



House of Commons
Exiting the European Union
Committee

**Parliamentary scrutiny
and approval of the
Withdrawal Agreement
and negotiations on a
future relationship**

Sixth Report of Session 2017–19

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 26 June 2018*

Exiting the European Union Committee

The Exiting the European Union Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Exiting the European Union and related matters falling within the responsibilities of associated public bodies.

Current membership

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- [Mr Peter Bone MP](#) (*Conservative, Wellingborough*)
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Powers

The Committee is one of the departmental select committees; its powers are set out under a Temporary Standing Order of 4 July 2017.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/exeucom and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

Committee staff

The current staff of the Committee are James Rhys (Committee Clerk), Claire Cozens (Second Clerk), Dr Ariella Huff (Senior Committee Specialist), Shakera Ali (Committee Specialist), Duma Langton (Committee Specialist), Judy Goodall (Committee Specialist), Adrian Hitchins (Committee Specialist), Julian Mazowiecki (Committee Specialist), Eoin Martin (Committee Specialist), Leo Oliveira (Senior Committee Assistant), Pansy Barrett (Senior Committee Assistant), Henry Ayi-Hyde (Committee Assistant), Estelle Currie (Senior Media Officer) and Ben Shave (Media and Communications Officer).

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Conclusions

Parliament's vote on the Withdrawal Agreement and the terms of the future relationship

1. The conclusion of a Withdrawal Agreement between the UK and the EU27 and its accompanying Political Declaration on the framework for a future relationship will initiate a series of proceedings in Parliament which will need to be concluded by 29 March 2019, the date on which, under the terms of Article 50 of the Treaty on European Union, the UK becomes a third country. Even under the most optimistic scenario of full agreement at the October Council, Parliament will have barely more than five months to consider a motion to approve both documents (the “meaningful vote”), to complete consideration of the Withdrawal and Implementation Bill, and of any delegated legislation and any other primary legislation required by exit day, and to complete procedures required under the Constitutional Reform and Governance Act 2010 for treaty ratification. (Paragraph 39)
2. This Committee's scrutiny of the deal will be important to the “meaningful vote”. The Secretary of State has committed to give evidence to us following the October Council and we would expect a similar commitment if final agreement is deferred to the December Council or an even later date. We will expect the Secretary of State to be prepared to give evidence to us as soon as practicable after the Council at which any agreement is reached. We recommend the Government allow sufficient time between the Secretary of State appearing before us to give evidence and the scheduling of the “meaningful vote” to ensure that we have the opportunity to report to the House, as appropriate, on the final deal. We note that the Institute for Government suggested that parliamentarians should be given two weeks at the very least to consider the Withdrawal Agreement and Political Declaration before the debate is held. However, we recognise this timetable would need to be condensed in certain circumstances. (Paragraph 40)
3. The debate on the motion for approval of the Withdrawal Agreement and Political Declaration will be one of the most significant parliamentary debates in a generation. We note the precedent of five days spent debating the motion to approve the UK's decision to join the then European Communities in 1971. Five days would therefore be the minimum time that would be appropriate on this occasion. (Paragraph 41)
4. The Secretary of State indicated to us that the motion to approve the Withdrawal Agreement and Political Declaration will be amendable. Given the significance of the debate on the motion it would be unconscionable if the House of Commons was not provided with the opportunity both for the fullest debate and to enable a clear expression of its opinion. It is essential that debate is organised through a Business of the House motion to ensure that it is possible for the Speaker to select a series of different amendments for consideration. The Government must ensure, so far as it is within its powers to do so, that these procedures allow the decision on the Withdrawal Agreement and Political Declaration motion to reflect, as far as possible, the view of the House as a whole even if this differs from the Government's

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preferred wording. The means of doing this is a matter on which the House would benefit from the expertise of the Procedure Committee and we request that that Committee give it consideration. (Paragraph 42)

5. We do not accept that a refusal by the House of Commons to approve the Withdrawal Agreement and the Political Declaration would mean that the Withdrawal Agreement would fall and that the UK would therefore leave the EU on 29 March 2019 without a deal. Consideration of the approval motion will give the House the opportunity to ask the Government to renegotiate terms, if the EU agreed to do so, or to seek to put its own conditions on approval. The House will expect that, in such circumstances the Government would re-submit the motion following any renegotiation sought by Parliament or having considered the terms set by the House. We call on the Government to provide for a second parliamentary vote to approve the Withdrawal Agreement and Political Declaration in such circumstances. (Paragraph 43)
6. It is possible that a renegotiation may be required in the event of either the UK Parliament or the European Parliament rejecting the Withdrawal Agreement or Political Declaration. However, the terms of Article 50 mean that, without an extension of Article 50 negotiations by the UK and the EU27, the UK is due to exit the EU on 29 March 2019 with or without an agreement. (Paragraph 44)
7. We reiterate the recommendation from our Third Report that the Government should be prepared to seek a limited extension to the Article 50 period if substantive aspects of the future relationship remain to be agreed. This would allow Government to meet its objective that negotiations on substantive aspects of the future relationship should not continue into the transition/implementation period. A limited extension to Article 50 may also be required to prevent the UK leaving the EU on 29 March 2019 without an agreement in the event that parliamentary consent to the Withdrawal Agreement is delayed by either side of the negotiations, although it is by no means certain that the EU would respond positively to such a request. (Paragraph 45)
8. The negotiations on the UK's exit from the EU are unlike any other in that a "no deal" scenario does not maintain the status quo but has significant implications for the UK and the EU from the moment that the EU Treaties would cease to apply to the UK at 11pm on 29 March 2019. In the circumstances that a deal is not reached (or a deal is not reached that Parliament is prepared to approve), it is important that Parliament is able to express its view clearly and advise the Government on how to proceed. The provisions in the European Union (Withdrawal) Act 2018 provide a framework for Parliament's role in that scenario. Were this situation to arise, we would expect the Government to provide an opportunity for both Houses to express their views, as the Secretary of State told the House they would. In such circumstances, the country would expect more than that its elected representatives simply "took note" of the situation. (Paragraph 46)

The Political Declaration

9. Notwithstanding the constraints of the Article 50 process, which sets out the procedures for a country exiting the EU rather than a country establishing a new relationship, the House of Commons will expect a high level of detail in the Political Declaration accompanying the Withdrawal Agreement if it is to be able to give its approval to both. We call on the Government to seek the inclusion of the Political Declaration as an annex to the Withdrawal Agreement in order to give its contents greater force. (Paragraph 64)
10. The section on the financial settlement in the text of the draft Withdrawal Agreement published after the March Council was highlighted in green, indicating that it had been agreed in principle by both sides. The UK's agreement to pay the financial settlement estimated at between £35 billion and £39 billion will be legally binding under international law once the Withdrawal Agreement is ratified by all parties concerned. The Withdrawal Agreement will be considered by the UK Parliament alongside a non-binding Political Declaration. A legally binding agreement on the UK's future relationship can only be agreed once the UK is a third country. If the UK Government wishes to make the payment of the financial settlement conditional on reaching a binding agreement on the future relationship, it would need to secure the agreement of the EU27 to inserting text to this effect in the Withdrawal Agreement. We note that the Government has not yet secured a clause in the Withdrawal Agreement linking the financial settlement to the satisfactory conclusion of negotiations on the framework for the future relationship. We call on the Government to confirm whether the inclusion of such a clause is one of its negotiating objectives. (Paragraph 65)

Implementation and ratification of EU exit agreements

11. If the House of Commons agrees the motion to approve the Withdrawal Agreement and Political Declaration, the Government will then introduce the Withdrawal Agreement and Implementation Bill to give effect to relevant provisions of the agreement in UK law and to allow for the exercise of delegated powers under Section 9 of the EU (Withdrawal) Act 2018. This will not provide an opportunity for parliamentarians to influence or amend the text of the Withdrawal Agreement itself. (Paragraph 82)
12. It is likely that, to secure the legal basis necessary for the standstill transition / implementation period envisaged in the current text of the Withdrawal Agreement, the Withdrawal and Implementation Bill will need to restore (for the limited period of the transition / implementation period) provision for the direct effect of EU law which is to be removed by the European Union (Withdrawal) Act 2018. We call on the Government to clarify the legal basis that will be used to provide for the standstill transition / implementation period. We also call on the Government to clarify how legal provision will be made for any backstop solution agreed for the Irish border and whether this backstop will need to be given provisional legal effect in the Withdrawal Agreement and Implementation Bill. (Paragraph 83)

13. Depending on the outcome of negotiations, the Government will have a large amount of legislation, both primary and secondary to pass before exit day or the end of the transition / implementation period if the transition / implementation period is agreed. It is essential that sufficient time is provided for proper consideration of the legislation required. Indeed, given the volume and complexity of legislation that now needs to be considered in such a short time, the Government should publish details of its intended legislative timetable including the intended publication dates of any proposed White Papers or Green Papers, and any contingency plans for handling a “no deal” outcome including legislative consequences. (Paragraph 84)
14. Parliament will also need to ratify the Withdrawal Agreement before exit day in accordance with the provisions of the Constitutional Reform and Governance Act 2010 (CRAG) on treaty ratification. We would expect the CRAG process to commence no earlier than the introduction of the Withdrawal Agreement and Implementation Bill in Parliament. The CRAG process should not be triggered when the Withdrawal Agreement is laid in the House ahead of the parliamentary vote unless the timing of events does not allow for this. (Paragraph 85)
15. The Government should give a commitment that there will be a vote on the Withdrawal Agreement if a resolution is tabled against it during the 21-day CRAG process. (Paragraph 86)

Scrutinising negotiations on the future relationship

16. On the basis of the existing text of the Withdrawal Agreement the UK will leave the institutions of the EU on 29 March 2019 and continue in the transition / implementation period until no later than 31 December 2020. This leaves only 21 months to translate the Political Declaration accompanying the Withdrawal Agreement into the legal text for any agreement or agreements on the future relationship, and for the ratification process to be sufficiently completed for key provisions to enter into force. The European Parliament elections in May 2019 and the subsequent establishment of a new Commission will substantially reduce the time available for meaningful negotiations to around 15 to 16 months. There is a possibility that this will not prove sufficient. Therefore, the Government should seek to secure a simple mechanism in the Withdrawal Agreement for the extension of the transition / implementation period if required. (Paragraph 104)
17. Once we leave the EU, the UK Parliament will lose the role it had in scrutinising EU external agreements, including trade agreements, through the European scrutiny processes in each House. Parliamentary scrutiny will be restricted instead to the provisions in the Constitutional Reform and Governance Act 2010 (CRAG) relating to ratification of treaties. CRAG provisions are inadequate, denying Parliament the right to information during negotiations, and not even guaranteeing a debate or vote on a treaty before it is ratified. The Government must ensure that the UK Parliament is given a meaningful vote on the final text of the agreements with the EU that will comprise the future UK-EU relationship. The Government must also commit to scheduling a vote in Parliament if a resolution is tabled against any of the future relationship agreements during the 21-day CRAG process. (Paragraph 105)

18. It is also important to look beyond the treaties we conclude with the EU to the negotiating and signing of any new agreements with non-EU countries, including new trade deals. We recommend that Parliament has a role in the scrutiny of these agreements. The Liaison Committee should examine the role of parliamentary committees in scrutinising treaties after the UK leaves the EU and consider proposals for a dedicated committee on treaties or how existing select committees might best approach this work. (Paragraph 106)
19. The UK's future trade agreement with the EU and negotiations on trade with non-EU states will have significant impacts on devolved policy areas and interests. As we said in our First Report, there needs to be cooperative, participative mechanisms for joint working between the UK Government and the devolved administrations to ensure that devolved interests are properly considered when entering into and developing new international agreements. We also asked the Government to set out whether it is considering formal structures for inter-governmental relations, including any arbitration system for disputes, so that the views of the devolved governments can be heard. The Government should set out in detail the processes by which the views of the devolved governments and parliaments will be fed into the negotiations on the UK's future relationship with the EU and on future trade agreements with non-EU states. The Government should also commit to seeking the views of the devolved parliaments as part of the process of seeking approval for the Withdrawal Agreement and Political Declaration. (Paragraph 107)
20. The negotiations on our future relationship with the EU will be a monumental task, touching a wide range of aspects of the political and economic future of this country. It is not yet clear whether changes will be made to the machinery of Government to accomplish this task. However, were the Department for Exiting the European Union to be abolished and this Committee to lose its role, adding the scrutiny of these negotiations to the workload of another existing committee would not be adequate. To ensure the right level of scrutiny of these historic negotiations and an effective role for Parliament in seeking the best outcome for the UK, there must continue to be a dedicated select committee on EU exit during the transition/implementation period to scrutinise and hold the Government to account in negotiating the UK's future relationship with the EU. (Paragraph 108)

Introduction

1. Following the EU referendum result in June 2016, the United Kingdom is currently negotiating a Withdrawal Agreement with the European Union. Under Article 50 of the Treaty on European Union, the European Parliament must ‘consent’ to the Withdrawal Agreement before the EU Council of Ministers can adopt the deal. Our predecessor Committee noted in its First Report of the last Parliament that there is no equivalent power for the UK Parliament and called on the Government to make it clear that Parliament would have a vote on the Withdrawal Agreement with time for proper consideration of the agreement beforehand.¹ In its response to that Report, the Government confirmed it would “bring forward a motion on the final agreement to be approved by both Houses of Parliament before it is concluded” and that this would happen before the European Parliament’s vote. It also expected that the vote would cover both the Withdrawal Agreement and the UK-EU future relationship.²

2. By October 2018, the Government and the European Union intend to have reached agreement on two documents. The first is the Withdrawal Agreement, a treaty that will set out the terms of the UK’s exit from the EU, including provisions for a transition / implementation period. This document, once signed and ratified, will have the force of international law. The second is the Political Declaration on the framework for a future relationship, which will set out the terms of the UK’s long-term relationship with the EU but will not be a treaty.

