



House of Commons  
Exiting the European Union  
Committee

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**Response to the vote  
on the Withdrawal  
Agreement and Political  
Declaration: Options for  
Parliament**

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**Eleventh Report of Session 2017–19**

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

*Ordered by the House of Commons  
to be printed 16 January 2019*

## 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

[Hilary Benn MP](#) (*Labour, Leeds Central*) (Chair)

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

[Joanna Cherry MP](#) (*Scottish National Party, Edinburgh South West*)

[Sir Christopher Chope MP](#) (*Conservative, Christchurch*)

[Stephen Crabb MP](#) (*Conservative, Preseli Pembrokeshire*)

[Mr Jonathan Djanogly MP](#) (*Conservative, Huntingdon*)

[Richard Graham MP](#) (*Conservative, Gloucester*)

[Peter Grant MP](#) (*Scottish National Party, Glenrothes*)

[Wera Hobhouse MP](#) (*Liberal Democrat, Bath*)

[Andrea Jenkyns MP](#) (*Conservative, Morley and Outwood*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Jeremy Lefroy MP](#) (*Conservative, Stafford*)

[Mr Pat McFadden MP](#) (*Labour, Wolverhampton South East*)

[Craig Mackinlay MP](#) (*Conservative, South Thanet*)

[Seema Malhotra MP](#) (*Labour (Co-op), Feltham and Heston*)

[Mr Jacob Rees-Mogg MP](#) (*Conservative, North East Somerset*)

[Emma Reynolds MP](#) (*Labour, Wolverhampton North East*)

[Stephen Timms MP](#) (*Labour, East Ham*)

[Mr John Whittingdale MP](#) (*Conservative, Maldon*)

[Hywel Williams MP](#) (*Plaid Cymru, Arfon*)

[Sammy Wilson MP](#) (*Democratic Unionist Party, East Antrim*)

### 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](http://www.parliament.uk/exeucom) and in print by Order of the House.

### **Committee staff**

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

### **Contacts**

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# Response to the vote on the Withdrawal Agreement and Political Declaration: Options for Parliament

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## Introduction

1. In her statement on 15 January 2019 following the vote of the House not to approve the Withdrawal Agreement and Political Declaration on the Future Framework for Relations between the EU and the U.K., the Prime Minister said that “The House has spoken and the Government will listen. It is clear that the House does not support this deal, but tonight’s vote tells us nothing about what it does support”. She said she would meet with Conservative colleagues, the DUP and “senior parliamentarians” to identify “what would be required to secure the backing of the House”. If successful, these ideas could be explored with the EU. She stated that it was not the Government’s strategy to simply “run down the clock” and undertook to make a statement on her proposed way forward and table an amendable motion by Monday 21 January.

2. Article 50 of the Treaty on European Union provides for the EU to conclude an agreement with a Member State that has chosen to leave “setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union”.<sup>1</sup> On 26 November 2018 the Prime Minister made a statement that political agreement had been reached on an agreement in principle on the substance of the arrangements for the United Kingdom’s withdrawal from the European Union and the framework for the future relationship between the European Union and the United Kingdom after the UK leaves the EU.<sup>2</sup>

3. Article 50 specifies that, from the EU side, the agreement needs to receive first the consent of the European Parliament and then be agreed by the European Council, acting by a super qualified majority of continuing Member States.<sup>3</sup> The UK’s main requirements for ratification of the agreement are set out in Section 13 of the EU (Withdrawal) Act 2018. These specify that the withdrawal agreement and the framework for the future relationship must be approved by a resolution of the House of Commons and that, before the agreement can be ratified, an Act of Parliament which makes provision for the implementation of the withdrawal agreement in domestic law is passed.<sup>4</sup>

4. Section 13 of the EU (Withdrawal) Act 2018 further specifies that, in the event that the House of Commons rejects a deal that has been agreed, the Government must, within 21 days, make a statement in writing setting out how it intends to proceed and, within seven sitting days of the statement, move a motion in neutral terms in the House of Commons. This motion is amendable following the decision of the House of 4 December that Standing Order No. 24B should not apply to such a motion.<sup>5</sup>

