



House of Commons
Procedure Committee

**Motions under section 13(1)
of the European Union
(Withdrawal) Act 2018**

Eighth Report of Session 2017–19

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

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Procedure Committee

The Procedure Committee is appointed by the House of Commons to consider the practice and procedure of the House in the conduct of public business, and to make recommendations.

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Summary

Before the UK may ratify any withdrawal agreement between the UK and the European Union as an international treaty, certain statutory conditions must be met. These are set out in section 13(1) of the European Union (Withdrawal) Act 2018. One of these conditions requires the House of Commons to approve, by resolution, the negotiated withdrawal agreement and a joint statement between the UK and the EU on the future framework of relations between the two.

This statutory provision presents the House with a unique and unfamiliar task, since it does not have a right to approval or veto of a treaty prior to ratification. The statutory requirement for an approval motion to be passed by the House of Commons, as a necessary precondition for ratification of a withdrawal agreement, has focused attention on the procedure in the House which ought to apply to the debate and decision on the approval motion and any amendments which might be tabled to it.

The Procedure Committee has undertaken a short inquiry into the procedural issues raised for the House in its discharge of this statutory task. The Committee on Exiting the European Union asked us to consider the procedure to be followed when the House decides on an amendable motion. Subsequently the Government gave its views on the procedure to be followed. It suggested that the nature of the decision to be taken required a procedure which would in all circumstances allow the House to first of all give its decision on a motion proposed by the Government, before moving to decide on any amendments proposed to the motion.

Under the House's existing procedures, a vote on any approval motion will be subject to the Standing Orders governing proceedings under an Act of Parliament: that is, the vote must take place after a debate of no more than 90 minutes, and only one amendment to the approval motion is likely to be selected and voted upon. There is widespread agreement that this procedure does not meet the expectations of the House, and of the general public, for a debate on a decision of this significance: in October 1971 the debate on a motion to approve the UK's entry into the European Economic Community, on the terms negotiated by the Government, lasted for 55 hours over six days.

The House must therefore determine the procedure which it wishes to apply to the debate and decision on any approval motion. The Committee has set out three possible models: in each case there are further possible variations which may be introduced. These models are:

- the usual practice of the House, modified so as to allow the Speaker to call more than one amendment for decision at the end of debate;
- a procedure based on the existing procedure for decision on motions on Opposition days, where the House is invited to decide on the motion originally tabled before deciding on any amendments to it;
- a procedure which will allow indicative decisions on a series of freestanding motions expressing alternative views on the withdrawal agreement, prior to a vote on the statutory motion as tabled.

The Government made representations to the Committee about the character of the decision the House is to be asked to take. In particular the Government has stressed that there is a risk to the successful ratification of any agreement should the motion which the Government puts before the House for approval be amended. The Government therefore argues that the House must have an opportunity to approve or reject the Government's motion as tabled, and ought to adopt a procedure which will allow this to happen. This course of action departs from the usual practice of the House in deciding on motions, where the strength of support for alternative propositions to a motion is tested by voting on amendments to the motion and then by voting to adopt the main motion, amended or not as the case may be.

There are differing views on the likelihood of a legal challenge being brought to the ratification of any withdrawal agreement should the motion tabled by the Government be amended in certain ways before being passed by the House. As well as the risks of any successful legal challenge, the House will wish to weigh carefully the risk that such proceedings may disrupt an orderly and negotiated departure from the EU. If the Government's analysis of the risk is correct, the risk would be mitigated if the House were to decide on a procedure which required a prior or separate decision on the motion put before the House by the Government. The Government's argument is based on the premise that it should be able to proceed with the ratification of the negotiated withdrawal agreement irrespective of whether the House has taken the view that there is a better option.

Against these considerations sits the evidence from Members and others about the expectation, unchallenged during the passage of what is now section 13 of the European Union (Withdrawal) Act, that the approval motion to be passed in the House of Commons would be subject to the House's usual procedures for amendment and decision. The request by the Government that the House adopt a procedure which sets aside the longstanding practices of the House attracted a mixed response inside and outside the House.

The decision which the House will be required to make on any motion to approve a withdrawal agreement will be momentous for the House and for the country. It will act as the gateway to the ratification process.

The Committee recommends that proceedings on such a motion should be governed by a bespoke Business of the House order rather than under the procedure set out in Standing Order No. 16. This order should provide that, in accordance with the usual practice of the House, any amendments to the motion which have been selected by the Speaker are to be decided on first. The Committee recognises that the decision on the provisions of any such business order is one for the House to take.