3. On 13 December 2017, the Rt Hon David Davis MP, Secretary of State for Exiting the European Union, made a written statement to the House in which he set out the process by which Parliament would be asked to approve and implement the agreements on EU exit, confirming that the parliamentary vote would be held as soon as possible after negotiations have concluded and would take the form of a motion to approve both the Withdrawal Agreement and the Political Declaration.³ The Statement also confirmed that the Government would only introduce the Withdrawal Agreement and Implementation Bill to give domestic legal effect to the Withdrawal Agreement if the motion is passed in Parliament and that the Withdrawal Agreement would also be subject to the Constitutional Reform and Governance Act 2010 procedures for treaty ratification.

4. Section 13 of the European Union (Withdrawal) Act 2018 places the commitments made by the Government to a parliamentary vote to approve the Withdrawal Agreement and Political Declaration on a statutory footing.

5. In this report we consider the role Parliament will play in approving and implementing the Withdrawal Agreement and the terms of the future relationship and its scrutiny role after the UK leaves the European Union. We held two oral evidence sessions with procedural, legal and EU experts and with Ministers from the Department for Exiting

1 Committee on Exiting the European Union, First Report of Session 2016–17, [The process for exiting the European Union and the Government’s negotiating objectives](#), HC 815, para 168

2 Committee on Exiting the European Union, First Special Report of Session 2016–17, [The process for exiting the European Union and the Government’s negotiating objectives: Government’s Response to the Committee’s First Report](#), HC 1101, para 63

3 Department for Exiting the European Union HCWS342, [Procedures for the Approval and Implementation of EU Exit Agreements](#), 13 December 2017

the European Union. We also held two informal briefings with in-house experts from the House of Commons Library and Speaker's Counsel, and from the Institute for Government. We are grateful to all those who have given evidence to this inquiry.

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6. A draft of the Withdrawal Agreement was published by the Commission on 28 February 2018. A subsequent version was published on 19 March 2018 following the March Council that indicated the progress that had been made on agreeing a final text with sections agreed in principle highlighted in green.⁴ The Secretary of State for Exiting the European Union has said, “we are at 75%, but the last 25% is the hardest.”⁵ The Secretary of State told us that he expects to have the final agreed text of the Withdrawal Agreement in October.⁶

7. Article 50 states that the Withdrawal Agreement shall be negotiated and concluded, taking account of the framework for the UK's future relationship with the EU. The European Council stated in March that, as part of the Article 50 negotiations, the EU and the UK will negotiate a “Political Declaration” on the framework for the future relationship, which will accompany the Withdrawal Agreement.⁷ Section 13 of the European Union (Withdrawal) Act 2018 states that Parliament's vote on the final deal negotiated with the EU will cover both the Withdrawal Agreement and the Political Declaration.

8. The Government can negotiate and sign treaties using its prerogative powers and without any formal parliamentary involvement. Parliament's role is customarily restricted to implementing a treaty through legislation, or using its powers under the Constitutional Reform and Governance Act 2010 to delay ratification. As Suella Braverman MP, Under-Secretary of State at the Department for Exiting the European Union, has said, “The meaningful vote is over and above the usual process that other international treaties are subject to.”⁸

9. Article 50 does require the consent of the European Parliament before the Withdrawal Agreement can be concluded by the EU, giving the European Parliament a legally binding veto over the Withdrawal Agreement. Section 13 of the European Union (Withdrawal) Act 2018 has also made it a legal requirement that a vote be held in the UK Parliament to approve the Withdrawal Agreement before it can be concluded by the UK. The parliamentary vote will be a significant opportunity for Parliament to debate and to reach a view on the outcome of the negotiations. According to the Institute for Government, the vote will be “both the point of maximum vulnerability for the Government, and the point of maximum opportunity for parliamentarians who wish to influence the course of events.”⁹

4 Commission, [draft Withdrawal Agreement](#), 19 March 2018

5 Oral evidence taken before the House of Lords Select Committee on the European Union, Scrutiny of the Brexit negotiations, 1 May 2018, [Q1](#)

6 [Qq1420-1](#)

7 Council of European Union, [Draft Guidelines on the framework for the future relationship](#), 7 March 2018

8 Oral evidence taken before the House of Lords Constitution Committee, Parliament's role in relation to the terms of Brexit, 18 April 2018, [Q5](#)

9 Institute for Government, [Voting on Brexit](#), April 2018, p5 and p20

Timing

10. In his written statement of 13 December 2017, the Secretary of State outlined the Government’s plan for approving and implementing the Withdrawal Agreement and the Political Declaration on the framework of the future relationship. He included a commitment to give Parliament a vote on the final deal “as soon as possible” after the negotiations have concluded.¹⁰ The Government has also said the vote will take place before the European Parliament holds its own vote on whether it consents to the Withdrawal Agreement.¹¹ The timing between the publication of the Withdrawal Agreement and Political Declaration and the parliamentary vote will, therefore, have implications for how they will be scrutinised.

11. The Institute for Government has set out the tasks that Government faces in Parliament in order to complete the approval process for the Withdrawal Agreement, including the parliamentary vote and passing the Withdrawal Agreement and Implementation Bill to put the Withdrawal Agreement into domestic law.¹² They describe the Government’s timetable as “ambitious”, but suggested that “there will be enough time, providing that nothing goes wrong.”¹³

12. The Institute for Government recommended that parliamentarians be given two weeks to consider the Withdrawal Agreement and Political Declaration in detail before the debate is held. When we put this to the Secretary of State, he told us that Parliament will have already had sight of the Withdrawal Agreement before it is finalised and underlined the tight timeframe:

We have a pace on us to deliver you a vote in that timetable. I am not going to try to preempt what the usual channels will determine, which is how long, how much time there will be and what the actual draft of the vote will be. I also make this other point to you. Unlike most votes in the House, in the previous several months you will have seen unveiled or put in front of the public and in front of Parliament all the elements of the negotiation. We already know large parts of what is going to be put in front of the House. We will know all of it, to the very last bits of the negotiation, way before we are in a position to put it to the House. You will then have a statement, and I imagine not too long after that, you will have the vote. That will be a matter for the usual channels at that stage.¹⁶

13. The vote in Parliament on the principle of accession to the then European Communities in 1971 provides a useful comparison. In October 1971, the House of Commons was given five days to debate a government motion approving the then Government’s decision to join the European Communities. The Institute for Government suggests that the 1971

10 DExEU, [Written Statement Procedures for the Approval and Implementation of EU Exit Agreements](#), HCWS342 13 December 2017.

11 HC Deb, 7 February 2017, [col 295](#)

12 Failure to approve and implement the Withdrawal Agreement in domestic law (in part at least) by statute would prevent the UK ratifying the Withdrawal Agreement.

13 Institute for Government, [Voting on Brexit](#), April 2018, p3

precedent should act as the Government’s “starting point” for allocating time to the parliamentary vote on the Withdrawal Agreement.¹⁴ The Secretary of State noted that “five days does not sound onerous” for the debate on the motion.¹⁵

14. The Government has made a statutory commitment in the European Union (Withdrawal) Act that the UK Parliament will debate and vote on the Withdrawal Agreement and Political Declaration before the European Parliament does the same. Guy Verhofstadt, Brexit Coordinator and Chair of the Brexit Steering Group in the European Parliament, told us that the European Parliament would need three months to consider and give its consent to the Withdrawal Agreement and Political Declaration. He also confirmed that the European Parliament would have to receive the documents before the end of this year, otherwise they could not be “assured to have a vote in plenary in March.”¹⁶

Motion

15. On 21 October 1971, the House of Commons began its debate on the following Government motion on the principle of the UK’s accession to the European Communities:

That this House approves Her Majesty’s Government’s decision of principle to join the European Communities on the basis of the arrangements which have been negotiated.

16. Section 13 of the European Union (Withdrawal) Act 2018 provides that the motion to be put to the House in the autumn will cover both the Withdrawal Agreement and the Political Declaration on the terms of our future relationship. The Secretary of State told the House in November that “if the original motion is put but not passed, the deal falls—full stop; in toto.”¹⁷

17. The Institute for Government has suggested that it is in the Government’s interests to talk up the disruption associated with voting down the deal. They also state that

The Government’s claim that the vote is a binary choice between ‘deal or no deal’ is wrong. Parliament won’t be able to amend the content of the withdrawal agreement or future framework. But if MPs and peers are unhappy with what the Government has negotiated, they will almost certainly be able to amend the motion so as to put conditions on approval. Even if Parliament voted the Government’s deal down without amendment, this could lead to a renegotiation if the Government faced insurmountable political pressure to heed Parliament’s concerns, and the 27 Member States of the EU were willing to discuss the issues raised by parliamentarians.¹⁸

We were also told by Lord Lisvane, former Clerk of the House of Commons, that if the motion were rejected, the Government could subsequently put down a different motion, taking account of the reasons why the first one had been rejected.¹⁹

14 Institute for Government, [Voting on Brexit](#), April 2018, p3

15 [Q1420](#)

16 [Q2048](#)

17 HC Deb [EU Exit Negotiations](#), 13 November 2017, vol 631, col 41

18 Institute for Government, [Voting on Brexit](#), April 2018, p3

19 [Q1494](#)

18. The Secretary of State conceded that the motion considered would be amendable.²⁰ It will be up to the Speaker to decide whether any amendments tabled are within the scope of the motion and which should be selected for debate. Parliament cannot directly amend the content of either the Withdrawal Agreement or the Political Declaration, but can instruct the Government to seek a different outcome with the EU. This could include instructing the Government to negotiate a new Withdrawal Agreement and Political Declaration based on different terms.

19. To be eligible for selection by the Speaker, amendments need to be within the scope of the motion. The Institute for Government suggested that amendments would be likely to be considered to be within scope on substantive points in the Withdrawal Agreement or the Political Declaration (requiring the re-opening of negotiations with the EU²⁷) or setting procedural requirements which would be within the gift of the UK Government to concede.

