

# PARLIAMENTARY APPROVAL OF THE WITHDRAWAL AGREEMENT AND THE FRAMEWORK FOR THE FUTURE RELATIONSHIP UNDER SECTION 13 OF THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

## Legal requirements

1. As set out in s.13 of the European Union (Withdrawal) Act 2018 (the 2018 Act) the Withdrawal Agreement may be ratified only if,
  - after laying the key documents before Parliament (under s.13(1)(a)), the negotiated Withdrawal Agreement and the framework for the future relationship have been approved by a resolution of the House of Commons on a motion (the approval motion) moved by a Minister.
  - a motion for the House of Lords to take note of the negotiated Withdrawal Agreement and the framework for the future relationship has been tabled in the House of Lords by a Minister of the Crown and, either, the House of Lords has debated the motion, or the House of Lords has not concluded a debate on the motion before the end of the period of five Lords sitting days beginning with the first Lords sitting day after the day on which the House of Commons passes the resolution<sup>1</sup>.
  - an Act of Parliament must be passed containing provision for the implementation of the Withdrawal Agreement.
2. Whilst negotiations are ongoing (the conclusion of which is necessary for a vote under s.13(1) to take place), this note does not set out the text of the motion that the Government will table, but it will be necessary for the text to provide no legal ambiguity as to whether or not it provides the legal authority to proceed with ratification.
3. If there is any uncertainty over whether Parliament has approved the deal, this would clearly give rise to major issues, including litigation risks. Whilst this would present obvious problems for Government, it would also raise the risk of the courts encroaching on the privileges of Parliament by questioning proceedings in the House.

## Effect of amendments to the motion

4. The approval motion will be a substantive motion and therefore, under existing House procedures, will be amendable. To understand the effect of amendments, it is necessary to clarify the interaction between domestic and international law and parliamentary proceedings.
5. Amendments to the motion will not automatically alter the text of the Withdrawal Agreement or Future Framework, which will have both been agreed at the international level between the UK and EU. Nor will they be able to automatically delay or prevent our departure from the EU. The timing of our departure from the EU is dictated by international law under the Article 50 process.

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<sup>1</sup> The Lords Companion to the Standing Orders states that "take note" motions are not amendable. This note therefore deals only with considerations of amendments to the approval motion in the House of Commons.

6. However, due to the legal status accorded to the motion under s.13 of the 2018 Act, a clear decision on approval of the motion is needed in order for the Government to be able to ratify the Withdrawal Agreement. There is no express provision in s.13 for the Agreement to be partially or conditionally approved; amendments could therefore have the effect - whether deliberately or accidentally - of inhibiting the Government's legal ability to ratify the Withdrawal Agreement.
7. For example, if amendments were passed which purported to offer approval, but only subject to changes being made to the text of either the Withdrawal Agreement or the Future Framework, this would, in effect, amount to Parliament not approving the documents that were put to it. In this circumstance, the Government would therefore not have the authority to ratify the Withdrawal Agreement.
8. Likewise, if amendments made approval conditional, such as on an event occurring, this could prevent ratification if the condition introduced any doubt that the Government had the required approval to proceed with ratification. At the very least this would invite litigation, bringing with it consequent uncertainty.
9. For example, if an amendment inserted a condition which could legally only be met after ratification, then this would not give the Government the authority to ratify the deal in time for exit day and would therefore prevent ratification.
10. This broad categorisation does not seek to identify all possible amendments that Parliament could seek to make to the motion, but seeks to make clear that amendments - even those which may not intend to affect approval - may actually result in the Government being unable to ratify the Withdrawal Agreement through creating uncertainty as to whether such approval had in fact been given.