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1 Treaty on European Union, Article 50 (2)

2 [Statement by the Prime Minister that political agreement has been reached, 26 November 2018.](#)

3 A super qualified majority requires 72% of the Council comprising 65% of the population.

4 [European Union \(Withdrawal\) Act 2018, sections 13\(1\)\(b\) and \(d\)](#)

5 [Votes and Proceedings, 4 December 2018](#); Standing Order No. 24B, disapplied by the decision of the House of 4 December 2018, states that “Where, in the opinion of the Speaker or the Chair, a motion, That this House, or as the case may be, the committee has considered the matter, is expressed in neutral terms, no amendments to it may be tabled”.

5. The House decided on 9 January 2019 that, in the event that the agreement was not approved, a Minister of the Crown

shall table within three sitting days a motion under Section 13, considering the process of exiting the European Union under Article 50.<sup>6</sup>

### What alternative courses of action are there?

6. We concluded in our report on the *Progress of the negotiations: The Withdrawal Agreement and Political Declaration*, that “the decision of the House of Commons on whether to approve the Withdrawal Agreement and framework for the future relationship [ ... ] will not simply reflect a binary choice between leaving the EU with the deal that has been negotiated or leaving without a deal”.<sup>7</sup> On 15 January the House declined to approve the agreement that has been reached but a range of options remain open to the Government and it must proceed expeditiously to determine its next steps. It is not clear, however, whether there is an alternative course of action that would secure the support of a majority of the House. We intend to report shortly in more detail on the viability of the options that the Government can pursue, but they are broadly as follows.

### A second vote in Parliament on the Government’s deal

7. In evidence to the Committee on 31 October 2018, Sir David Natzler, Clerk of the House of Commons, was asked whether, if the Government’s deal was defeated, it could come back and have another go. He replied

That is a hypothetical question, and you will know there is a general rule against being asked to decide again on the same question in the same Session, but that rule is not designed to obstruct the will of the House. If it plainly was the will of the House, there are ways in which that could happen, yes.<sup>8</sup>

A decision to approve the Withdrawal Agreement and Political Declaration would still require both Houses to pass the legislation which the Government would then introduce to give effect in domestic law to the provisions of the Agreement. However, the scale of the defeat on 15 January would suggest that a repeat of the vote without significant changes would be futile.

### Re-negotiation followed by a further vote

8. The House could call on the Government to seek to re-negotiate either the Withdrawal Agreement or the Political Declaration or both. It could decide that greater clarity should be sought on the end state objective for the future relationship between the EU and the UK. For example, the House could instruct the Government to seek to re-negotiate the Political Declaration to clarify what terms might be negotiated for a Norway-style relationship, involving much closer economic integration with the EU and greater ongoing obligations, or a Canada-style future relationship more like a free trade agreement. Alternatively, it could instruct the Government to try to re-negotiate the Withdrawal Agreement to

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6 [Votes and Proceedings, 9 January 2019.](#)

7 [Tenth Report, Session 2017–19, paragraph 111.](#)

8 [Q3089](#)



amend provisions relating to the Northern Ireland backstop or the financial settlement. Any process of re-negotiation would require the EU's agreement and may well need an extension of the time period set down by Article 50. Any new agreement would of course need to be voted on in Parliament and, if approved, would require legislation to give effect to it.

### **No deal exit**

9. Under the terms of Article 50, following notification by the UK, an exit without any formal agreement is the default outcome which will take effect at 11pm on 29 March 2019 unless either an agreement is ratified, the process is extended by unanimous consent of the EU 27 or the notification is withdrawn.