That would include amendments directing the Government to renegotiate the length of transition, the financial settlement or “divorce bill”, provisions on citizens’ rights, and the UK’s future trading relationship with the EU. Amendments to the procedure for approving the UK’s departure from the EU—for instance, by requiring a further referendum or a different kind of parliamentary vote—would also be likely to be in scope.²¹

20. Although amendments can be grouped for debate, only one question can formally be put before the House at one time. Lord Lisvane explained to us why consideration would need to be given to the arrangement of debate. The order in which amendments are considered is important as, where amendments are mutually incompatible the agreement of one could preclude a decision being taken on a subsequent one. Furthermore, specific provision would also be required for the House to be sure to be able to vote on more than one amendment. Without a business motion, if debate was continuing at the moment of interruption in the House²² on the last day scheduled for debate, a division could be held on only the single amendment formally before the House followed by the main approval motion (as amended or in its original form).

if it is a straightforward motion with amendments down, when you hit the moment of interruption [...] you put the question on the amendment before the House. Then you put the contingent main question. If you want to have a choice of amendments to put, one after the other—there are questions of calls and falls, because there might be incompatible amendments—so if you want to call more than one, you will need a business order to allow more than one amendment to be called after 10 o’clock, 7 o’clock or whatever it turns out to be.²³

21. If a formal vote of the House was likely to be only possible on one amendment, the Speaker’s selection of the amendment would become even more significant. The Institute for Government report notes that

20 [Q1383 and Q1454](#)

21 Institute for Government, [Voting on Brexit](#), April 2018, p10

22 10p.m. on Monday; 7p.m. on a Tuesday or Wednesday; and 5p.m. on a Thursday.

23 [Q1492](#)

The choice between an amendment which required a new referendum on the Government's deal and one that required the UK to leave the EU without a transition, for instance, would be highly political.

22. The Secretary of State told us he would be tabling the same amendable motion in the House of Commons and the House of Lords and seeking approval from both.²⁴ This raised the possibility that the two Houses might not pass the motion in the same form. Steve Baker MP, Parliamentary Under-Secretary of State in the Department for Exiting the European Union, explained to the Lords' Constitution Committee how the Government would respond to such a situation:

If we were to reach such a position, there would be a considerable flurry of conversation through the usual channels and between both Houses and we would find ourselves in rather an interesting and uncharted position.

I would observe that in the [Constitutional Reform and Governance Act 2010] CRAG procedures if a resolution rejects the ratification of the treaty and if Ministers lay a Statement to explain why it should proceed, if the House of Lords objects again the Government can proceed and ratify. If the House of Commons objects, we would end up indefinitely postponing the ratification of the treaty under CRAG. That indicates a constitutional convention whereby the elected House is more powerful in its ability to affect what the Government do.

[...] Ultimately, the House of Commons has to win. Your Lordships' House generally seeks to respect the convention that the House of Commons has primacy.²⁵

A "no deal" scenario

23. In our Second Report, we concluded that it was "difficult to imagine any possible deal, consistent with WTO and other international treaties, that would be more damaging to the UK's interests than leaving the EU with no deal whatsoever in place."²⁶ The UK's economy, infrastructure, legislative base and regulatory framework are not prepared overall to absorb the disruption that would be caused by a "no deal" Brexit.

24. If the Commons rejects the Withdrawal Agreement, Section 13 of the European Union (Withdrawal) Act 2018, requires the Government to make a statement within 21 days on how it intends to proceed in the negotiations with the EU. Within seven sitting days of that statement, a motion in neutral terms must be tabled.

25. Section 13 also makes provision where no deal is agreed between the EU and the UK. If the Prime Minister announces before 21 January 2019 that no deal can be agreed with the European Union, a statement must be made within 14 days, and a motion in neutral terms must then be tabled in both Houses within seven days of that statement.

24 [Qq1423–4](#). However, Section 13 subsection (1) of the European Union (Withdrawal) Act 2018 states that the motion in the House of Lords would "take note of the negotiated withdrawal agreement and the framework for a future relationship."

25 Oral evidence taken before the House of Lords Constitution Committee, on [Parliament's role in relation to the terms of Brexit](#), 18 April 2018, Q1. See also [Q1498](#) (Lord Lisvane)

26 Committee on Exiting the European Union, Second Report of Session 2017–19, [The progress of the UK's negotiations on EU withdrawal](#), HC 372, 1 December 2017, para 123

Additionally, if no agreement has been reached by the end of 21 January 2019, a statement must be made within five days, and a motion must be tabled in both Houses within five sitting days. As the Secretary of State told the House during the passage of the Act, this section provides that “there is a guaranteed opportunity for both Houses to express their views on the Government’s proposed next steps.”²⁷

26. Section 13 provides for debate in each of these scenarios to be on motions “in neutral terms, to the effect that the House of Commons has considered the matter of the statement”. As the House of Commons Library has noted:

The Standing Orders of the House of Commons state that if the Speaker considers that a motion is expressed in ‘neutral terms’ then ‘no amendments to it may be tabled’. It appears to be the Government’s intention that the motion in each of these three scenarios could not be amended. However, [...] the House is free to agree to disapply Standing Orders. A statutory provision cannot be used to force a specific Standing Order to be used to move a particular motion.²⁸

27. In a written statement on this point, the Secretary of State clarified that “Under the Standing Orders of the House of Commons it will be for the Speaker to determine whether a motion when it is introduced by the Government under the European Union (Withdrawal) Bill is or is not in fact cast in neutral terms and hence whether the motion is or is not amendable.” He added that Members can table motions on and debate matters of concern and that, “as is the convention, parliamentary time will be provided for this.”²⁹ This point was further clarified by former Attorney General Dominic Grieve MP, who stated that the House would be able to express its view in the event of a “no deal.”:

If this House chooses to debate matters, including matters on which it may wish to have multiple motions, the reality is that if we wish to exert our power to do that, we can. In the circumstances that might follow a “no deal”, which would undoubtedly be one of the biggest political crises in modern British history, if the House wishes to speak with one voice, or indeed with multiple voices, the House has the power to do.³⁰

28. Section 13 provides for a “motion in neutral terms” only in the three “no deal” scenarios specified in subsections 3, 7 and 10. Subsection 1 of that section, which requires that the House approve both the Withdrawal Agreement and the Future Framework before the former can be ratified, does not attempt to provide for an unamendable motion.

29. Dr Brigid Fowler of the Hansard Society explained that the focus on a meaningful vote on “no deal” stems from the unusual nature of the EU negotiations. She notes that “in most international agreements, if one party’s legislature votes it down the status quo prevails”. Unlike other negotiations, there is no business as usual option in the EU negotiations. As Dr Fowler says, “not achieving a ratified agreement is more akin to triggering a sunset clause on the legal underpinnings for all the UK’s interactions with the EU.”³¹

27 HC Deb, 20 June 2018, [col 359](#)

28 Commons Library Insight, [Grieve 2: an amendable motion?](#) 19 June 2018

29 Department for Exiting the European Union, HCWS781, [European Union \(Withdrawal\) Bill](#), 21 June 2018

30 HC Deb, 20 June 2018, [col 369](#)

31 Hansard Society, [Debating “meaningful votes”](#), 12 June 2018

30. Our predecessor Committee recommended in its Third Report in the last Parliament that Parliament must have a vote in the event that there is “no deal”.³² Mrs Braverman rejected the need for such a vote, telling us that Parliament had already given its consent to the possibility of the UK leaving the EU without an agreement when it passed the European Union (Notification of Withdrawal) Act 2017, which conferred power on the Prime Minister to trigger Article 50:

It is law in the UK that Article 50 is triggered and that has a time limit. As stated in Article 50, we will leave at the end of March 2019. We want to leave with a withdrawal agreement and the future framework, but if that is not approved by Parliament, Article 50 still stands, and that legal basis continues.³³

31. The Secretary of State has suggested that if the deal were to fall this would not necessarily lead to the “complete absence of any outcome”, pointing to the possibility of a “bare bones deal” or a “whole series of bilateral deals”.³⁴

The European Parliament’s vote

32. Under Article 50, the European Parliament’s consent is necessary for the Agreement to be concluded by the Council. The European Parliament cannot amend the Withdrawal Agreement but it can make it clear to negotiators what is needed to get the consent which Article 50 requires. Agata Gostynska-Jakubowska, Senior Research Fellow, Centre for European Reform, illustrated this point to us:

At the end of the process, it has to ratify international agreements. [...] That means that the European Parliament cannot amend an international agreement that has been agreed between the parties and wrapped up. It can simply either approve it or reject it. But the European Parliament over the course of recent years has expanded its powers and used its veto rights to extract some concessions in the process of the negotiations. It has used various resolutions to say, “This is what we do not like; that should be in the draft text”, but it happened in advance rather than when the European Parliament received the text. It also happened that the European Parliament decided to reject the text on conditions or to say, “We will approve it only if a party decides to do A, B or C”.³⁵

33. The European Parliament’s powers of consent under Article 50 reflect the institution’s powers in the vast majority of international agreements concluded by the EU. These powers are provided for in Article 218 of the Treaty on the Functioning of the European Union and a subsequent Framework Agreement. The European Parliament must be “immediately and fully informed at all stages of the procedure”, and have information rights including access to negotiating directives as well as observation rights for MEPs. Agata Gostynska-Jakubowska has suggested that Member States are uneasy about the influence over international negotiations of an “increasingly assertive European Parliament”.³⁶ The

32 Committee on Exiting the European Union, Third Report of Session 2016–17, [The Government’s negotiating objectives: The White Paper](#), HC 1125, 4 April 2017, para 33

33 [Q1887](#)

34 [Q1430](#)

35 [Q1511](#)

36 Centre for European Reform, [Parliamentarians in Brexit Talks: Bulls in a China Shop](#), February 2017, pp 4–5

European Parliament has exercised these powers on a number of occasions: declining consent to agreements which has resulted in renegotiations to satisfy MEP's interests³⁷ and even to agreements being abandoned.³⁸

34. The European Parliament has passed a number of resolutions on the Article 50 negotiating directives produced by the Council³⁹ and responded to the Joint Report agreed in December 2017, focussing particularly on the citizens' rights aspects of Brexit.⁴⁰ Given the Parliament's strong views on the protections for EU citizens' rights in the Withdrawal Agreement, it is unlikely MEPs will withhold consent on that agreement for fear of precipitating a "no deal" exit, leaving citizens' rights in an uncertain state. As DExEU Minister Steve Baker told the Lords' Constitution Committee:

I would not expect us to be in a position where the European Parliament has sought to amend the international agreement, which is the Withdrawal Agreement.

I do not doubt that a considerable range of views will be expressed, but again I would say that the European Union Parliament has been very strong on citizens' rights in particular. We are proud of the agreement and I very much hope and expect that the European Parliament will agree with us that that agreement should be concluded.⁴¹

35. The Government has been clear that the UK Parliament will vote on the Withdrawal Agreement and the Political Declaration before the European Parliament.⁴² If the European Parliament's vote were to lead to a renegotiation which substantially changed the proposition which had been put to the UK Parliament in the meaningful vote then, as Lord Lisvane told us, "there might need to be a second authorising resolution."⁴³

Extending Article 50

36. We noted in our Third Report that if substantial aspects of the future relationship were not agreed in October, the Government "should seek a limited extension to the Article 50 time" to allow for sufficient detail to be included in the Political Declaration ahead of the parliamentary vote. This would be important to ensure that the Government could meet its objective that no negotiations on substantive aspects of the future relationship take place during the transition / implementation period.⁴⁴

37 For example, In February 2010, the European Parliament blocked the US-EU agreement on the processing and transfer of financial data for the purposes of terrorist finance tracking (also known as the SWIFT agreement, because it gave the US authorities access to information from the SWIFT interbank communication system, based in Belgium). And during the EU-Korea negotiations the European Parliament called for better safeguarding for the EU car industry extending the negotiations by 2 years.

38 The European Parliament refused to consent to the Anti-Counterfeiting Trade Agreement 2012 due to issues of privacy which prevented the agreement from being concluded.