The Committee recommends that the House's decision on the procedure which ought to apply should itself be subject to debate on a substantive and amendable motion. This must allow the options to be fully debated on a day at least two sitting days prior to the day on which the debate on ratification is to start, with the Government's proposed Business of the House motion tabled no fewer than five sitting days before the date on which that motion is to be debated. It is essential that the House is able to make a thorough assessment of the issues, and to reach a clear understanding and decision on the procedure to apply to the eventual decision of the House.

1 Pre-ratification approval: a statutory requirement

1. Section 13(1) of the European Union (Withdrawal) Act 2018 provides the mechanism for Parliamentary approval of a negotiated agreement between the UK Government and the European Union on the terms of the UK's withdrawal from the European Union.¹

2. There are four requirements to be satisfied before the Government may ratify that agreement as an international treaty:

- a) a Minister must lay before each House a statement that political agreement has been reached on an agreement, together with a copy of the negotiated withdrawal agreement and a copy of the framework for the future relationship,
- b) the negotiated withdrawal agreement and the framework for the future relationship must be approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown,
- c) a Minister must table a motion in the House of Lords for that House to take note of the negotiated withdrawal agreement and the framework for the future relationship, and that motion must either have been debated in the Lords or five Lords sitting days must elapse from the day after the passage of the Commons resolution, and
- d) an Act of Parliament must have been passed which contains provision for the implementation of the withdrawal agreement.

3. The Government has published a White Paper on the legislation it considers necessary to implement the withdrawal agreement.² In March 2018 the Government and the European Commission each published the text of a draft withdrawal agreement, with colour coding to indicate the status of each provision.³ The substantive provisions of this document ran to 120 pages in draft. A further draft of the proposed agreement, reflecting agreement in principle between the UK and EU negotiating teams on the full legal text, was published on 14 November 2018: this text has 584 pages.⁴

4. Parliament's role in treaty making is a limited one. Parliament is required to pass legislation to change domestic law in order to implement a treaty, but typically neither House has the power to approve, reject or amend the treaty itself.⁵ Under the Constitutional Reform and Governance Act 2010, Parliament has a statutory role in the ratification of

1 The text of section 13 of the Act is published in the appendix to this report.

2 Department for Exiting the European Union, [Legislating for the Withdrawal Agreement between the United Kingdom and the European Union](#), Cm. 9674, July 2018.

3 Department for Exiting the European Union, [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](#), March 2018. In the draft agreement, text in green had been agreed at negotiator level, subject to technical legal revisions; text in yellow indicated negotiator agreement on the policy objective, and text in white was text proposed by the EU which was subject to ongoing discussion.

4 Department for Exiting the European Union, [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](#), 14 November 2018.

5 House of Commons Library, [Parliament's role in ratifying treaties](#), CBP 5855, February 2017, p. 3.

certain treaties, but this comprises only a right to be informed about the content of a treaty subject to ratification and the right to block ratification pending resolution of any objections.⁶

5. The provision in section 13 of the European Union (Withdrawal) Act for explicit approval by the House of Commons of an international agreement as a prerequisite to ratification is therefore novel. Existing House procedure is not well designed for this task. The statutory provision for the task has also given rise to expectations and assumptions within the House, among commentators and in the general public about the way in which the House should handle it. As there is no existing House procedure tailor-made for this process, we are making recommendations about possible solutions in accordance with our remit to consider the practice and procedure of the House in the conduct of public business.

Our inquiry

6. After the European Union (Withdrawal) Act 2018 had received Royal Assent, we undertook to examine the procedural issues involved in any decision on a section 13(1) motion. The Committee on Exiting the European Union also suggested that we examine how a Business of the House motion might be drafted “to ensure that it is possible for the Speaker to select a series of different amendments [to the approval motion] for consideration”, and how procedure 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 even if this differs from the Government’s preferred wording.”⁷

7. In October 2018 the Secretary of State for Exiting the European Union wrote to the Chairman to indicate the Government’s suggested approach to the matter.⁸ At the same time he wrote to the Committee on Exiting the European Union with the Government’s response to that Committee’s report.⁹ In his letter to the Chairman the Secretary of State set out his political and legal arguments for not following existing procedures.¹⁰ The Government memorandum suggested that the House’s existing procedures for deciding on motions—which provide for amendments to be decided upon before the decision on the main motion is taken—would be unsuitable for the task, and asked that the House consider adopting a procedure which would entail a decision on the Government motion before any amendment were contemplated.