### **Revocation or extension of Article 50**

10. The decision of the Court of Justice of the EU in *Wightman* confirmed that the UK has the right to withdraw its notification of Article 50 and end the Brexit process as long as that is done unconditionally and unequivocally.<sup>9</sup> If the UK sought to make revocation subject to another referendum (or put other options to the decision of a referendum), any request to extend the Article 50 process would have to be made to the EU; a decision to extend the process requires the unanimity of the EU 27.<sup>10</sup>

### **Next steps for the Government**

11. There is currently no majority in the House of Commons to approve the deal. The recent decision of the House on an amendment to the Finance Bill, which would have the effect of preventing the Government from implementing the provisions of the Bill relating to changes to tax law arising from EU withdrawal in the event of no deal without the explicit consent of Parliament, suggests that there would not be a majority in favour of a no deal outcome.<sup>11</sup>

12. At our request, the Procedure Committee examined the process for the House's consideration of the Agreement and how the House's procedures might "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".<sup>12</sup> Among the options then considered by the Procedure Committee was to provide for the House to hold a series of indicative votes on freestanding motions prior to a decision on approval of the Withdrawal Agreement and Political Declaration. This approach would allow the opinion of the House to be tested on a series of proposals. The Committee identified a number of potential disadvantages in this approach, including the risk that the House could adopt several mutually contradictory positions or adopt no position at all.<sup>13</sup> However, even such an outcome would provide at least a degree of clarity about the options that might subsequently be pursued.

9 [Judgment of the Court of Justice of the EU, \*Wightman\* C621/18](#)

10 Abstention by a Member State does not prevent unanimity.

11 [Amendment 7 to the Finance \(No. 3\) Bill](#), and [Votes and Proceedings 8 January 2019](#).

12 [Sixth Report, Session 2017–19, HC1240, para 42](#).

13 There is a precedent for both of these outcomes when the House has previously debated non-binding indicative motions.

13. There are other ways in which the House could make a decision between different options, allowing Members to express relative preferences rather than approving or rejecting a series of specific propositions. The House has in the past adopted a number of different methods for decision-making and has made use of different voting systems in its proceedings. Decision-making in the House of Commons does not need to be a binary process of putting propositions to the vote which either secure a majority or not. A great deal of expertise exists both within the House and in political parties on different methods for decision-making, which could be used to help a decision be reached.

### Options for the House to consider

14. Whatever method is used, there are four broad options available.

#### *Option 1*

15. To hold another vote in Parliament on the draft Withdrawal Agreement and Framework for the Future Relationship. Without any material change it is hard to see how this might produce a different result. However, if the deal was agreed and ratified by subsequent legislation, the UK would leave the EU on 29 March 2019 on that basis, with a transitional / implementation period as set out in the Withdrawal Agreement.

#### *Option 2*

16. To leave the EU with no deal on 29 March 2019 with no agreement on future relations in place and with no transition / implementation period. This might involve some sector-specific arrangements. This is the default if the House of Commons is unable to ratify the agreement, or unless the UK applies to extend or decides to revoke Article 50.

#### *Option 3*

17. The House could call on the Government to seek to re-negotiate the deal to achieve a specific outcome, be it a variation of the terms of the separation set out in the Withdrawal Agreement or providing greater clarity about the end state of future relations as set out in the Political Declaration. This option is not entirely within the UK's hands as any agreement to re-negotiate and any extension of Article 50 would only be possible with the consent of the EU 27 (unanimous consent in respect of an extension). There is, of course, also no guarantee of the success of any re-negotiation in meeting the House's objectives.

18. The three main renegotiation possibilities would be:

3(a) Seeking changes to the text in the Withdrawal Agreement on the backstop arrangements;

3(b) Seeking a Canada-style deal

3 (c) Seeking to join the EEA through the EFTA pillar and remaining in a customs union with the EU or a variation on this.

### ***Option 4***

19. In addition to these policy choices about the UK's future relationship, Parliament could decide to hold a second referendum to allow the British people to decide either which kind of Brexit deal they want or whether they wish to remain in the EU.

### ***Timetable***

20. If more time is needed, the UK could make provision for this by either requesting an extension to Article 50 or by revoking Article 50. Extension would require the approval of all EU Member States and the amendment of UK law which could be done by delegated legislation. Revocation would be a decision for the UK alone but would require a change in the law.