39 European Parliament resolution of 3 October 2017 on [the state of play of negotiations with the United Kingdom](#) (2017/2847(RSP))

40 European Parliament resolution of 13 December 2017 on [the state of play of negotiations with the United Kingdom](#) (2017/2964(RSP))

41 Oral evidence taken before the House of Lords Constitution Committee, [Parliament's role in relation to the terms of Brexit](#), 18 April 2018, Q2

42 [Qq1380-1](#) [David Davis]

43 [Q1514](#)

44 Committee on Exiting the European Union, Third Report of Session 2017-19, [The progress of the UK's negotiations on EU withdrawal: December 2017 to March 2018](#), HC884, 18 March 2018, para 86

37. The Secretary of State told us that an extension of Article 50 “may well prove to be impossible” in terms of achieving unanimity of the EU27 for the process.⁴⁵ Sir Jonathan Faull, former Director General, European Commission, argued that political events in Brussels could complicate such a process, in particular the European Parliament elections only two months after the Article 50 deadline.⁴⁶ If the UK were to continue as a Member State beyond the May 2019 elections, it is unclear whether UK MEPs would stand in the elections and participate in parliamentary committees for the period until the revised exit day.⁴⁷ These complications led Agata Gostynska-Jakubowska to suggest that it would be extremely unlikely that the EU27 would allow for a substantial extension if there were already a Withdrawal Agreement on the table.⁴⁸ Furthermore, the Government has also recently made it clear that local authorities and Returning Officers should not incur expenditure in preparation for any UK involvement in these elections.⁴⁹

38. Witnesses noted that there were different views on whether Article 50 was revocable, a question being considered by the Court of Session in Scotland.⁵⁰ Agata Gostynska-Jakubowska told us that the European Parliament has said that a revocation of Article 50 might be subject to some conditions.⁵¹ Any revocation of Article 50 would need to occur before 29 March 2019 as at that point, under the terms of Article 50, the UK would have become a third country and would have to reapply for EU membership under Article 49.

39. The conclusion of a Withdrawal Agreement between the UK and the EU27 and its accompanying Political Declaration on the framework for a future relationship will initiate a series of proceedings in Parliament which will need to be concluded by 29 March 2019, the date on which, under the terms of Article 50 of the Treaty on European Union, the UK becomes a third country. Even under the most optimistic scenario of full agreement at the October Council, Parliament will have barely more than five months to consider a motion to approve both documents (the “meaningful vote”), to complete consideration of the Withdrawal and Implementation Bill, and of any delegated legislation and any other primary legislation required by exit day, and to complete procedures required under the Constitutional Reform and Governance Act 2010 for treaty ratification.

40. This Committee’s scrutiny of the deal will be important to the “meaningful vote”. The Secretary of State has committed to give evidence to us following the October Council and we would expect a similar commitment if final agreement is deferred to the December Council or an even later date. We will expect the Secretary of State to be prepared to give evidence to us as soon as practicable after the Council at which any agreement is reached. We recommend the Government allow sufficient time between the Secretary of State appearing before us to give evidence and the scheduling of the “meaningful vote” to ensure that we have the opportunity to report to the House, as appropriate, on the final deal. We note that the Institute for Government suggested

45 [Q1419](#)

46 [Qq1504–5](#)

47 The European Council decision on [the composition of the European Parliament](#), on 13 April 2018 would allow the UK to take part in the May 2019 European Parliament elections if the UK were still a Member State.

48 [Q1550](#)

49 Cabinet Office, Written Answer 143730, [European Parliament: Elections](#), 18 May 2018

50 Scottish Legal News, [A Judge rejects request to refer Article 50 revocation question to European Court of Justice](#), 8 June 2018

51 [Q1561](#)

that parliamentarians should be given two weeks at the very least to consider the Withdrawal Agreement and Political Declaration before the debate is held. However, we recognise this timetable would need to be condensed in certain circumstances.

41. The debate on the motion for approval of the Withdrawal Agreement and Political Declaration will be one of the most significant parliamentary debates in a generation. We note the precedent of five days spent debating the motion to approve the UK's decision to join the then European Communities in 1971. Five days would therefore be the minimum time that would be appropriate on this occasion.

42. The Secretary of State indicated to us that the motion to approve the Withdrawal Agreement and Political Declaration will be amendable. Given the significance of the debate on the motion it would be unconscionable if the House of Commons was not provided with the opportunity both for the fullest debate and to enable a clear expression of its opinion. It is essential that debate is organised through a Business of the House motion to ensure that it is possible for the Speaker to select a series of different amendments for consideration. The Government must ensure, so far as it is within its powers to do so, that these procedures allow the decision on the Withdrawal Agreement and Political Declaration motion to reflect, as far as possible, the view of the House as a whole even if this differs from the Government's preferred wording. The means of doing this is a matter on which the House would benefit from the expertise of the Procedure Committee and we request that that Committee give it consideration.

43. We do not accept that a refusal by the House of Commons to approve the Withdrawal Agreement and the Political Declaration would mean that the Withdrawal Agreement would fall and that the UK would therefore leave the EU on 29 March 2019 without a deal. Consideration of the approval motion will give the House the opportunity to ask the Government to renegotiate terms, if the EU agreed to do so, or to seek to put its own conditions on approval. The House will expect that, in such circumstances the Government would re-submit the motion following any renegotiation sought by Parliament or having considered the terms set by the House. We call on the Government to provide for a second parliamentary vote to approve the Withdrawal Agreement and Political Declaration in such circumstances.

44. It is possible that a renegotiation may be required in the event of either the UK Parliament or the European Parliament rejecting the Withdrawal Agreement or Political Declaration. However, the terms of Article 50 mean that, without an extension of Article 50 negotiations by the UK and the EU27, the UK is due to exit the EU on 29 March 2019 with or without an agreement.

45. We reiterate the recommendation from our Third Report that the Government should be prepared to seek a limited extension to the Article 50 period if substantive aspects of the future relationship remain to be agreed. This would allow Government to meet its objective that negotiations on substantive aspects of the future relationship should not continue into the transition/ implementation period. A limited extension to Article 50 may also be required to prevent the UK leaving the EU on 29 March 2019 without an agreement in the event that parliamentary consent to the Withdrawal Agreement is delayed by either side of the negotiations, although it is by no means certain that the EU would respond positively to such a request.

46. **The negotiations on the UK’s exit from the EU are unlike any other in that a “no deal” scenario does not maintain the status quo but has significant implications for the UK and the EU from the moment that the EU Treaties would cease to apply to the UK at 11pm on 29 March 2019. In the circumstances that a deal is not reached (or a deal is not reached that Parliament is prepared to approve), it is important that Parliament is able to express its view clearly and advise the Government on how to proceed. The provisions in the European Union (Withdrawal) Act 2018 provide a framework for Parliament’s role in that scenario. Were this situation to arise, we would expect the Government to provide an opportunity for both Houses to express their views, as the Secretary of State told the House they would. In such circumstances, the country would expect more than that its elected representatives simply “took note” of the situation.**

2 The Political Declaration

The content of the Political Declaration

47. Article 50 states that the Withdrawal Agreement will set out the arrangements for the UK's departure from the EU, taking account of the framework for the future relationship, which will be the subject of the Political Declaration. As DExEU Minister Suella Braverman told us, the Withdrawal Agreement is “to be seen against the context of our future framework agreement. [...] Our departure is pursuant to a Withdrawal Agreement and the framework of our future relationship. That is not an “or”; it is an “and”, so those two things go together and they are part of a package.”⁵²

48. The Political Declaration will not be a treaty. The Secretary of State told us that it would be in effect a “statement by the Council on a whole series of decisions as to what the future economic partnership will look like.”⁵³ He expects it to contain “quite a lot” of detail including not only a free trade agreement and mutual recognition, but also a whole series of other important areas such as aviation, data and nuclear materials. He told us that there are important players in the EU27, naming Angela Merkel, who have “made it very plain that they want the substantive future partnership to be very detailed”⁵⁴.

49. In oral evidence in January, we heard from the Secretary of State that it was important that material aspects of the future relationship are not left to be negotiated during the transition / implementation period. He argued:

It would be unwise, in my view, apart from that it practically does not meet the requirements of a transition period, to get sucked into doing a negotiation that is substantive or major during the transition period itself. Why? The balance of power in the negotiation alters and the aim then, on the part of the Commission, will be to spin out the negotiation.⁵⁵

50. To achieve this, he told us that the detail could be added to the future framework between the parliamentary vote and exit day:

Bear in mind, you have left out a six-month lacuna in that, between October of this year and March of 2019. It does not inevitably mean it will spill over [...] There is no reason why we cannot turn a very detailed substantive arrangement into a treaty before the end of the Article 50 period.⁵⁶

Robin Walker MP, Parliamentary Under-Secretary of State in the Department for Exiting the European Union, also told us that making progress on the future relationship before the UK enters the transition / implementation period was in the interests of both the UK and the EU. He said the Government will be making this case in the White Paper due after the June Council.⁵⁷

52 [Q1785](#)

53 [Q1458](#)

54 [Q1396](#)

55 [Q707](#)

56 [Q1394](#) and [Q1396](#)

57 [Q1842](#) and [Q1775](#)

51. The legal basis for the negotiations on converting the Political Declaration on the future relationship into a legally binding treaty will be Article 218 of the TFEU, which applies to relations with third countries. Consequently, the negotiations on a future relationship can only be concluded and ratified after the UK has left the EU. The Secretary of State has claimed that it will be possible to turn the Political Declaration into a treaty between the autumn of this year and exit day. While some text might be negotiated, we believe it is unlikely, given the scale and complexity of the issues which need to be addressed and the process of reaching agreement, that a future relationship treaty could be negotiated, even in draft, before exit day.

52. In a report for the Scottish Parliament, Dr Tobias Lock from the University of Edinburgh suggested that the framework for the future relationship should “pave the way towards achieving it” but noted “it is difficult to conceive of it being used as the basis for a future relationship treaty.” He explains that the Article 50 process could not be used to circumvent the specific procedures for negotiating agreements with third countries (which is what the UK will become on 30 March 2019) set out in Article 218.⁵⁸ He added that it would be “problematic if the level of detail were such as to place the agreement outside the competence conferred on the EU by Article 50 (2) TEU.”⁵⁹

53. It was noted by Sir Jonathan Faull that a “mutually acceptable arrangement for the customs relationship” between the UK and the EU would be key to adding more detail to the future framework. He said that once that relationship is understood, that will simplify the Irish land border and Dover/Calais and provide for more detail on our regulatory relationship with the EU.⁶⁰ He suggested that the time it will take to turn the Political Declaration into a fully-fledged agreement will be determined predominantly by the duration of the ratification process as elements of the agreement will require national ratification, involving the agreement of national and regional parliaments in some countries.⁶¹

The legal status of the Political Declaration

54. The EU has previously produced a number of ‘political declarations’ across a variety of policy fields, including migration policy⁶² and environmental policy.⁶³ Agata Gostynska-Jakubowska raised with us the example of the declaration the EU concluded with New Zealand in 2017 ahead of trade negotiations. A document of 14 pages, it mentions numerous areas of co-operation, from global and regional security to movement of people, development policy, fisheries, transport, and people-to-people contact, but it remains very general. She described it as “more an intention of both parties to say, “We share common values, this is the intention we have and these are the goals we want to achieve”,” adding that “it will be more binding when it comes to means than when it comes to results.”⁶⁴ Guy Verhofstadt, Brexit Coordinator and Chair of the Brexit Steering

58 The Withdrawal Agreement can be concluded (ratified) by a (super) qualified majority in the Council whilst the agreement(s) on the future relationship will likely require unanimity in the Council and (if it is a “mixed agreement”) the individual ratification by each Member State

59 Dr Tobias Lock, [The legal and political process for agreeing the future relationship between the EU and the UK and any transitional agreement](#), Scottish Parliament (December 2017)

60 [Q1524](#)

61 [Q1524](#)

62 See, for example, Valletta Summit, 11–12 November 2015, [Political Declaration](#)

63 See, for example, Valletta 18 May 2017, [Political Declaration on Clean Energy for the EU Islands](#)

64 [Q1524](#)

Group in the European Parliament, told us that, in his “personal opinion”, the best way to secure a legally binding Political Declaration would be to make it an annex to the Withdrawal Agreement. He said that would make the Political Declaration part of the whole Withdrawal Agreement. He added, however, that he was not saying this was the position of the European Commission.”⁶⁵

55. The House of Commons Library explains that a ‘political declaration’ is not a formal EU law instrument under the EU Treaties; it is understood that political declarations are not legally binding but they do carry political weight.⁶⁶ The Secretary of State compared the Political Declaration to the agreements on the Article 50 negotiations reached in December and March:

They are not legally binding but we view them as completely politically binding. That is pretty forceful. I remember I made this point in December and people got into a terrible uproar, saying, “Oh, he is saying it is not legally binding”. It was not, as the Commission confirmed. That does not mean we do not view it as binding. It is binding.⁶⁷

56. Jill Barrett from Queen Mary University Law School agreed that the Political Declaration would be politically but not legally binding, and not binding in international law as the Withdrawal Agreement treaty will be. She explained that there would be no legal liability if changes were subsequently made to the Political Declaration:

there would be no legal liability if the UK did change its mind on elements in the Political Declaration. With nonbinding political commitments of this kind, it is always understood that, if the Government have a change of policy or even if there is a change of Administration, the new Administration may not be bound to that text. There would certainly not be any legal liability if it came back at a later date to the EU and said, “Look, circumstances have changed and we would now like to negotiate something different in the future relations treaty”.⁶⁸

57. The Secretary of State acknowledged the uncertainty that this creates for Members of Parliament who must decide whether to approve the Withdrawal Agreement, which would become a legally binding treaty when ratified, based on a Political Declaration for a future framework which will not be ratified until after the UK leaves the EU. He told us that the Political Declaration will need to be substantive so he can show the UK Parliament what it is getting in exchange for voting for a financial settlement of £35 billion to £39 billion.⁶⁹

65 [Q2008, Qq2095–6](#)

66 HC Library briefing paper CBP 8321, [Parliament’s role in approving and implementing agreements with the European Union](#), 23 May 2018, p25

67 [Q1391](#)

68 [Q1525](#)

69 [Q1458](#) and [Q1525](#)

The Financial Settlement

58. In her statement to the House following the agreement of the Joint Report on 11 December 2017, the Prime Minister said that the £35 billion to £39 billion “offer” was conditional on the agreement on the future relationship and, if we do not agree the future relationship, then “the offer is off the table.”⁷⁰

59. The Comptroller and Auditor General told the Treasury Committee in April following publication of his report on the financial settlement⁷¹:

In the autumn, leading up to a significant vote, there will be a draft of the withdrawal treaty and, at the same time, there will be what I will call a statement of intent. That is a sort of vision statement for how the rest of the relationship is intended to work. The idea is that the statement of future intentions is supposed to assist in approving the treaty. The treaty, once approved, will pass into law in time for us to leave the EU and then will become legally binding. Therefore, the payments would fall to be paid no matter what, under international law.⁷²

He added that the payments were primarily in respect of the UK’s continuing membership of the EU during the transition / implementation period and do not relate directly to any future arrangements beyond the end of December 2020.⁷³

60. Jill Barrett told us that, when the UK leaves the EU, the Withdrawal Agreement will become legally binding and the UK will be under an obligation, binding in international law, to pay a certain sum of money. Any subsequent change to that would require a renegotiation of the treaty.⁷⁴ As Sir Jonathan Faull explained, it was the sequencing of the negotiations, proposed by the EU and signed up to by the UK, which placed the financial settlement as one of the three preliminary threshold issues that had to be addressed within the Withdrawal Agreement before progress could be made on the details of the future long-term relationship. He argued that the “nothing is agreed until everything is agreed” principle applied only to the Withdrawal Agreement. The negotiations on the future long-term relationship will be conducted under a different legal framework.⁷⁵

61. While acknowledging that the Political Declaration will not be a legally binding document when Parliament votes in the autumn, DExEU Minister Suella Braverman told us that the “nothing is agreed until everything is agreed” principle applies to the whole package of our departure.⁷⁶ She sought to reassure us that the financial settlement and the final future relationship agreement were explicitly linked through the statement in the December Joint Report that the Report was “agreed by the UK on the condition of an overall agreement under Article 50 on the UK’s withdrawal, taking into account the framework for the future relationship.”⁷⁷ In other words, she explained, if the future

70 HC Deb, [Brexit Negotiations](#), 11 December 2017, Vol 633, Col 30

71 National Audit Office, [Exiting the EU: The Financial Settlement](#), 20 April 2018

72 Oral evidence to Treasury Committee, [The UK’s economic relationship with the European Union](#), 24 April 2018, HC 473, Q522

73 Ibid

74 [Q1520](#)

75 [Q1548](#)

76 [Q1796](#)

77 [Joint Report on progress under Phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union](#), 8 December 2017, para 96

relationship is not agreed by the end of the transition / implementation period, then the Withdrawal Agreement can be renegotiated and payments not made.⁷⁸ However, there must be some doubt about the achievability of such a renegotiation.

62. Mrs Braverman also drew our attention to the Article of Good Faith in the draft Withdrawal Agreement⁷⁹ as a further insurance policy linking the UK's financial commitments to the agreement of a future relationship:

A duty of good faith is contained in many legal documents. Let us use the joint report as the starting point. The settlement on the financial payment is to be set and put forward on a condition of an overall agreement relating to our future framework under Article 50. As I said before, the two are to be taken together. There is going to be continuous regard to how our future relationship is concluded. That includes the agreement on the implementation period. When it comes to the duty of good faith, it essentially means that the agreement in the joint report that the future framework is highly relevant to any payment that has been agreed is to be part of the discussions. That cannot be ignored.⁸⁰

63. Jill Barrett told us that the UK could try to negotiate conditionality into the Withdrawal Agreement, for example with a clause that says “If this is agreed in the future we will pay that, and if this is not agreed in the future we will be paying less”, but that would have to be negotiated into the agreement now and agreed by the EU.⁸¹ It would also mean re-opening the chapter on the financial settlement in the draft Withdrawal Agreement which is coloured green, having been agreed in principle by both the Commission and the UK Government in March. We noted in our Fifth Report that the Secretary of State has left open the possibility that provisions could be added to link the financial settlement to the agreement of a future relationship. He told the Lords' European Union Select Committee, “it depends on what conditionalities are in the legal text. At this stage I do not know what they are. Somewhere in there will be a reference to the future framework. It depends on what the text says.”⁸² We were told by Mrs Braverman that the Withdrawal Agreement, as currently drafted, does not contain conditionalities but she could not confirm whether it would when finalised.⁸³

64. Notwithstanding the constraints of the Article 50 process, which sets out the procedures for a country exiting the EU rather than a country establishing a new relationship, the House of Commons will expect a high level of detail in the Political Declaration accompanying the Withdrawal Agreement if it is to be able to give its approval to both. We call on the Government to seek the inclusion of the Political Declaration as an annex to the Withdrawal Agreement in order to give its contents greater force.

78 [Q1798](#) [Mrs Braverman]

79 [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 19 March 2018, Article 4a

80 [Q1853](#)

81 [Q1533](#)

82 Oral evidence taken before the House of Lords European Union Committee, Scrutiny of Brexit negotiations, 1 May 2018, [Q4](#)

83 [Q1796](#) and [Q1863](#)

65. **The section on the financial settlement in the text of the draft Withdrawal Agreement published after the March Council was highlighted in green, indicating that it had been agreed in principle by both sides. The UK's agreement to pay the financial settlement estimated at between £35 billion and £39 billion will be legally binding under international law once the Withdrawal Agreement is ratified by all parties concerned. The Withdrawal Agreement will be considered by the UK Parliament alongside a non-binding Political Declaration. A legally binding agreement on the UK's future relationship can only be agreed once the UK is a third country. If the UK Government wishes to make the payment of the financial settlement conditional on reaching a binding agreement on the future relationship, it would need to secure the agreement of the EU27 to inserting text to this effect in the Withdrawal Agreement. We note that the Government has not yet secured a clause in the Withdrawal Agreement linking the financial settlement to the satisfactory conclusion of negotiations on the framework for the future relationship. We call on the Government to confirm whether the inclusion of such a clause is one of its negotiating objectives.**

3 Implementation and ratification of EU exit agreements

66. The United Kingdom is a dualist legal system, which means that any international agreement ratified by the UK will not be directly applicable domestically. To grant legally enforceable rights in domestic law, the UK must enact domestic legislation to give legal effect to the international agreement. The constitutional requirement for implementing domestic legislation provides Parliament with an opportunity to refuse implementation, which could prevent ratification of the agreement in question.

67. In his written statement of 13 December, the Secretary of State explained this process in relation to Parliament's approval of the Withdrawal Agreement and bringing it into force:

If Parliament supports the resolution to proceed with the Withdrawal Agreement and the terms for our future relationship, the Government will bring forward a Withdrawal Agreement and Implementation Bill to give the Withdrawal Agreement domestic legal effect. The Bill will implement the terms of the Withdrawal Agreement in UK law as well as providing a further opportunity for parliamentary scrutiny.⁸⁴

68. This follows a similar process to the UK's accession to the European Communities. After the House of Commons had approved in October 1971, through a vote on a motion, the principle of joining the European Communities, the Government introduced in the Commons, on 25 January 1972, the European Communities Bill. Following the three-day second reading debate in the Commons, the Prime Minister, Edward Heath, announced that the vote would be one of confidence in his Government, which was won by 8 votes.

69. We heard from the Secretary of State that the second reading of the Withdrawal Agreement and Implementation Bill (WAIB) would be a second opportunity for the House to reject the Withdrawal Agreement:

In other words, if the House rejects the proposed negotiation then that negotiation will fall. There are two chances of that, because of course you will then have the second reading of the Withdrawal Agreement and Implementation Bill, which will incorporate all of that, which will also be another test. In that case, of course the Government have absolutely no choice constitutionally.⁸⁵

70. Consideration of the Bill will not, however, provide a realistic opportunity for Parliament to amend the Withdrawal Agreement itself. As the House of Commons Library explains, the debate on implementing legislation is not on the text of the treaty itself, but rather on the legislative provisions which would implement the agreement.⁸⁶ This was evidenced during the Committee Stage of the European Communities Bill in

84 Department for Exiting the European Union HCWS342, [Procedures for the Approval and Implementation of EU Exit Agreements](#), 13 December 2017

85 [Q1385](#)

86 HC Library briefing paper CBP 8321, [Parliament's role in approving and implementing agreements with the European Union](#), 23 May 2018, pp11–12

1972 when the Chairman of Ways and Means ruled that since the purpose of the Bill was not to approve the basic treaties, “amendments designed to vary the terms of those treaties are not in order, and I have no option to rule otherwise.”⁸⁷

European Union (Withdrawal) Act

71. The European Union (Withdrawal) Act, introduced in the House on 13 July 2017, contained a power in Section 9 to implement the Withdrawal Agreement through secondary legislation. Following debate around the appropriateness of using secondary legislation for this purpose, the Government announced its intention to bring forward a Withdrawal Agreement and Implementation Bill (WAIB), a piece of primary legislation “to enshrine the Withdrawal Agreement between the UK and the EU in domestic law”⁸⁸; an announcement welcomed by this Committee.⁸⁹

72. We were told by DExEU Minister Steve Baker that it was not the purpose of the European Union (Withdrawal) Act to implement the transition / implementation period.⁹⁰ The transition / implementation period, currently set out in green in the draft Withdrawal Agreement as being agreed in principle between the European Commission and the UK Government, provides that EU law will continue to be applicable to the UK. This brings into question the EU (Withdrawal) Act’s provisions both in Section 1 to repeal the European Communities Act 1972 (ECA), effectively ending the application of EU law on exit day, and in Section 6 which ends CJEU jurisdiction in the UK on exit day. The Government has not been clear on how it will deal with the contradictions between the commitments in the Withdrawal Agreement and the EU (Withdrawal) Act. It is not yet clear whether the EU (Withdrawal) Act will provide the foundations for the transition / implementation period, or whether it will be the WAIB alone, or a combination of the two. Swee Leng Harris of the Hansard Society has asked that the Government be clearer as to whether the EU (Withdrawal) Act remains relevant:

in the interests of the rule of law the government needs to provide greater clarity and certainty about the next steps in legislating for Brexit and the relationship between the provisions in the EU (Withdrawal) Bill and the proposed WAI Bill.