8. We published the Secretary of State’s letter and the Government memorandum and invited written evidence. The Government’s approach received a mixed reaction. We received representations objecting to the Government’s suggested approach from a

6 The 2010 Act gave statutory effect to a convention known as the ‘Ponsonby rule’: *Erskine May*, 24th edition (2011), p. 135.

7 Committee on Exiting the European Union, Sixth Report of Session 2017–19, *Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship*, HC 1240, para 42

8 The Secretary of State’s letter enclosed a Government memorandum. Department for Exiting the European Union ([MUS 0001](#)).

9 Committee on Exiting the European Union, Seventh Special Report of Session 2017–19, *Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship: Government Response to the Committee’s Sixth Report*, HC 1641.

10 Department for Exiting the European Union ([MUS 0001](#))

number of individual Members,¹¹ as well as from the Scottish National Party Westminster Group and from members of the public,¹² together with a submission from a Member broadly sympathetic to the Government's position.¹³ We also received memoranda on the procedural and legal issues involved.¹⁴ The Clerk of the House of Commons set out the procedural issues for us in a memorandum and has since submitted a further paper outlining additional procedural options: we have also discussed the matter informally with him and with the Clerk Assistant. We are grateful to all who submitted written evidence to the inquiry at very short notice. We held two sessions of oral evidence, on 24 and 31 October, and are similarly grateful to our witnesses.¹⁵

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- 11 Rt Hon Keir Starmer QC MP, Shadow Secretary of State for Exiting the European Union ([MUS0006](#)); Rt Hon Dominic Grieve QC MP ([MUS0011](#)); Rt Hon Hilary Benn MP, Chair, Committee on Exiting the European Union ([MUS0012](#))
- 12 SNP Westminster Group ([MUS0014](#))
- 13 Rt Hon Sir Oliver Letwin MP ([MUS0003](#))
- 14 The Bingham Centre for the Rule of Law and the UK in a Changing Europe ([MUS0007](#)), the Public Law Project ([MUS0008](#)), the Hansard Society ([MUS0009](#)) and Professor Gavin Phillipson ([MUS0013](#)). A full list of the written evidence received is at page 33.
- 15 A list of the oral evidence taken is at page 32.

2 The House's decision on approval of the Withdrawal Agreement

The requirement for a Business of the House motion

9. The approval motion required under section 13(1)(b) of the European Union (Withdrawal) Act 2018 is a proceeding under an Act of Parliament. Unless alternative provision is made, that motion will be subject to the provisions of Standing Order No. 16. That Standing Order requires the Speaker to put the questions necessary to dispose of proceedings under any Act of Parliament not later than one and a half hours after their commencement.¹⁶ Under the usual practice of the House, this allows for 90 minutes of debate, with a vote on the main question at the end of that period. Such debates are exempt from the usual 'moment of interruption': debate may continue past this point without additional provision.¹⁷ Where an amendment to a motion has been tabled and selected by the Speaker, it may be moved if its sponsor is called in the course of debate, and the first question to be put at the end of the debate is the question on the amendment, followed by the question on the main motion (amended or not as the case may be).

10. Where the provisions of Standing Order No. 16 are not appropriate for a debate on a motion pursuant to an Act of Parliament, the Government will invite the House to disapply Standing Order No. 16 and make alternative arrangements for the duration of the debate and the disposal of business at its end.¹⁸

11. The Government recognises that the provisions of that Standing Order will be inadequate for the debate envisaged on the motion to approve the Withdrawal Agreement and Future Framework, and indicates that it will be expected to bring forward an alternative proposal for the organisation of the debate in the form of a Business of the House motion. The Government stresses that "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."¹⁹

Procedural precedents

12. The closest precedent to a decision of the magnitude the House will be invited to take occurred in October 1971, when the Government sought the approval of the House, by resolution, to enter the European Economic Community on the basis of terms which

16 Standing Order No. 16 was passed in 1994. Until the reforms of the House's sitting hours which were introduced in 1992, the House had no express procedural provision for considering motions which were introduced pursuant to an Act of Parliament. Typically, such motions entail the approval on the floor of the House of a statutory instrument or other paper subject to affirmative resolution which had not been otherwise debated in a delegated legislation committee.