**21. It is vital that the House of Commons is now given the opportunity to identify an option that might secure a majority. We recommend that this is done by holding a series of indicative votes on the options we have set out above as soon as possible. In deciding how to proceed on 21 January, the House and the Government will need to identify not only where a majority might be found but also what decision-making process might allow for the reflection of the view of the House as a whole, including the possibility of free votes, and how to enact any decision made.**

**22. The most important question to be considered by the House in generations cannot be determined simply by the running down of the clock. This would lead either to a default exit with no deal, or to the House being offered a Hobson's choice of the deal currently on offer or no deal. If Parliament cannot reach a view in time, then the House should be able to express its opinion on extending Article 50.**

# Formal minutes

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**Wednesday 16 January 2019**

Members present:

Hilary Benn, in the Chair

Joanna Cherry	Craig Mackinlay
Sir Christopher Chope	Seema Malhotra
Stephen Crabb	Mr Jacob Rees-Mogg
Mr Jonathan Djanogly	Emma Reynolds
Richard Graham	Stephen Timms
Peter Grant	Mr John Whittingdale
Wera Hobhouse	Hywel Williams
Stephen Kinnock	Sammy Wilson
Mr Pat McFadden	

Draft Report (*Response to the vote on the Withdrawal Agreement and Political Declaration: Options for Parliament*), 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 20 read and agreed to.

Paragraph 21 read.

Question put, That paragraph 21 stand part of the Report.

The Committee divided.

Ayes, 11

Noes, 4

Joanna Cherry	Sir Christopher Chope
Stephen Crabb	Craig Mackinlay
Mr Jonathan Djanogly	Mr John Whittingdale
Peter Grant	Sammy Wilson
Wera Hobhouse	
Stephen Kinnock	
Mr Pat McFadden	
Seema Malhotra	
Emma Reynolds	
Stephen Timms	
Hywel Williams	

Paragraph accordingly agreed to.

Paragraph 22 read.

Question put, That paragraph 22 stand part of the Report.

The Committee divided.

Ayes, 11

Noes, 4

Joanna Cherry

Sir Christopher Chope

Stephen Crabb

Craig Mackinlay

Mr Jonathan Djanogly

Mr John Whittingdale

Peter Grant

Sammy Wilson

Wera Hobhouse

Stephen Kinnock

Mr Pat McFadden

Seema Malhotra

Emma Reynolds

Stephen Timms

Hywel Williams

Paragraph accordingly agreed to.

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

The Committee divided.

Ayes, 11

Noes, 4

Joanna Cherry

Sir Christopher Chope

Stephen Crabb

Craig Mackinlay

Mr Jonathan Djanogly

Mr John Whittingdale

Peter Grant

Sammy Wilson

Wera Hobhouse

Stephen Kinnock

Mr Pat McFadden

Seema Malhotra

Emma Reynolds

Stephen Timms

Hywel Williams

Question accordingly agreed to.

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

[Adjourned till Wednesday 23 January at 9.00am

## 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.

### 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 (HC 1552)
Sixth Report	Parliamentary approval of the Withdrawal Agreement and the future relationship	HC 1240 (HC 1641)
Seventh Report	The progress of the UK's negotiations on EU withdrawal: Data	HC 1317 (HC 1564)
Eighth Report	The progress of the UK's negotiations on EU withdrawal: the rights of UK and EU citizens	HC 1439 (HC 1872)
Ninth Report	The progress of the UK's negotiations EU withdrawal (June to September 2018)	HC 1554
Tenth Report	The progress of the UK's negotiations on EU withdrawal - The Withdrawal Agreement and Political Declaration	HC 1778
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
Fifth Special Report	The progress of the UK's negotiations on EU withdrawal (March to May 2018): Government Response to the Committee's Fifth Report	HC 1552

Sixth Special Report	The progress of the UK's negotiations on EU withdrawal: Data: Government Response to the Committee's Seventh Report	HC 1564
Seventh Special Report	Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship: Government Response to the Committee's Sixth Report	HC 1641
Eighth Special Report	The progress of the UK's negotiations on EU Withdrawal: The rights of UK and EU citizens: Government Response to the Committee's Eight Report	HC 1872