Without this clarity, MPs and Peers risk spending many hours in the coming weeks scrutinising legislation that will shortly need to be amended or will be superseded.⁹¹

87 HC Deb 29 February 1972 col 269

88 [“New Bill to implement Withdrawal Agreement”](#), Department for Exiting the European Union press release, 13 November 2017

89 Committee on Exiting the European Union, First Report of Session 2017–19, [European Union \(Withdrawal\) Bill](#), HC 373, 17 November 2017, para 85

90 Oral evidence taken on 26 October 2017, HC (2017–19) 373, [Q184](#)

91 Hansard Society, [Legislating for transition/implementation: implications for the EU \(Withdrawal Bill\)](#), April 2018, p1

Withdrawal Agreement and Implementation Bill

73. The Institute for Government has argued that the Withdrawal Agreement and Implementation Bill (WAIB) can be expected to have three main parts:

- First, it will give domestic legal effect to whatever transition/implementation period is agreed between the UK and the EU. In effect, this part of the WAIB will mimic the European Communities Act 1972. For instance, it will have to provide that EU law is enforceable in the UK during the transition/implementation period, and that any question as to the meaning of EU law can be determined by the European Court of Justice (CJEU) during that period.
- Second, the WAIB will need to give effect to the agreement on citizens' rights. The draft Withdrawal Agreement sets out the rights that EU citizens would enjoy in the UK after Brexit, and provides that these would be made enforceable in UK law.
- Third, the WAIB will need to lay the legal groundwork for other separation provisions to be dealt with. For example, if the Treasury needs a power to make payments in order to satisfy the UK's obligations under the financial settlement in the Withdrawal Agreement, the WAIB will have to create that power.⁹²

74. The Government published its proposals on 7 June for a temporary customs arrangement between the UK and the EU. The expectation is that it will last from the end of the transition/implementation period until the end of December 2021.⁹³ This backstop is intended to meet the commitments made in the Joint Report agreed in December 2017 to avoid a hard border between Northern Ireland and the Republic of Ireland. Provisions for an agreed "backstop" solution for the Northern Ireland land border will be included in any Withdrawal Agreement. We did not take evidence on how the backstop would be given legal effect in the UK.

75. On the issue of whether the backstop will be time-limited, by definition it will last until such time as it is replaced by other arrangements that maintain an open border between Northern Ireland and the Republic of Ireland.

76. According to the Institute for Government, the WAIB will raise testing constitutional questions, many of which could generate political opposition in Parliament. For example:

The WAIB cannot give legal effect to transition in the UK, for instance, without keeping in force or effectively replicating the European Communities Act 1972 for the duration of that transition. In addition, the Government's promise, in text now agreed as part of the draft withdrawal agreement, to use this legislation to entrench EU citizens' rights in domestic law, will be complex for parliamentary draftsmen to navigate. Because the UK Parliament is sovereign, entrenchment is difficult—any Parliament can, as a general rule, reverse what any previous Parliament has done.⁹⁴

77. There will be time constraints on the passage of the WAIB. The legislation cannot be written and introduced until the Withdrawal Agreement has been negotiated and then approved by Parliament. The Bill must then complete its passage through Parliament

92 Institute for Government, [Voting on Brexit](#), April 2018, p13

93 HM Government, [Technical Note: Temporary Customs Arrangement](#), 7 June 2018

94 Institute for Government, [Voting on Brexit](#), April 2018, p5

and receive Royal Assent by the date of the UK's departure from the EU. Otherwise, the UK will leave the EU and be bound by the Withdrawal Agreement without the domestic legislation needed to implement that agreement. This would put the UK in breach of its obligations under international law. It would also create legal uncertainty for businesses and citizens who will be unsure whether the terms of the Withdrawal Agreement will apply to them or not. The European Union (Withdrawal) Bill took over 11 months to complete its parliamentary journey⁹⁵ while, if negotiations go to plan and there is agreement at the October Council, the Government will have only five months (180 calendar days) to get the WAIB through Parliament.⁹⁶

Other Brexit Bills

78. In addition to the EU (Withdrawal) Act and the Withdrawal Agreement and Implementation Bill, there are a number of Bills related to the UK's withdrawal from the EU making their way through Parliament. Asked about the slow progress of those Bills, the Secretary of State told us that it was a challenge to put 45 years of law into the UK's legal system in three years. He noted that some of the legislation would need to be passed before the UK leaves the EU, but the majority would be needed towards the end of the transition / implementation period.⁹⁷ He told us there were six Bills in play at the moment and he would expect between 800 and 1000 statutory instruments to derive from the powers in those Bills.

79. The passage of this legislation would become much more urgent in the event of "no deal" as there would be no transition / implementation period. As we heard from DExEU Minister Suella Braverman, consideration of legislation including the Nuclear Safeguards Bill, the Haulage Permits and Trailer Registration Bill, the Sanctions and AntiMoney Laundering Bill has commenced that makes provisions for frameworks that could be set up in the event of a "no deal".⁹⁸ Other domestic legislation including the EU (Withdrawal) Bill, the Taxation (Cross-border Trade) Bill, the Trade Bill, the Fisheries Bill and the Agriculture Bill would be needed to construct a domestic legal framework where there was an EU one previously, to avoid a legal vacuum.⁹⁹

Constitutional Reform and Governance Act 2010

80. The Constitutional Reform and Governance Act 2010 (CRAG) formalises a convention that dates from 1924, known as the 'Ponsonby Rule'. It says the Government must lay international treaties before both Houses of Parliament at least 21 days before the intended date of ratification. If neither House raises objections in that period, the deal is ratified. However, Section 20(1)(c) of the Act sets out that a treaty is not to be ratified if the House of Commons has 'resolved, within [21 days], that the treaty should not be ratified'. If the House of Commons does vote against the treaty, a minister must lay a statement before Parliament explaining why the treaty should nevertheless be ratified. That triggers a further 21-day scrutiny period, after which the Government can ratify if neither House raises objections. Whilst the House of Lords has only one opportunity to

95 Commons Library Insight, [Parliament's right to a meaningful vote: Amendments to the EU \(Withdrawal\) Bill](#), 11 June 2018

96 Institute for Government, [Voting on Brexit](#), April 2018, p14

97 [Q1483](#)

98 [Q1896](#)

99 Institute for Government, [Voting on Brexit](#), April 2018, p32

object, this process can be repeated indefinitely in the House of Commons. In theory, therefore, the House of Commons could stop the Government from ratifying a CRAG-applicable treaty indefinitely. However, it has yet to use this power to delay a treaty ratification. In fact, treaties are often not debated and voted upon at all. CRAG does not oblige the Government to allocate time to a debate, even if parliamentarians have registered objections to ratification.

81. With regards to the Withdrawal Agreement, it is unclear exactly when the CRAG process would commence. DExEU Minister Steve Baker told the House of Lords European Union Select Committee that it would likely be “at some point during the passage of the Withdrawal Agreement and Implementation Bill.”¹⁰⁰ We heard from Jill Barrett that because time will be tight, the CRAG process and the Withdrawal Agreement and Implementation Bill will likely take place in parallel.¹⁰¹ DExEU Ministers would not confirm whether there would be a vote on the Withdrawal Agreement if a resolution is tabled against it during the 21 day CRAG process.¹⁰²

82. If the House of Commons agrees the motion to approve the Withdrawal Agreement and Political Declaration, the Government will then introduce the Withdrawal Agreement and Implementation Bill to give effect to relevant provisions of the agreement in UK law and to allow for the exercise of delegated powers under Section 9 of the EU (Withdrawal) Act 2018. This will not provide an opportunity for parliamentarians to influence or amend the text of the Withdrawal Agreement itself.

83. It is likely that, to secure the legal basis necessary for the standstill transition/implementation period envisaged in the current text of the Withdrawal Agreement, the Withdrawal and Implementation Bill will need to restore (for the limited period of the transition / implementation period) provision for the direct effect of EU law which is to be removed by the European Union (Withdrawal) Act. We call on the Government to clarify the legal basis that will be used to provide for the standstill transition/implementation period. We also call on the Government to clarify how legal provision will be made for any backstop solution agreed for the Irish border and whether this backstop will need to be given provisional legal effect in the Withdrawal Agreement and Implementation Bill.

84. Depending on the outcome of negotiations, the Government will have a large amount of legislation, both primary and secondary to pass before exit day or the end of the transition/implementation period if the transition/implementation period is agreed. It is essential that sufficient time is provided for proper consideration of the legislation required. Indeed, given the volume and complexity of legislation that now needs to be considered in such a short time, the Government should publish details of its intended legislative timetable including the intended publication dates of any proposed White Papers or Green Papers, and any contingency plans for handling a “no deal” outcome including legislative consequences.

85. Parliament will also need to ratify the Withdrawal Agreement before exit day in accordance with the provisions of the Constitutional Reform and Governance Act 2010 (CRAG) on treaty ratification. We would expect the CRAG process to commence

100 Oral evidence taken before the House of Lords Constitution Committee, Parliament’s role in relation to the terms of Brexit, 18 April 2018, [Q5](#)

101 [Q1491](#)

102 [Qq1899-1904](#) [Mrs Braverman]

no earlier than the introduction of the Withdrawal Agreement and Implementation Bill in Parliament. The CRAG process should not be triggered when the Withdrawal Agreement is laid in the House ahead of the parliamentary vote unless the timing of events does not allow for this.

86. The Government should give a commitment that there will be a vote on the Withdrawal Agreement if a resolution is tabled against it during the 21-day CRAG process.

4 Scrutinising negotiations on the future relationship

The powers of the European Parliament

87. The European Parliament took the opportunity in March 2018 to pass a resolution setting out its preferred framework for a future relationship based on an association agreement.¹⁰³ This was in anticipation of the role the European Parliament will play in concluding the future relationship agreement. As explained in Chapter 1, Article 218 (6) TFEU sets out that all trade agreements negotiated by the EU require the consent of the European Parliament. The additional rights of access to information, documentation and meetings granted to MEPs under the 2010 Framework Agreement on relations between the European Parliament and the Commission,¹⁰⁴ mean that the role the European Parliament has played in influencing the Article 50 negotiations can also be played in the negotiations on the future relationship. Agata Gostynska-Jakubowska has written that the “European Parliament has developed robust procedures for ex-ante scrutiny of the EU’s international negotiations, and MEPs might want to apply this practice to the exit talks with the UK.”¹⁰⁵

88. We heard from Sir Jonathan Faull that, unless special arrangements were put in place, the future relationship negotiations would be conducted on the EU side by the Directorate General for Trade in the European Commission. However, Agata Gostynska-Jakubowska suggested that there might be some wrangling between the EU institutions:

I cannot totally exclude the situation where the European Parliament comes and says, “We have had such a good framework with the Article 50 negotiations that we would like to be similarly engaged”. As you know, the European Parliament has had quite a big role in those negotiations. You will perhaps have Member States saying, “We want to have a greater say as well”.¹⁰⁶

89. The negotiations on the future relationship that continue into the transition / implementation period will be disrupted by EU institutional changes with the appointment of a new European Commission as well as European Parliament elections in 2019. Agata Gostynska-Jakubowska outlined the risks these changes may bring to those negotiations:

The UK will be dealing with a totally different European Parliament and European Commission. I could argue that it is plausible that the next European Parliament might be less economically liberal without the 73 British MEPs, who across the line were pushing for this economically liberal agenda. The European Parliament might be less willing to push this forward, particularly because some of the seats of the current MEPs

103 European Parliament resolution of 14 March 2018 on [the framework of the future EU-UK relationship \(2018/2573\(RSP\)\)](#). Association Agreements are envisaged by Article 217 TFEU.