17 Standing Order No. 15(1)(b).

18 See, for example, 5 February 2018: a Business of the House order providing for a three-hour debate on the Police Grant Report 2018-19 and several Local Government Finance reports for 2018-19 on 7 February 2018.

19 Department for Exiting the European Union ([MUS0001](#)), para 4

had been negotiated with the EEC and which were set out in a White Paper.²⁰ There was no statutory requirement for a resolution of the House to approve accession, but it was considered a political and constitutional necessity.

13. The debate on the approval motion was scheduled over six sitting days, from Thursday 21 to Thursday 28 October 1971. In view of the large number of Members who had indicated a wish to speak, the Government moved business motions at the moment of interruption each day to allow debate to continue for a set period. In total the debate ran for over 55 hours, with 19 of these after the moment of interruption: on Wednesday 27 October debate was allowed to run for an additional 9 hours after the usual 10pm moment of interruption, until 7am the following day. The Speaker (Rt Hon Selwyn Lloyd MP) had no authority to impose time limits on any speech, though on several occasions he and his deputies appealed for brevity.

14. It is not known how many amendments to the approval motion were contemplated, or indeed offered and found disorderly. One amendment stood on the Order Paper on the first day of debate, in the name of Mr Willie Hamilton MP and 25 other Members. It was not selected by the Speaker, who, in accordance with practice and precedent, declined to give his reasons for doing so. Lord Hennessy of Nympsfield, in evidence to us, surmised that it was an amendment which had more of the character of a confidence motion, and suspected that the Speaker might have considered it out of scope.²¹

15. The Speaker put the question on the Government's motion at 10 pm on Thursday 28 October 1971. The motion was carried by 356 votes to 244.²²

16. The 1971 debate and vote give an indication of the magnitude of the issue then under consideration and the degree of interest in the House in participating. It nevertheless provides no exact precedent for the present situation. While it was no doubt considered politically and constitutionally necessary by the then Government, the House's decision in 1971 did not have any statutory effect. The length of debate and the decision required at the end were not governed by any Business of the House order, save the standard 'ten o'clock' motion moved on the first five days of the debate to allow proceedings to continue beyond the moment of interruption. No amendments were selected and therefore there was a single vote on a clear proposition before the House.

17. There have been four instances where the House has been invited to endorse negotiated international agreements prior to their ratification: the United Nations Charter (motion debated on 22 and 23 August 1945), the North Atlantic Treaty (12 May 1949), the Sino-British Joint Declaration on the future of Hong Kong (5 December 1984) and the Anglo-Irish Agreement (26 and 27 November 1985). The Sino-British Joint Declaration was approved by the House before signature: in the other three cases the approval came between signature and deposit of the instrument of ratification. In none of these cases was approval by the House pursuant to a statutory requirement, nor was any tabled amendment selected for debate or decision. The debates were not governed by any Business of the House order.

20 Foreign and Commonwealth Office, *The United Kingdom and the European Communities*, Cmnd. 4715, July 1971.

21 [Q97](#)

22 Lord Hennessy records the manner in which the then Prime Minister, Rt Hon Edward Heath MP, marked the House's approval—by retiring to Downing Street and playing the First Prelude from Book 1 of J S Bach's 'The Well-Tempered Clavier': [Q92](#)

Approaches to the decision

18. The evidence we have received reveals two contrasting approaches to the significance and the status of the decision which the House will be asked to make. Broadly speaking the approaches envisage different roles for the House in the process of approving and ratifying any withdrawal agreement.

- The Government contends that the purpose of the section 13 motion is to satisfy one of the statutory conditions which must be met before any withdrawal agreement may be ratified. It argues that an amended motion, if adopted by the House as a resolution, may deliberately or accidentally inhibit the Government’s ability to ratify any agreement.
- Others contend that the decision on a section 13 motion is the first opportunity for the House to express its own view on the content of the withdrawal agreement and the future framework—in other words, on the overall shape of Brexit. Under the process set out in section 13, the decision on an approval motion is the sole opportunity for the House to adopt a substantive resolution on how the withdrawal agreement ought to proceed: if it is necessary to amend the motion to be proposed by the Government to give expression to the House’s view then it ought to be possible to do so.

