

HOUSE OF LORDS

Select Committee on the Constitution

19th Report of Session 2017–19

**European Union
(Withdrawal) (No.5)
Bill**

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Select Committee on the Constitution

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Committee staff

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European Union (Withdrawal) (No. 5) Bill

Introduction

1. The European Union (Withdrawal) (No. 5) Bill was introduced into the House of Commons on 2 April 2019 and completed all its remaining stages in that House on 3 April. It is a Private Member's Bill sponsored in the House of Commons by Yvette Cooper MP. The Bill will be brought to the House of Lords on 4 April.
2. The Bill arises from the United Kingdom's scheduled withdrawal from the European Union. It makes provision for the Prime Minister to be placed under certain statutory duties in connection with negotiations with the European Council on the date of the UK's exit from the EU under Article 50(3) of the Treaty on European Union.

The scheme of the Bill

3. The Bill would require the Prime Minister to move a motion in the House of Commons the day after it receives Royal Assent.¹ The motion would be in terms that the House of Commons agreed to the Prime Minister "seeking an extension of the period specified in Article 50(3) of the Treaty on European Union to a period ending on" a date to be inserted into the motion.² The Bill makes no provision about what date should be set in the motion, leaving that to the discretion of the Prime Minister (subject to paragraph 4(c) below).
4. Once such a motion had been moved by the Prime Minister, three possibilities would arise:
 - (a) **Failure to agree the motion.** The House of Commons might not agree to the motion. In that case, the Prime Minister would have fulfilled her duty under the Bill and the Bill would have no further application. The date of the UK's departure from the EU would remain 12 April 2019. Unless an extension of the Article 50 period was agreed via a process not involving this Bill, on that date the UK would by default leave the EU on a no-deal basis.
 - (b) **Agreement to the motion without amendment.** The House of Commons might agree to the motion without amending the date specified in it. In that case, the Prime Minister would be required by the Bill to seek an extension of the Article 50 period to the date specified in the motion.³
 - (c) **Agreement to an amended motion.** The House of Commons might agree to the motion having amended the date originally specified in it. In that case, the Prime Minister would be required by the Bill to seek an extension of the Article 50 period to the date specified in the motion as amended.⁴

1 Clause 1(1)
2 Clause 1(2)
3 Clause 1(4)
4 Clause 1(5)

5. If the Prime Minister were obliged to seek an extension of the Article 50 period to a date specified in a motion (whether or not amended) passed under the Bill, the following possibilities would arise:
- (a) **No Article 50 extension.** The European Council might refuse to offer any extension of the Article 50 period. In those circumstances, the Bill would have no further application—that is, it would not impose any further duties on the Prime Minister nor make any further relevant provision. The UK would then, by default, leave the EU on 12 April 2019 on a no-deal basis.
 - (b) **Unconditional Article 50 extension.** The European Council might agree unconditionally to the extension. If such a situation were to arise, the Bill would have no further application—that is, it would not impose any further duties on the Prime Minister nor make any relevant further provision. Subject to being formally accepted by the UK Government, the European Council’s offer to extend the Article 50 period would take effect and the date of the UK’s departure from the EU would be adjusted accordingly. To align the definition of ‘exit day’ in domestic law with the new date of the UK’s departure from the EU under EU law, a statutory instrument would need to be made.⁵
 - (c) **Conditional Article 50 extension.** The European Council might agree to the extension but subject to certain conditions (e.g. UK participation in elections to the European Parliament). If such a situation were to arise, the Bill would have no further application—that is, it would not impose any further duties on the Prime Minister nor make any relevant further provision.
 - (d) **Counterproposal as to the duration of Article 50 extension.** The European Council might make a counterproposal by offering to extend the Article 50 period to a date other than that which the Prime Minister was required to request. In that case, the Bill would require the Prime Minister, the day after the European Council’s decision, again to move a motion in the terms set out in paragraph 3 above.⁶ Once the Prime Minister had moved such a motion, the possibilities identified in paragraph 4 above would again arise. The Bill imposes no limit on the number of times that the Prime Minister could be required to seek an extension to the Article 50 period in response to a European Council counterproposal on the duration of that period.

Conclusions

6. The House may wish to consider the implications of the Bill in the following respects:
- A motion passed under the terms of the Bill would place a duty on the Prime Minister to “seek an extension” to the Article 50 period, while leaving discretion as to how it should be sought. Such discretion is inevitable as there is a limit to the extent to which it is feasible for legislation to provide direction in matters of this nature.
 - The Bill requires the Prime Minister to move a motion on the day after it receives Royal Assent. It does not, however, specify the time during

⁵ European Union (Withdrawal) Act 2018, [section 20\(4\)](#)

⁶ Clause 1(6)-(7)

which the Prime Minister would be required to act on the motion, should it be passed by the House of Commons.

- In the event that a counterproposal is made by the European Council, the Bill does not require the Prime Minister to move a motion containing the date of that counterproposal. If the Prime Minister did move a motion containing that date, it would be open to the House of Commons to amend the motion so that it specified a different date. The provisions of the Bill could be applied repeatedly in the event that departure dates agreed by the House of Commons in subsequent motions did not align with the date or dates offered by the European Council.
 - The Bill does not provide for how any counterproposal from the European Council should be treated in the event that conditions are attached to it.
 - If the European Council refuses to offer an extension, or there is otherwise a failure to reach agreement on an extension, the Bill has no further effect and the UK would leave the European Union on 12 April by default.
 - As the result of a Government amendment in the House of Commons, the process by which a statutory instrument to alter ‘exit day’ in the European Union (Withdrawal) Act 2018 is changed from the affirmative to the negative procedure. The justification for this change, accepted by the Bill’s sponsor and the Official Opposition,⁷ was that it might be necessary to legislate as a matter of urgency to change the date of exit and that the requirement to get the approval of both Houses to an affirmative instrument could cause undesirable delay, risking a situation in which exit day in domestic law was not aligned with the exit day agreed under EU law.
7. The Bill has been fast-tracked in the House of Commons, with all its substantive stages taken in a single sitting on one day, and it is expected that it will also be fast-tracked in the House of Lords. We considered the issue of fast-track bills in a previous report.⁸ We took the view that in exceptional circumstances the fast-tracking of legislation could be acceptable and we emphasised the need to ensure effective parliamentary scrutiny.

7 HC Deb 3 April 2019, [cols 1188–1191](#)

8 Constitution Committee, *Fast-track Legislation: Constitutional Implications and Safeguards* (15th Report, Session 2008–09, HL Paper 116)