## Procedure for the vote

1. The Government recognises that the House has the power to adapt its own procedures as it sees fit, for example through permanent or temporary changes to the Standing Orders or through the provision of bespoke procedures on a case by case basis as set out in Business of the House motions.
2. The Committee will no doubt consider a range of existing, and potentially novel, procedures in its deliberations on the handling of amendments to the approval motion. The Government recognises and supports the desire of Members for the fullest possible debate on the Withdrawal Agreement and Future Framework.
3. It is important, however, to recognise the need ultimately for the House to consider the question that is in reality before the UK - whether or not to accept the deal that the Government has negotiated with the EU.
4. As a proceeding under an Act of Parliament, existing House procedures (Standing Order No. 16) would limit the length of the debate on the approval motion to 90 minutes. It is therefore likely that the Government will need to bring forward a Business of the House motion to govern the arrangements for the debate on the approval motion to allow sufficient time for debate. Whether or not debate ought to be organised through a Business of the House motion, and the form of any such motion, will ultimately be in the hands of the House itself, which has the power to amend, approve or reject such a motion.
5. In the absence of any provision in a Business of the House motion for specific arrangements governing the handling of amendments, the Government's understanding of existing House procedures is that:
  - Multiple amendments may be tabled.
  - Selection of amendments is in the hands of the Speaker.
  - To be eligible for selection, amendments must be within scope of the motion.
  - More than one amendment can be selected by the Speaker.
  - At the end of the debate a decision can be taken on the first amendment selected by the Speaker.
  - If the decision on the first amendment is dealt with while the House is still in free time (i.e. before the expiration of any time limits), further amendments that have been selected may be moved and decided on.
  - Once the House hits a time limit (e.g. the Moment of Interruption at the end of the day, or, if provision has been made for the debate to extend beyond this point, another previously agreed time limit) the Speaker, having disposed of any question already before the House, may only put for decision the question that the main approval motion (as amended) be agreed.

## **Procedural options**

6. Under existing procedures, as set out in para 5, a decision on an amendment is taken before a decision on the main motion. There is therefore no guarantee that the House will be given the opportunity to vote on the unamended approval motion. Indeed, this is unlikely, if the approval motion is amended.
7. The Government notes that the Standing Orders provide for amendments to different types of business to be handled in different ways. For example:

### Standing Order No. 33

8. This provides that in respect of a motion for an address in answer to Her Majesty's Speech, the Speaker may select up to four amendments of which notice has been given. No amendments are selected for decision before the penultimate day of the debate.
9. Under this option, the order of decision-making would be that decisions on amendments selected by the Speaker would be taken first turn by turn (usual rules for the order of decisions on such amendments would likely apply), followed by a vote on the main approval motion (whether amended or not).
10. As with proceedings under the normal rules, this would not guarantee that the House will be given the opportunity to express its agreement to the approval motion as tabled. By increasing the number of possible amendments, this would also increase the risk that the clarity of approval necessary to ratify the Withdrawal Agreement could not be provided.

### Standing Order No. 31(2)

11. This provides that in respect of Opposition Day motions, where amendments have been tabled by a Minister to leave out or replace words, the first question put for decision is that the original words stand part. This provides for a decision on the main opposition motion as tabled ahead of a decision on any government amendment.
12. Under this option, if the first question is agreed there would be no opportunity to vote on the amendment - the House will have expressed its will - to approve the deal - by majority.
13. However, if this question is not agreed (i.e. the deal is voted down), the House would have the opportunity to move on to the lead amendment in the usual way. As recommended by the Exiting the EU Select Committee, it would be possible to also make provision for multiple amendments (to be selected by the Speaker) to be decided on turn-by-turn at the end of the debate if the "original words" question is lost. This would be followed by a question on the motion as amended. The views of Parliament would have been tested as to how to proceed in the event that it does not support the deal as negotiated under Article 50.

14. This approach only changes the order of decision-making. It would not limit the ability of backbenchers to table amendments, debate their amendments and, in the event that the Government lost the approval motion as tabled, it would not limit the ability of backbenchers to vote on their amendments and seek approval of the motion as amended.

**10 OCTOBER 2018**