19. The statutory requirement for the House to approve any withdrawal agreement was debated in both Houses in the course of proceedings on what is now section 13 of the European Union (Withdrawal) Act 2018. There has been no subsequent opportunity for the House of Commons to consider or to come to a settled view on how it should discharge this task. The Hansard Society observes that, in the absence of any discussion on the arrangements for voting on a section 13 motion, it is reasonable to suppose that Members would have assumed that the House’s usual practice would apply.²³

20. The procedure which the House adopts to make its decision on the section 13 motion to approve any withdrawal agreement will shape how the decision is made. It is therefore an issue of crucial importance to the House’s role.

The legal impact of amendments

21. The Government’s position was set out by the Secretary of State in his letter to the Chairman. The Government’s memorandum to the Committee which was enclosed with that letter set out a number of factors which, in its view, ought to be taken into account in determining the procedure for the decision.²⁴ The Secretary of State stressed that the procedure for decision on any section 13 motion “must allow for an unequivocal decision”. He argued that this decision “must be clear to the British public” and that the procedure “should not undermine the intention of the Act”. The Government considers that the House ought “ultimately ... 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.”²⁵

23 Hansard Society ([MUS0009](#)), p. 4

24 Department for Exiting the European Union ([MUS0001](#))

25 *Ibid.*, para 3

22. The Secretary of State makes a presentational case that the decision on the section 13 motion should be clear to the British public. However, his central argument is a legal one—amendments create uncertainty. They bring the risk of litigation and thus would inhibit the Government’s legal ability to ratify the Withdrawal Agreement, with all the consequent problems that that would bring. The Government noted the possibility that under usual arrangements the House might not have an opportunity to vote on the unamended motion tabled by the Government: if an amendment to the motion were successfully moved, the House would be unlikely to be able to vote on the Government’s original proposition because the House would have indicated it preferred another course of action.²⁶

23. The approval motion which the Government proposes to table will be drafted so as to ensure, in the Government’s judgment, “no legal ambiguity” as to whether the subsequent resolution of the House provides the legal authority to proceed with ratification of any withdrawal agreement under section 13 of the Act. The Government states that an amended motion, passed as a resolution of the House, cannot directly alter the text of the two international agreements—the Withdrawal Agreement and the Future Framework—which will have been negotiated and agreed at international level between the UK and the European Union: nor will an amended resolution automatically have the effect of delaying or preventing the UK’s exit from the EU. Since there is no provision in section 13 for a procedure to be followed should a resolution of the House of Commons give partial or conditional approval to the agreement, the Government argues that a Commons resolution in these terms would either deny the Government the authority to ratify any withdrawal agreement or would introduce doubt as to whether the Government had received the necessary authority to ratify. Not only would this situation pose “obvious problems” for the Government, but it is argued that it would also increase the risk of litigation against the Government were it to seek to go ahead with ratification in defiance of the expressed will of the House.²⁷

24. The Government’s position received support from Rt Hon Sir Oliver Letwin MP, who said that “it would be absurd if the House were deprived of the ability to permit the withdrawal agreement to be ratified simply because of the procedure of the House”, a situation which could easily arise if an amendment to the Government’s motion were successful.²⁸ He thought it plausible that there might be a majority in the House for both the Government’s motion and an amended motion, and sought a procedure which would enable the House to discover whether there was a majority in favour of an unamended motion, but would also allow the Government to proceed with its favoured course of action.

Could the Withdrawal Agreement be ratified if an amended resolution is passed?

25. The Government’s claims about the risk of litigation and the risk of the courts interfering with Parliamentary proceedings were addressed by Professor Gavin Phillipson of Durham Law School.²⁹ He considered that whatever the likely chances of success of litigation against the Government—for instance, asking a court to issue a declaration that

