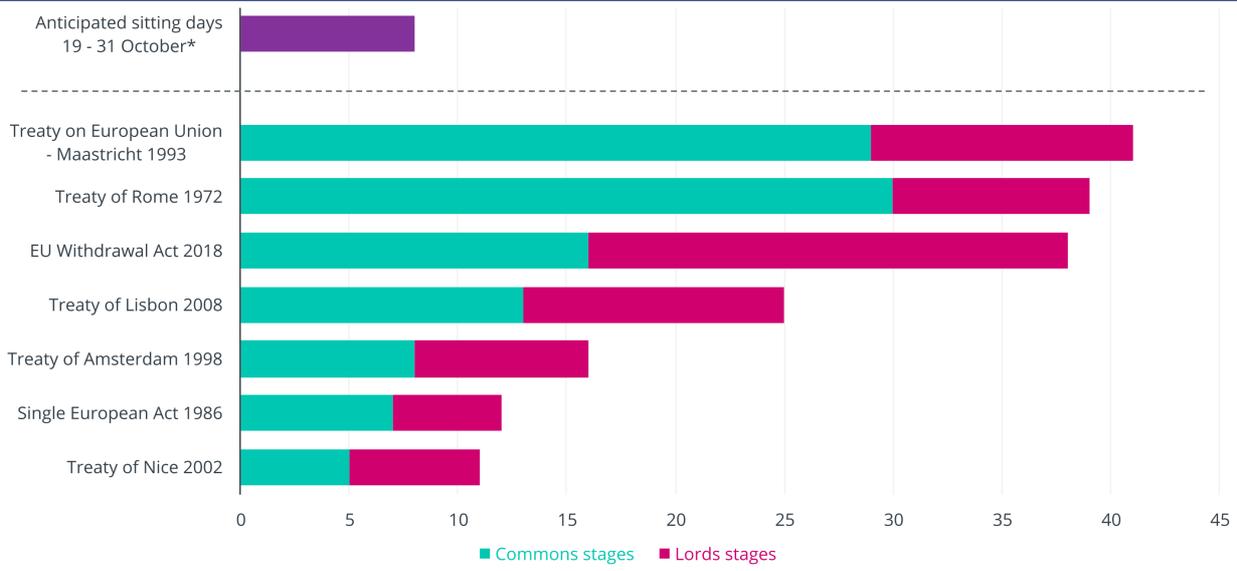
Is there enough time to pass the Withdrawal Agreement Bill?

Past bills to implement major EU treaties have taken between 10 and 40 sitting days to get through Parliament. More controversial treaties have tended to take longer.

If the government cannot get the Withdrawal Agreement Bill through Parliament, then the default legal position is that the UK cannot ratify the deal, and so would leave the EU on 31 October without a deal.

However, on 19 October, the UK requested an extension of the Article 50 period until 31 January 2020. If Parliament did not pass the Withdrawal Agreement Bill by the end of October, the EU might decide to grant that extension.

Active sitting days in each House on bills relating to EU treaties, compared to number of sitting days 19 October - 31 October 2019 IfG



*19 October is the deadline for approving a deal before asking for an Article 50 extension in the EU Withdrawal (No.2) Act

Source: Institute for Government analysis of House of Commons Library briefing 'EU Treaty Change' and Hansard. Changes to programming legislation were made in 1998.



Active sitting days in each House on bills relating to EU treaties, compared to the number of scheduled sitting days (Updated: 17 Oct 2019) [2]

[3]
[4]

The government could push the bill through the Commons very quickly if it managed to command a majority for the necessary programme motion. However, the government cannot control the timetable in the House of Lords.

Update date:
Tuesday, October 22, 2019

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