

Withdrawal Agreement: Section 13(1)(c) of the European Union (Withdrawal) Act 2018

Debate on 5, 6 and 10 December 2018

On 25 November 2018, the UK and the EU concluded a withdrawal agreement setting out the terms of the UK's departure from the EU and a political declaration on the framework for their future relationship, as provided for under article 50(2) of the Treaty on European Union. Under the terms of article 50 of the Treaty on European Union, the UK is set to leave the EU on 29 March 2019, two years from the date of giving notice of its intention to leave. Following its ratification, the withdrawal agreement would become a legally binding international treaty. The political declaration sets out a framework for the future relationship between the UK and the EU. The precise terms of the future relationship can only be negotiated once the UK has left the EU and become a third country. Formal negotiations can then begin before a legally binding agreement (or agreements) can be reached.

Section 13 of the European Union (Withdrawal) Act 2018 sets out specific requirements that must be met before the UK can ratify the withdrawal agreement.

This briefing outlines the requirements of section 13 and identifies relevant reports and useful documents, including recent parliamentary materials and press articles, which may be of assistance to Members in preparing for the following motions that are expected to be debated together:

The Lord Privy Seal (Baroness Evans of Bowes Park) to move that this House, for the purposes of section 13(1)(c) of the European Union (Withdrawal) Act 2018, takes note of the negotiated withdrawal agreement laid before the House on Monday 26 November 2018 with the title 'Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community' and the framework for the future relationship laid before the House on Monday 26 November 2018 with the title 'Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom'.

Baroness Smith of Basildon (Labour) to move that this House, while noting that it is for the House of Commons to determine the matter, considers that a no deal outcome to negotiations under Article 50(2) of the Treaty on European Union must be emphatically rejected, and regrets that Her Majesty's Government have negotiated a withdrawal agreement and political declaration that would do grave damage to the future economic prosperity, internal security and global influence of the United Kingdom.

Copies of the materials are available for collection from the Library.

Section 13 of the European Union (Withdrawal) Act 2018: Role of the House of Lords

Section 13(1) of the European Union (Withdrawal) Act 2018 (the EUWA) sets out specific requirements for the ratification of the withdrawal agreement that has been agreed between the UK and the EU under article 50(2) of the Treaty on European Union. This requires that before the withdrawal agreement can be ratified four conditions must be met (those requirements placed upon the House of Lords are defined in Section 13(1)(c)):

13 Parliamentary approval of the outcome of negotiations with the EU

- (1) The withdrawal agreement may be ratified only if—
- (a) a Minister of the Crown has laid before each House of Parliament—
 - (i) a statement that political agreement has been reached,
 - (ii) a copy of the negotiated withdrawal agreement, and
 - (iii) a copy of the framework for the future relationship,
 - b) the negotiated withdrawal agreement and the framework for the future relationship have been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown,
 - (c) 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—
 - (i) the House of Lords has debated the motion, or
 - (ii) 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 mentioned in paragraph (b), and
 - (d) an Act of Parliament has been passed which contains provision for the implementation of the withdrawal agreement.

The House of Commons is due to debate a motion to approve the withdrawal agreement, and the framework for the future relationship, under section 13(1)(b), starting on 4 December 2018 and continuing on 6, 10 and 11 December 2018.¹ Ratification of the withdrawal agreement can only proceed if the House of Commons approves the withdrawal agreement and the framework for the future relationship. However, approval by the House of Lords is not required under section 13(1)(c) in order for ratification of the withdrawal agreement to proceed.

Should the House of Commons resolve not to support the motion under 13(1)(b), then:

A Minister of the Crown must, within the period of 21 days beginning with the day on which the House of Commons decides not to pass the resolution, make a statement setting out how Her Majesty's Government proposes to proceed in relation to negotiations for the United Kingdom's withdrawal from the EU under Article 50(2) of the Treaty on European Union.²

Section 13(6) provides that a Minister of the Crown must make arrangements for motions to be considered in each House:

¹ [HC Hansard, 30 November 2018, col 423.](#)

² European Union (Withdrawal) Act 2018, section 13(4).

- (6) A Minister of the Crown must make arrangements for—
- (a) a motion in neutral terms, to the effect that the House of Commons has considered the matter of the statement mentioned in subsection (4), to be moved in that House by a Minister of the Crown within the period of seven Commons sitting days beginning with the day on which the statement is made, and
 - (b) a motion for the House of Lords to take note of the statement to be moved in that House by a Minister of the Crown within the period of seven Lords sitting days beginning with the day on which the statement is made.³

On 26 November 2018, the Prime Minister, Theresa May, made a written ministerial statement for the purposes of satisfying section 13(1)(a) of the EUWA. Mrs May stated that:

I am of the opinion that an agreement in principle has been reached in negotiations under Article 50(2) of the Treaty on European Union on the substance of:

- a. the arrangements for the United Kingdom's withdrawal from the European Union, and
- b. the framework for the future relationship between the European Union and the United Kingdom after withdrawal.⁴