104 Official Journal of the European Union, Interinstitutional Agreements: [Framework Agreement on relations between the European Parliament and the European Commission](#), 20 November 2010

105 Centre for European Reform, [Parliamentarians in Brexit Talks: Bulls in a China Shop](#), February 2017, p3

106 [Q1551](#)

will go to countries like France, Spain and Italy, which you could argue, as VoteWatch has suggested in its analysis, might be slightly more protectionist in their approach. That would have an impact on the negotiations between the UK and the EU when it comes to the future relationship.¹⁰⁷

Ms Gostynska-Jakubowska also advised that it will take time for British officials to get acquainted with a new team in the European Commission and the European Parliament. She said that “it is much more difficult when you are outside the EU machinery rather than inside it.”¹⁰⁸

90. When asked about these risks, DExEU Minister Robin Walker responded that rather than a risk, the EU institutional changes could act as an incentive to the Commission and MEPs to make real progress before the elections, so a “healthy agreement” with the UK could be part of their legacy and record:

the European institutions want to ensure that we are out in time, so as not to complicate the European elections for 2019 by having seats that need to be available for UK MEPs, which then go away. That is something we are all agreed on. When people have to go to their electorates, they will want to explain that the EU will have a successful future trading relationship with one of its closest allies and biggest trading partners. We should look to the opportunities in that institutional change you talk about, rather than assuming it will be a problem.¹⁰⁹

We note the European Council decision of 13 April 2018 that if the UK remains a Member State at the beginning of the 2019–2024 parliamentary term, it will continue to have representatives in the European Parliament until its withdrawal from the EU becomes legally effective. At that point, the number of representatives in the European Parliament from each of the EU27 Member States would be reallocated according to the provisions in the Council’s decision.¹¹⁰

91. In a speech on 1 March 2018, Michel Barnier confirmed that the future relations agreement would be mixed, meaning it would “require not only the ratification of the Council and the Parliament, but each of the 27 national parliaments by unanimity.”¹¹¹ Sir Jonathan Faull told us that the ratification process would be of “unpredictable duration, at the very least”, notwithstanding the risk that even one parliament’s failure to ratify the agreement could delay or even prevent entry into force.¹¹² In October 2016, the Walloon Parliament in Belgium voted to reject the CETA trade agreement with Canada, delaying ratification by a number of weeks until agreement could be reached.

92. In evidence to the Lords European Union Select Committee, the Secretary of State noted the need to ratify the future relationship agreement with a new Parliament and Commission, as well as the EU27’s Member States individually, within the

107 [Q1551](#)

108 [Q1552](#)

109 [Q1843](#)

110 The European Council decision on [the composition of the European Parliament](#), on 13 April 2018

111 [Speech by Michel Barnier at Business Europe Day 2018](#), Brussels, 1 March 2018

112 [Q1524](#)

transition/implementation period. He said that we would “absolutely have to have ratification concluded before the implementation period is over, otherwise we will be in a sort of limbo.”¹¹³

93. However, we were told that the exclusion of a mechanism to extend the length of the transition/implementation period to ensure there is time to complete and ratify the future relationship agreement was a shortcoming of the Withdrawal Agreement. Agata Gostynska-Jakubowska told us:

The current text of the withdrawal agreement does not envisage any specific mechanism or any possibility to extend the transition period. We will probably agree—there are voices on both sides of the channel—that it might make sense to extend or at least leave such an option open.

To my legal mind, it seems that the withdrawal treaty would have to consist of such an instrument, allowing extension of the transition period. For the moment, as it stands, the EU 27 and the UK would not be able to extend this transition period after the treaty entered into force. As you probably notice, there is very little, if anything, when it comes to a revision clause. That is the question of the governance, which will have to be dealt with. I suspect that, in order to request an extension of the transition, you would need to have a special mechanism inside.¹¹⁴

A role for the UK Parliament

94. The UK Government has not yet set out how Parliament will be involved in the process of negotiating, approving and implementing the treaty or treaties on the future relationship. In his written statement of 13 December 2017, the Secretary of State said the following on Parliament’s role in relation to the agreement governing the UK’s future relationship with the EU:

In the UK, the Government will introduce further legislation where it is needed to implement the terms of the future relationship into UK law, providing yet another opportunity for proper parliamentary scrutiny.

The CRAG process is also likely to apply to agreements on our future relationship, depending on the final form they take.¹¹⁵

95. As we noted in the previous chapter, the opportunities for Parliament to consider treaties lies primarily in scrutinising legislation which implements the terms of treaties—scrutiny of the ‘how’, rather than the ‘why’ or the ‘what’ of the treaties themselves. We also noted the limited role for parliamentary scrutiny of treaties through the CRAG process. As the Secretary of State’s written statement suggests, not all the future relationship agreements will necessarily be subject to CRAG. Jill Barrett told us that the agreements

113 Oral evidence taken before the House of Lords European Union Committee, Scrutiny of Brexit negotiations, 1 May 2018, [Q3](#)

114 [Q1552](#)

115 Department for Exiting the European Union HCWS342, [Procedures for the Approval and Implementation of EU Exit Agreements](#), 13 December 2017

could take different forms including non-binding arrangements such as a memorandum of understanding or a treaty which comes into force on signature, effectively removing a role for Parliament altogether.¹¹⁶

96. In written evidence to the House of Lords Liaison Committee on “Treaties, Brexit and the Constitution”, Arabella Lang from the House of Commons Library, Eirik Bjorge from Bristol University and Ewan Smith from Jesus College, Oxford, noted that the UK Parliament carefully scrutinises EU external agreements but non-EU treaties signed by the UK Government attract far less attention.¹¹⁷ At present, the UK Parliament has a ‘scrutiny reserve’ on EU laws which means that UK ministers in the EU Council cannot agree to the EU opening negotiations on, or signing, an international agreement unless the European scrutiny committees in both Houses have released the relevant documents from the scrutiny reserve. UK MEPs also take part in the scrutiny and approval functions of the European Parliament with regards the EU’s external agreements. They explain that for most non-EU treaties signed by the UK Government:

Parliament is notified only when treaties are signed, and then has the power only to object to the UK proceeding to be bound by them (ratification), and to pass any legislation needed to implement them. The Government has no obligation to inform Parliament or the public when it starts negotiations, or to provide updates, let alone take into account any views expressed by Parliament. And Parliament has few structures or processes for scrutinising the Government’s treaty actions. Yet the Government’s action in concluding a treaty results in binding international obligations for the UK, which may be applied by UK courts.¹¹⁸

97. Treaty making has traditionally been an executive power which, the House of Commons Library explains, was “once fairly infrequent, and usually concerned war and peace, territory and trade.”¹¹⁹ Now, the Government negotiates, signs and ratifies around 30 treaties a year, covering almost every area of government. This is done under the Royal Prerogative with only a limited role for Parliament. Under the Constitutional Reform and Governance Act (CRAG), there are no rights to a debate in Parliament on treaty provisions and the Government is not required to provide parliamentary time. As we heard from DExEU Minister Suella Braverman, there is no obligation for the Government to hold a vote even when a motion is tabled against ratification.¹²⁰ Parliament can only oppose or accept ratification of a whole treaty and has no power to amend the agreement.

98. Leaving the EU has re-awakened the debate on Parliament’s involvement in scrutinising and approving treaties. The Government has so far committed to a parliamentary vote on the Withdrawal Agreement before it is signed. The Government has not said whether the UK Parliament will have a power of consent equivalent to that of the European Parliament on the subsequent agreement(s) on the future relationship. Withdrawal from the EU will also likely be followed by a number of treaties, for instance on trade with non-EU states, which could lead to calls for more parliamentary scrutiny of treaties.

116 [Q1515](#)

117 Written evidence to the House of Lords’ Liaison Committee ‘Review of Investigative and Scrutiny Committees’ inquiry, *Treaties, Brexit and the Constitution* ([RIS0034](#)), para 6

118 *Ibid*, summary

119 Commons Library Briefing Paper 5855, [Parliament’s role in ratifying treaties](#), 17 February 2017, p5

120 [Qq1899–1904](#)

99. It is not only the European Parliament which has carved out a role for itself in treaty negotiations. Other countries give their parliaments a greater role in relation to treaties than the UK does. For example, the Australian Parliament has a large all-party Joint Standing Committee on Treaties, while the New Zealand Government can refer treaties to the Foreign Affairs, Defence and Trade Committee prior to ratification. In the US, the Senate Committee on Foreign Relations can go so far as to propose amendments to a treaty. Lang, Bjorge and Smith suggest that the UK Parliament consider proposals for a dedicated committee to scrutinise treaties.¹²¹

The devolved legislatures

100. Since the UK joined the EU, it has devolved powers in a number of areas to Edinburgh, Cardiff and Belfast. The present treaty procedures do not require the UK Government to consult the devolved executives or legislatures, but it is recognised that the devolved administrations need to be involved where a treaty might have implications for devolved areas of responsibility. As we heard from DExEU Minister Robin Walker:

It has always been the case that trade negotiations are a reserved area where the UK acts as one. But I would expect every Government Department to take very seriously its responsibilities to the devolution settlement and to ensure that views of the devolved Administrations were taken into account, as currently is the case. Where the devolved Administrations and legislatures have powers to implement and to do things differently, there is no reason why that should not continue in the future.¹²²

101. The rules governing cooperation between the UK Government and the devolved administrations are set out in a Concordat on International Relations, which supports a Memorandum of Understanding. The Concordat is politically rather than legally binding but provides for cooperation on exchanging information, formulating UK foreign policy, negotiating treaties and implementing treaty obligations. It also allows for ministers and officials from the devolved administrations to take part in UK treaty-negotiating teams.¹²³ However, as Lang, Bjorge and Smith point out, the devolved legislatures, in addition to the devolved administrations, may have an interest but “there is no comparable institution which enables devolved legislatures to participate in treaty scrutiny, perhaps in cooperation with Westminster.”¹²⁴

Scrutiny by parliamentary committees

102. Scrutiny of EU affairs by parliamentary committees will not end on the 29 March 2019. Dr Brigit Fowler of the Hansard Society has set out transition tasks for Parliament which include continued scrutiny of new EU law and policy which will apply to the UK despite Westminster’s loss of ‘national parliament’ status.¹²⁵ In its Report of March 2018, the European Scrutiny Committee said that “if the transitional arrangement is

121 Written evidence to the House of Lords’ Liaison Committee ‘Review of Investigative and Scrutiny Committees’ inquiry, Treaties, Brexit and the Constitution ([RIS0034](#)), paras 31–2

122 [Q1818](#)

123 Commons Library Briefing Paper 5855, [Parliament’s role in ratifying treaties](#), 17 February 2017, p16

124 Written evidence to the House of Lords’ Liaison Committee ‘Review of Investigative and Scrutiny Committees’ inquiry, Treaties, Brexit and the Constitution ([RIS0034](#)), para 11

125 Hansard Society, [Brexit: Parliament’s Five Transition Tasks](#), April 2018, p4

implemented as described [...] it would require continued intensive scrutiny of EU affairs by Parliament.”¹²⁶ This would require maintaining a role for the European Scrutiny Committee in scrutinising the EU laws which will affect the UK.

103. Select Committee scrutiny of the ongoing negotiations on the future relationship will also be an essential but separate part of Parliament’s work during the transition / implementation period. It has been reported that the Department for Exiting the European Union may be dismantled after exit day with its responsibilities carved up among other Whitehall Departments.¹²⁷ Our remit is set out in Standing Order No. 152 as a departmental select committee to examine the expenditure, administration and policy of the Department for Exiting the European Union, which has been the lead Department on the negotiations. Wherever the Whitehall responsibility for the negotiations on the future relationship ends up has implications for the remit and, indeed, the very existence of this Committee, as a departmental select committee, and our role in scrutinising progress of the UK’s negotiations on EU exit.

104. On the basis of the existing text of the Withdrawal Agreement the UK will leave the institutions of the EU on 29 March 2019 and continue in the transition / implementation period until no later than 31 December 2020. This leaves only 21 months to translate the Political Declaration accompanying the Withdrawal Agreement into the legal text for any agreement or agreements on the future relationship, and for the ratification process to be sufficiently completed for key provisions to enter into force. The European Parliament elections in May 2019 and the subsequent establishment of a new Commission will substantially reduce the time available for meaningful negotiations to around 15 to 16 months. There is a possibility that this will not prove sufficient. Therefore, the Government should seek to secure a simple mechanism in the Withdrawal Agreement for the extension of the transition / implementation period if required.

105. Once we leave the EU, the UK Parliament will lose the role it had in scrutinising EU external agreements, including trade agreements, through the European scrutiny processes in each House. Parliamentary scrutiny will be restricted instead to the provisions in the Constitutional Reform and Governance Act 2010 (CRAG) relating to ratification of treaties. CRAG provisions are inadequate, denying Parliament the right to information during negotiations, and not even guaranteeing a debate or vote on a treaty before it is ratified. The Government must ensure that the UK Parliament is given a meaningful vote on the final text of the agreements with the EU that will comprise the future UK-EU relationship. The Government must also commit to scheduling a vote in Parliament if a resolution is tabled against any of the future relationship agreements during the 21-day CRAG process.