The Prime Minister also announced that copies of the withdrawal agreement and the framework had been laid.⁵ Theresa May explained that before the text of the withdrawal agreement could be formally signed it had to complete the EU's jurist-linguist translation process. She stated that during this time "minor technical corrections" would be made to the text but that these would not affect its substance. The Prime Minister stated that "the laying of the withdrawal agreement before Parliament at this stage does not therefore trigger any procedures under the Constitutional Reform and Governance Act 2010".⁶

Constitutional Reform and Governance Act 2010: Ratification of Treaties

Part 2 of the Constitutional Reform and Governance Act 2010 (CRAG) makes provisions for the ratification of treaties. Section 20(1) of CRAG sets out that a treaty is not to be ratified unless a minister has laid a copy before Parliament; that the treaty has been published in a way that the minister thinks appropriate; and that a period of 21 sitting days has elapsed since the day after the treaty was laid before Parliament, without either House resolving that it should not be ratified. Should the Commons resolve against ratification, the minister may lay a statement indicating that the minister is of the opinion that the treaty should nevertheless be ratified and explaining why. A second period of 21 sitting days is then triggered, during which the Commons may resolve again against ratification. Similarly, the minister may then lay another statement. In such a way the Commons theoretically has the power to delay ratification indefinitely. The House of Lords does not have this power. Should the Lords resolve against ratification and the Commons not resolve against ratification, then the treaty may be ratified "if a Minister of the Crown has laid before Parliament a statement indicating that the minister is of the opinion that the treaty should nevertheless be ratified and explaining why".⁷

³ *ibid*, section 13(6).

⁴ House of Commons, '[Written Statement: Exiting the European Union](#)', 26 November 2018, HCWS1110.

⁵ *ibid*.

⁶ *ibid*.

⁷ Constitutional Reform and Governance Act 2010, section 20(8).

Withdrawal Agreement Bill: Implementing the Agreement in Domestic Law

Should the withdrawal agreement be approved by the House of Commons, the Government is committed to introducing primary legislation to give the treaty domestic legal effect (a 'Withdrawal Agreement Bill'). Article 4(2) of the withdrawal agreement states that the UK shall introduce domestic primary legislation to ensure compliance with article 4(1). This states that:

The provisions of this Agreement and the provisions of Union law made applicable by this Agreement shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its member states. Accordingly, legal or natural persons shall in particular be able to rely directly on the provisions contained or referred to in this Agreement which meet the conditions for direct effect under Union law.

The requirement to implement a treaty in primary legislation stems from the UK's 'dualist' nature:

The UK is a 'dualist' state, unlike many continental European countries, which are 'monist'. In dualist states a treaty ratified by the Government does not alter the laws of the state unless and until it is incorporated into national law by legislation. This is a constitutional requirement: until incorporating legislation is enacted, the national courts have no power to enforce treaty rights and obligations either on behalf of the Government or a private individual.⁸

A Withdrawal Agreement Bill would also be required under section 13(1)(d) before the withdrawal agreement can be ratified. Additionally, under section 9 of the EUWA, the Government has regulation-making powers for the purposes of implementing the withdrawal agreement if the minister considers that such provision should be in force on or before exit day. However, this is subject to the "prior enactment of a statute by Parliament approving the final terms of withdrawal of the United Kingdom from the EU".⁹

⁸ House of Commons European Scrutiny Committee, [The EU Bill and Parliamentary Sovereignty](#), 7 December 2010, HC 633-I of session 2010–12, para 10.

⁹ European Union (Withdrawal) Act 2018, section 9(1).

Key Information

- [Statement by the Prime Minister, Theresa May, on 'Leaving the EU'](#), HC Hansard, 26 November 2018, cols 23–67

Statement by the Prime Minister following an agreement being reached between the UK and the EU at a special European Council held on 25 November 2018, including follow-up questions in the Chamber by MPs. The statement was repeated in the House of Lords, with subsequent questions: [Statement by the Lord Privy Seal, Baroness Evans of Bowes Park, on 'Leaving the European Union'](#), HL Hansard, 26 November 2018, cols 500–13.

- European Commission, '[President Juncker in the Special Meeting of the European Council \(Art. 50\)](#)', 25 November 2018

Statement by the European Commission President Jean-Claude Juncker, following the special meeting of the European Council (Art. 50) on 25 November 2018 which endorsed the Brexit withdrawal agreement.

- HM Government, [Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland From the European Union and the European Atomic Energy Community, As Endorsed by Leaders at a Special Meeting of the European Council on 25 November 2018](#), 25 November 2018

Withdrawal agreement between the UK and the EU as endorsed by leaders at a special meeting of the European Council on 25 November 2018. This document is 599 pages long. Hard copies are available in the Printed Paper Office and reference copies are available in the Palace Library.

- HM Government, [Political Declaration Setting Out the Framework for the Future Relationship Between the European Union and the United Kingdom](#), 25 November 2018

Political declaration on the future relationship between the UK and the EU as endorsed by leaders at a special meeting of the European Council on 25 November 2018.