106. It is also important to look beyond the treaties we conclude with the EU to the negotiating and signing of any new agreements with non-EU countries, including new trade deals. We recommend that Parliament has a role in the scrutiny of these agreements. The Liaison Committee should examine the role of parliamentary

126 European Scrutiny Committee, Nineteenth Report of Session 2017–19, [EU withdrawal: transitional provisions and dispute resolution](#), HC 763, 20 March 2018, para 46

127 See Financial Times, [Whitehall begins talks on dismantling Brexit ministry](#), 22 March 2018 and Politico, [Hello Brexit, goodbye Brexit department](#), 4 June 2018

committees in scrutinising treaties after the UK leaves the EU and consider proposals for a dedicated committee on treaties or how existing select committees might best approach this work.

107. The UK's future trade agreement with the EU and negotiations on trade with non-EU states will have significant impacts on devolved policy areas and interests. As we said in our First Report, there needs to be cooperative, participative mechanisms for joint working between the UK Government and the devolved administrations to ensure that devolved interests are properly considered when entering into and developing new international agreements. We also asked the Government to set out whether it is considering formal structures for inter-governmental relations, including any arbitration system for disputes, so that the views of the devolved governments can be heard. The Government should set out in detail the processes by which the views of the devolved governments and parliaments will be fed into the negotiations on the UK's future relationship with the EU and on future trade agreements with non-EU states. The Government should also commit to seeking the views of the devolved parliaments as part of the process of seeking approval for the Withdrawal Agreement and Political Declaration.

108. The negotiations on our future relationship with the EU will be a monumental task, touching a wide range of aspects of the political and economic future of this country. It is not yet clear whether changes will be made to the machinery of Government to accomplish this task. However, were the Department for Exiting the European Union to be abolished and this Committee to lose its role, adding the scrutiny of these negotiations to the workload of another existing committee would not be adequate. To ensure the right level of scrutiny of these historic negotiations and an effective role for Parliament in seeking the best outcome for the UK, there must continue to be a dedicated select committee on EU exit during the transition / implementation period to scrutinise and hold the Government to account in negotiating the UK's future relationship with the EU.

Formal minutes

Tuesday 26 June 2018

Members present:

Hilary Benn, in the Chair

Joanna Cherry	Jeremy Lefroy
Stephen Crabb	Mr Pat McFadden
Mr Jonathan Djanogly	Craig Mackinlay
Richard Graham	Emma Reynolds
Peter Grant	Stephen Timms
Wera Hobhouse	Mr John Whittingdale
Andrea Jenkyns	Hywel Williams
Stephen Kinnock	

Draft Report (*Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship*), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 35 agreed to.

Paragraph 36 read.

Motion made, and Question put, That the paragraph stand part of the Report.

The Committee divided.

Ayes, 12	Noes, 3
Joanna Cherry	Andrea Jenkyns
Stephen Crabb	Craig Mackinlay
Mr Jonathan Djanogly	Mr John Whittingdale
Richard Graham	
Peter Grant	
Wera Hobhouse	
Stephen Kinnock	
Jeremy Lefroy	
Mr Pat McFadden	
Emma Reynolds	
Stephen Timms	
Hywel Williams	

Paragraph accordingly agreed to.

Paragraphs 37 to 41 agreed to.

Paragraph 42 read.

Amendment proposed, to leave out from “its opinion.” to “The Government must”—
(*Craig Mackinlay*).

Question put, That the amendment be made.

The Committee divided.

Ayes, 4

Richard Graham

Andrea Jenkyns

Craig Mackinlay

Mr John Whittingdale

Noes, 11

Joanna Cherry

Stephen Crabb

Mr Jonathan Djanogly

Peter Grant

Wera Hobhouse

Stephen Kinnock

Jeremy Lefroy

Mr Pat McFadden

Emma Reynolds

Stephen Timms

Hywel Williams

Question accordingly negatived.

Paragraph agreed to.

Paragraph 43 read.

Amendment proposed, to leave out paragraphs 43, 44 and 45 and insert “The deadline of 29 March 2019 is set in Article 50 and cannot be amended without the agreement of all 27 EU Member States. This is unlikely to be achieved. The timetable for achieving an agreement and the necessary Parliamentary approvals will be extremely tight. However, we are confident that it can still be met if all sides treat it with the urgency that it will require.”—(*Mr John Whittingdale*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 3	Noes, 12
Andrea Jenkyns	Joanna Cherry
Craig Mackinlay	Stephen Crabb
Mr John Whittingdale	Mr Jonathan Djanogly
	Richard Graham
	Peter Grant
	Wera Hobhouse
	Stephen Kinnock
	Jeremy Lefroy
	Mr Pat McFadden
	Emma Reynolds
	Stephen Timms
	Hywel Williams

Question accordingly negated.

Amendment proposed, to leave out “We do not accept that”—(*Craig Mackinlay*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 3	Noes, 12
Andrea Jenkyns	Joanna Cherry
Craig Mackinlay	Stephen Crabb
Mr John Whittingdale	Mr Jonathan Djanogly
	Richard Graham
	Peter Grant
	Wera Hobhouse
	Stephen Kinnock
	Jeremy Lefroy
	Mr Pat McFadden
	Emma Reynolds
	Stephen Timms
	Hywel Williams

Question accordingly negated.

Amendment proposed, to leave out from “without a deal.” to “The House will expect”—(*Craig Mackinlay*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 3	Noes, 12
Andrea Jenkyns	Joanna Cherry
Craig Mackinlay	Stephen Crabb
Mr John Whittingdale	Mr Jonathan Djanogly
	Richard Graham
	Peter Grant
	Wera Hobhouse
	Stephen Kinnock
	Jeremy Lefroy
	Mr Pat McFadden
	Emma Reynolds
	Stephen Timms
	Hywel Williams

Question accordingly negated

Amendment proposed, to leave out “The House will expect that, in such circumstances the Government would re-submit the motion following any renegotiation sought by Parliament or having considered the terms set by the House.” and insert “However, in the event of a renegotiation, the House will expect that, in such circumstances the Government would re-submit the motion to Parliament.”—(*Craig Mackinlay*)

The Committee divided.

Ayes, 3	Noes, 12
Andrea Jenkyns	Joanna Cherry
Craig Mackinlay	Stephen Crabb
Mr John Whittingdale	Mr Jonathan Djanogly
	Richard Graham
	Peter Grant
	Wera Hobhouse
	Stephen Kinnock
	Jeremy Lefroy
	Mr Pat McFadden
	Emma Reynolds
	Stephen Timms
	Hywel Williams

Question accordingly negated

Paragraph agreed to.

Paragraph 44 agreed to.

Paragraph 45 read.

Motion made, and Question put, That the paragraph stand part of the Report.

The Committee divided.

Ayes, 12	Noes, 3
Joanna Cherry	Andrea Jenkyns
Stephen Crabb	Craig Mackinlay
Mr Jonathan Djanogly	Mr John Whittingdale
Richard Graham	
Peter Grant	
Wera Hobhouse	
Stephen Kinnock	
Jeremy Lefroy	
Mr Pat McFadden	
Emma Reynolds	
Stephen Timms	
Hywel Williams	

Paragraph accordingly agreed to.

Paragraph 46 read.

Amendment proposed, to leave out from “its view clearly” to “The provisions”—(*Richard Graham*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 7	Noes, 8
Stephen Crabb	Joanna Cherry
Mr Jonathan Djanogly	Peter Grant
Richard Graham	Wera Hobhouse
Andrea Jenkyns	Stephen Kinnock
Jeremy Lefroy	Mr Pat McFadden
Craig Mackinlay	Emma Reynolds
Mr John Whittingdale	Stephen Timms
	Hywel Williams

Question accordingly negated

Amendment proposed, to leave out from “told the House they would.” to the end of the paragraph—(*Richard Graham*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 4

Richard Graham

Andrea Jenkyns

Craig Mackinlay

Mr John Whittingdale

Noes, 11

Joanna Cherry

Stephen Crabb

Mr Jonathan Djanogly

Peter Grant

Wera Hobhouse

Stephen Kinnock

Jeremy Lefroy

Mr Pat McFadden

Emma Reynolds

Stephen Timms

Hywel Williams

Question accordingly negated

Paragraph agreed to.

Paragraphs 47 to 64 agreed to.

Paragraph 65 read.

Amendment proposed, to leave out from “a third country.” to “We note that” and insert “The assurance that nothing is agreed until everything is agreed has been central to the Government’s approach and must be maintained. The financial settlement represents one of the UK’s strongest negotiating cards and should be used to obtain maximum advantage. The Government must therefore make it clear that any agreed settlement is conditional on obtaining a satisfactory agreement on the future relationship between the UK and the EU and this should be written into the Withdrawal Agreement and Implementation Bill.”—(*Mr John Whittingdale*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 5	Noes, 10
Stephen Crabb	Joanna Cherry
Richard Graham	Mr Jonathan Djanogly
Andrea Jenkyns	Peter Grant
Craig Mackinlay	Wera Hobhouse
Mr John Whittingdale	Stephen Kinnock
	Jeremy Lefroy
	Mr Pat McFadden
	Emma Reynolds
	Stephen Timms
	Hywel Williams

Question accordingly negated

Paragraph agreed to.

Paragraphs 66 to 103 agreed to.

Paragraph 104 read.

Amendment proposed, to leave out from “16 months.” to the end of the paragraph and insert “However, we are confident that a successful outcome can be achieved in that time and would not support any further extension of the transition / implementation period.”—
(*Mr John Whittingdale*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 4	Noes, 11
Richard Graham	Joanna Cherry
Andrea Jenkyns	Stephen Crabb
Craig Mackinlay	Mr Jonathan Djanogly
Mr John Whittingdale	Peter Grant
	Wera Hobhouse
	Stephen Kinnock
	Jeremy Lefroy
	Mr Pat McFadden
	Emma Reynolds
	Stephen Timms
	Hywel Williams

Question accordingly negated

Paragraph agreed to.

Paragraphs 105–108 agreed to.

Question put, That the Report be the Sixth Report of the Committee to the House.

The Committee divided.

Ayes, 12

Joanna Cherry

Stephen Crabb

Mr Jonathan Djanogly

Richard Graham

Peter Grant

Wera Hobhouse

Stephen Kinnock

Jeremy Lefroy

Mr Pat McFadden

Emma Reynolds

Stephen Timms

Hywel Williams

Noes, 3

Andrea Jenkyns

Craig Mackinlay

Mr John Whittingdale

Question accordingly agreed to.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134)

[Adjourned till Wednesday 27 June at 9.00am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 2 May 2018

Jill Barrett, Visiting Reader, Queen Mary University Law School; **Sir Jonathan Faull**, former Director General, European Commission; **Agata Gostynska-Jakubowska**, Senior Research Fellow, Centre for European Reform; **Lord Lisvane**, former Clerk, House of Commons

[Q1489–1561](#)

Wednesday 23 May 2018

Suella Braverman MP, Parliamentary Under-Secretary of State, Department for Exiting the European Union, and **Mr Robin Walker MP**, Parliamentary Under-Secretary of State, Department for Exiting the European Union

[Q1759–1908](#)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	European Union (Withdrawal) Bill	HC 373 (HC 771)
Second Report	The progress of the UK's negotiations on EU withdrawal	HC 372 (HC 862)
Third Report	The progress of the UK's negotiations on EU withdrawal: December 2017 to March 2018	HC 884 (HC 1077)
Fourth Report	The future UK-EU relationship	HC 935 (HC 1150)
Fifth Report	The progress of the UK's negotiations on EU withdrawal (March to May 2018)	HC 1060
First Special Report	European Union (Withdrawal) Bill: Government Response to the Committee's First Report	HC 771
Second Special Report	The progress of the UK's negotiations on EU withdrawal: Government response to the Committee's Second Report	HC 862
Third Special Report	The progress of the UK's negotiations on EU withdrawal (December 2017 to March 2018): Government response to the Committee's Third Report	HC 1077
Fourth Special Report	The future UK-EU relationship: Government Response to the Committee's Fourth Report	HC 1150