- HM Government, [Explainer for the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), 14 November 2018, pp 1–6; [Technical Explanatory Note: Articles 6–8 of the Protocol on Northern Ireland](#), 14 November 2018 and [Explainer for the Political Declaration Setting out the Framework for the Future Relationship Between the United Kingdom and the European Union](#), 25 November 2018, pp 1–5

First sections, including summaries, of the Government's explanatory documents to accompany the withdrawal agreement and the political declaration.

- HM Government, [EU Exit: Taking Back Control of Our Borders, Money, and Laws While Protecting Our Economy, Security and Union](#), 28 November 2018, Cm 9741

Command paper setting out the Government's arguments why the withdrawal agreement and the political declaration deliver on the result of the referendum and work in the national interest.

- HM Government, [EU Exit: Assessment of the Security Partnership](#), 28 November 2018, Cm 9743, pp 1–8

Executive summary of a command paper setting out the Government’s assessment of the cooperation envisaged between the UK and the EU as set out in Part III (‘Security Partnership’) of the political declaration.

- HM Government, [EU Exit: Long-term Economic Analysis](#), 28 November 2018, Cm 9741, 1–13 and [EU Exit: Long-Term Economic Analysis Technical Reference Paper](#), 28 November 2018

Executive summary and introduction of a command paper setting out the Government’s economic analysis of the effect of the UK’s withdrawal from the EU on the UK’s economy under different scenarios and a Technical Reference Paper setting out additional detail behind the analysis.

- HM Government, [EU Exit: Legal Position on the Withdrawal Agreement](#), 3 December 2018

Command paper which takes each part of the withdrawal agreement of 25 November 2018, together with the protocols on Ireland/Northern Ireland, Gibraltar and the UK Sovereign Base Areas in Cyprus, and describes their overall legal effect.

- Bank of England, [EU Withdrawal Scenarios and Monetary and Financial Stability: A Response to the House of Commons Treasury Committee](#), November 2018, pp 1–10

Executive summary of a report published by the Bank of England, following a request by the House of Commons Treasury Committee that it publish an analysis of how leaving the EU would affect the Bank’s ability to deliver its objectives for monetary and financial stability.

- House of Commons Library, [The UK’s EU Withdrawal Agreement](#), 2 December 2018

Briefing published by the House of Commons Library examining the withdrawal agreement agreed between the UK and the EU at a special European Council meeting on 25 November 2018.

- House of Commons Library, [The Political Declaration on the Framework for Future EU-UK Relations](#), 30 November 2018

Briefing published by the House of Commons Library examining the political declaration on the framework for the future relationship.

- House of Commons Library, [A User’s Guide to the Meaningful Vote](#), 25 October 2018

Briefing published by the House of Commons Library examining the role of Parliament in approving or rejecting the withdrawal agreement.

Parliamentary Debate, Statements and Questions

- House of Commons, [‘Exiting the European Union: Publications’](#), 28 November 2018, HCWS1118
- [Urgent Question on ‘Withdrawal Agreement: Legal Advice’](#), HC Hansard, 29 November 2018, cols 411–22

Press Articles and Comment

- Labour Party, '[Labour Tables Amendment to Meaningful Vote to Prevent a No Deal Brexit](#)', 29 November 2018
- Labour Party, '[Jeremy Corbyn Statement on EU Summit](#)', 25 November 2018
- Scottish Government, '[Brexit Deal 'Damaging' to Scotland](#)', 27 November 2018 and [Scotland's Place in Europe: An Assessment of The UK Government's Proposed Future Relationship With the EU](#), 27 November 2018 [summary only in hard copy]
- Liberal Democrat Press Office, '[Official Twitter Account: Cable: PM's Deal Remains a Disaster](#)', 25 November 2018
- BBC News, '[Wales Less Prosperous After Brexit Deal, Says First Minister](#)', 25 November 2018
- Democratic Unionist Party, '[DUP Urges Prime Minister to "Bin the Backstop"](#)', 27 November 2018
- *Financial Times*[£], '[Theresa May's Brexit Deal Deserves Conditional Support](#)', 29 November 2018
- *Guardian*, '[The Guardian View on May's Brexit Deal: A Sobering Moment for Britain](#)', 25 November 2018
- *Telegraph*[£], '[This Withdrawal Deal is the Very Opposite of What We Voted For](#)', 24 November 2018
- Simon Nixon, '[If Theresa May Wants Sympathy For Her Brexit Deal, She Should Start by Being Honest](#)', *Times*[£], 29 November 2018

Further Information

- Prime Minister's Office and 10 Downing Street, [PM Letter to the Nation](#), 24 November 2018
- House of Commons Procedure Committee, [Motions Under Section 13\(1\) of the European Union \(Withdrawal\) Act 2018](#), 16 November 2018, HC 1664 of session 2017–19
- House of Commons, [Explanatory Note For the Business of the House \(Section 13\(1\)\(b\) of the European Union \(Withdrawal\) Act 2018\) Motion](#), 29 November 2018
- Department for Exiting the European Union, [Legislating for the Withdrawal Agreement Between the United Kingdom and the European Union](#), 24 July 2018, Cm 9674
- House of Lords Library, [Publishing Government Legal Advice](#), 7 November 2018

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