26 *Ibid.*, para 6

27 *Ibid.*, para 3

28 Rt Hon Sir Oliver Letwin MP ([MUS0003](#))

29 Professor Gavin Phillipson ([MUS0013](#))

the Withdrawal Agreement could not legally be ratified on the basis of the Commons resolution—the existence of live court proceedings might delay or impede ratification of the Withdrawal Agreement until after exit day.³⁰ He referred to the Supreme Court’s majority statement in *Miller* that ‘ministers cannot frustrate the purpose of a statute or a statutory provision, for example by emptying it of content or preventing its effectual operation’.³¹ Phillipson went on to say that “it follows therefore that the Government cannot exercise the prerogative to ratify any treaty agreed with the EU where to do so would not just frustrate, but flatly defy the will of Parliament in s. 13(1)(b) that such ratification may not occur unless there has been ‘approval’ of the requisite statutory motion by the House of Commons.” He set out a number of scenarios under which a case might be taken against the Government if it sought to ratify an unchanged withdrawal agreement on the basis of an amended Commons resolution, and assesses the risk of successful litigation of each.³² While he considered that a court would be able to examine the fact of a decision made in the House, by examining the published record, he argued that it would be highly reluctant to examine the procedures which the House had used to come to that decision, since that would fall within the prohibition on “questioning or impeaching proceedings in Parliament” under Article IX of the Bill of Rights 1689.³³

26. Rt Hon Dominic Grieve QC MP, a former Attorney-General, was sympathetic to the issues the Government raised, though he suggested that they might have been anticipated earlier in the process.³⁴ He found it difficult to think of an amendment to any approval motion which would not be fatal to the process of approval, but did not accept the approach proposed because it went against assurances made and would not allow the House to debate alternatives.³⁵ The Hansard Society challenged the Government’s assertion that any amendment to the motion would inevitably put ratification in doubt. They argued that this was not the inevitable outcome of any and all potential amendments. An amended resolution which called into question the Government’s ability to ratify the agreement might be remedied by a provision in the forthcoming Withdrawal Agreement Bill, or might be addressed by a subsequent resolution of the House which could give “the necessary comfort and clarity as to ratification.”³⁶

27. Rt Hon Keir Starmer QC MP questioned the basis of the Government’s assertion, arguing that it was contestable and pointing to an opinion published by the UK Constitutional Law Association which had concluded that “the courts would be highly unlikely to interfere. If the Commons did pass an amended approval motion, it could use the EU (Withdrawal Agreement) Bill to remove any legal doubt”.³⁷

28. Evidence we have received indicates that it is arguable that amendments relating to the Withdrawal Agreement could create legal uncertainty and risk litigation, were Ministers

30 *Ibid.*, paras 5–8

31 The case cited is *R (on the application of Miller and another) v Secretary of State for Exiting the European Union*, [2017] UKSC 5 (24 January 2017).

32 *Ibid.*, paras 21–29. Two scenarios carry a risk of litigation which is ‘very high’ or ‘high’: the remaining three carry risks which are ‘moderate’, ‘moderate to low’ and ‘low’ respectively.

33 *Ibid.*, paras 54–56

34 [Qq2–3](#)

35 *Ibid.*

36 Hansard Society ([MUS0009](#)), pp 5–6

37 J. Simson Caird, ‘Brexit and the Meaningful Vote: Down the Procedural Raab-it Hole?’, U.K. Const. L. Blog, 22nd Oct. 2018, (available at <https://ukconstitutionallaw.org/>), cited by Rt Hon Keir Starmer MP ([MUS0006](#))

to seek to go ahead as originally planned without taking into account or acting on the will expressed by the House of Commons. Amendments relating to procedural conditions or to the Future Framework carry less risk.

The role of Parliament

29. Members who have sought greater Parliamentary engagement with the process of negotiations have expressed concern at the Government’s proposal. The entry into force of section 13 of the 2018 Act was considered to have settled the question over the contribution of the House to the processes for agreeing not only how the UK withdraws from the EU, but also how the future relations between the two will be shaped. The Government’s intervention has now reopened the issue.

30. The provision for an approval motion in section 13(1) of the Act has been termed the “meaningful vote” in some quarters. There is no generally accepted definition of “meaningful vote”.³⁸ While the views of our witnesses on the precise meaning of the phrase differed,³⁹ Rt Hon Hilary Benn MP sought to define it and contrast it to the Government’s proposed procedure:

I think a meaningful vote is one in which the range of views that there clearly is in the House of Commons can be debated and voted upon before the Government’s motion is voted upon, either amended or unamended. Saying to the House of Commons, “There are only two choices—you can vote for our withdrawal agreement or we’re leaving with no deal” is not a meaningful vote.⁴⁰

31. Mr Benn indicated that one clear premise of his Committee’s consideration of the parliamentary arrangements for approval of the Withdrawal Agreement was that the decision on the statutory section 13 motion would be taken according to the House’s existing procedures. It was on that basis that his Committee had recommended that we consider the arrangements for selection of amendments at the end of any debate on the motion:

The clear presumption of the Committee in making that recommendation to you was that the normal procedure would apply—namely, we would vote on the amendments first, and then come to the main motion, either as amended or not. I was surprised, I have to say, when the Secretary of State’s memorandum appeared before you proposing a different approach, because that is not what any of us was expecting.⁴¹

32. Of significant importance to those seeking a “meaningful vote” is that the statutory motion envisaged in section 13 of the 2018 Act should be amendable. Ministers did not indicate that they expected any procedural or statutory constraints to apply to the motion and how it might be amended. This is in contrast to the provisions in sections 13(8) and 13(11) of the Act, which both specify that a Minister must move a motion “in neutral terms” for debate in the House of Commons, provisions intended to engage Standing Order No. 24B, under which no amendment may be tabled to a motion tabled in such

38 Hansard Society ([MUS0009](#))

39 [Q3](#); [Q5](#); [Q23](#); [Q33](#); [Q38](#); [Q59](#); [Q95](#).

40 [Q59](#)

41 [Q53](#)

terms. The only constraints on how a section 13(1) motion might be amended would be those set by the rules of the House on amendments: the relevant provisions of these rules, taken from *Erskine May*, are summarised in box 1.

Box 1: House of Commons procedure on amendments to motions

An amendment to a question may either modify a question so as to increase its acceptability, or present a different proposition to the House as an alternative to the original question.

Amendments fall into three types: (a) to leave out certain words; (b) to leave out certain words so as to insert or add others; and (c) to insert or add certain words.

Standing Order No. 31 provides that the question to be put on any amendment is ‘That the amendment be made.’⁴² On proceedings on motions, the only exception to this is under the specific circumstances in Standing Order No. 31(2), which apply only on Opposition days: on such days, where a Minister has moved an amendment to leave out words from a substantive Opposition motion and to add others, then the first question to be put is ‘That the original words stand part of the Question.’

When all amendments to a question have been disposed of, a final question must be put on the motion, whether or not it has been amended: rejecting an amendment to a motion does not of itself entail approval of the motion. Thus a Member may vote against an amendment and against the main motion. The only exception here is again on Opposition days, where, following defeat of the original motion, if a Government amendment to leave out all the effective words of an Opposition motion and to add others has been passed, the Speaker declares the main Question, as amended, to be agreed to.

To be orderly, amendments must be relevant to the question under consideration and intelligible. Standing Order No. 24B prohibits the tabling of amendments to motions ‘That this House has considered’ a matter, expressed in neutral terms. Amendments to motions to approve or to annul a statutory instrument have been ruled to be out of order, unless the parent Act makes specific provision for amendment.

Each amendment is proposed in the order in which, if agreed to, it would stand in the amended question.

Under Standing Order No. 32, the Speaker is given the power to select amendments to any motion. Selection is made by the Chair “in such a way as to bring out the salient points of criticism, to prevent repetition and overlapping.... and where several amendments deal with the same point, to choose the more effective and the better drafted.”

The Chair does not give reasons for not selecting an amendment.

Source: *Erskine May* (24th edition, 2011), pp.406-10, 464-65

42 Standing Order No. 31 was passed in November 1967. Before the Standing Order was passed, the practice of the House was to put questions on amendments according to their effect on the original question: where it was proposed to leave out words from a question (whether or not it was proposed to insert others), the first question to be put was ‘That the words proposed to be left out stand part of the Question’. If that question was negatived then a successive question on inserting words could be moved.

33. We discussed with Mr Benn the potential effect of the House passing an amended resolution, in the light of the position taken by the Government that any amendment to the motion would jeopardise successful ratification of the Withdrawal Agreement. He conceded that an amended resolution could not create a new statutory obligation on the Government, a position which the Clerk of the House had earlier made clear to his committee in oral evidence.⁴³

34. He nevertheless argued that an amendment of a Government motion would have a significant legal and political impact:

If the Government cannot get their policy through the House—whether or not there is a no confidence motion and it is carried—they have a very big problem, and the Government in those circumstances would have to say, “Right, we’ve got a big problem. Our preferred course of action has just been voted down; we’re going to have to do something else.” That is the pressure that we bring to bear, and that is the way in which Parliament shows it does have power in this process, because the Government in those circumstances surely would have to listen to what Parliament has had to say.⁴⁴

Thus a “meaningful vote” required the use of the House’s existing amendment procedure, because a simple vote against a withdrawal agreement would not be sufficient to demonstrate the reasons for rejection:

[A reasoned amendment to reject the agreement] would have the same effect [as a vote against], in that the withdrawal agreement would not be approved, but it would be the House of Commons saying to the Government, “This is the reason why.” The truth is we may end up with people voting against a withdrawal agreement for completely opposite reasons, and that is why the argument that we are putting is that there are a range of views in the House of Commons, and allowing those to be tested and voted on before you get to the Government’s main motion seems to me to be a reasonable approach. That was the expectation in which the Committee made its recommendation that you look at the question of how a number of amendments could be considered.⁴⁵

35. Mr Benn did not think that amendments to the motion which expressed the House’s view on the future framework of relations between the UK and the EU, the content of which remains to be negotiated in detail, would affect the capacity of the Government to ratify the withdrawal agreement itself:

[T]he House could say, “We approve the withdrawal agreement, but the Government should set out how it intends to keep the UK in a customs union with the European Union when it engages in the negotiations on the future relationship.” Or the House could say, “We are happy to approve the withdrawal agreement, but we want the Government to give an undertaking

43 [Q64](#); oral evidence given to the Committee on Exiting the European Union on 31 October 2018 by Sir David Natzler KCB, Clerk of the House of Commons, HC 372, [Q3122](#)

44 [Q84](#)

45 [Qq57–58](#)

that it will legislate to ensure that the House will have a vote on any treaty or treaties that emerge from the negotiations when the second phase, the future relationship, has been sorted.”⁴⁶

He considered that the Government’s position was an attempt to frame the choice for the House as one which was either for the negotiated withdrawal agreement, without caveat or condition, or in favour of no agreement.⁴⁷ He accepted that, following the initial vote on a section 13(1) motion, there was no statutory route by which the House could compel the Government to seek an amended agreement and bring it back to the House: but he thought the responsibility for avoiding a “no deal” situation rested with the Government.⁴⁸

I think Governments hold to their policy until they are required by force of circumstances or change of mind to alter them. Of course, up until that moment, that is the Government’s policy. If the Government were to lose the withdrawal agreement vote, we would be in a very different situation indeed, and the Government might decide to change their policy.⁴⁹

Procedural options for the House

36. From the evidence that we have taken, we have identified four options for a procedure to be established by a Business of the House motion.

37. The first of these is to do nothing, and to allow debate to proceed under the existing provisions of Standing Order No. 16. This would provide for a debate of 90 minutes followed by a vote on whichever amendment had been called during the course of debate, if any, and then a vote on the main question, amended or not as the case may be.

38. We do not think this option is likely to be acceptable to the House. While in April 2017 the House did take a significant decision following a debate governed by Standing Order No. 16,⁵⁰ it is manifestly clear to us that this procedure is unsuitable for the task at hand.

39. The three other procedural options which we identify are:

- a) to follow the usual practice of the House, modified so as to allow for more time and for the Speaker to call more than one amendment at the end of debate;
- b) to adopt and modify the procedure on Opposition days, where the House is invited to decide on the motion originally tabled: if the motion is defeated, the House may proceed to vote on any amendments to it;
- c) to adopt a procedure to allow a series of indicative decisions on freestanding motions expressing discrete views on the withdrawal agreement and future framework, before a decision is taken on the statutory motion as tabled.

We set out below our assessment of the advantages and disadvantages of each approach.

46 [Q55](#)

47 [Q62](#)

48 [Qq64–65](#)

49 [Q71](#)

50 [19 April 2017](#): the debate and vote on the motion ‘That there shall be an early parliamentary general election’ specified in section 2(2) of the [Fixed-term Parliaments Act 2011](#).

Option A: to follow the House's usual practice, but allowing decisions on several amendments

40. The House's usual procedure when deciding on amendments to motions is for the Speaker to put the question which is before the House when the debate ends, followed by any other questions necessary to bring the business to a conclusion. This means that when an amendment is under debate when the debate ends, the question is first put on that amendment, and then on the main question (amended or not as the case may be).

41. A common variation, often used in Business of the House motions tabled by the Government, is to provide for the Speaker to put questions at the end of debate on any amendments which he may have selected, should their sponsors choose to move them.⁵¹ In the course of debate Members who have tabled amendments may speak to any of their amendments which have been selected: they do not move them formally until called by the Speaker at the end of debate.

Advantages

42. We consider that this option has the following advantages:

- It is the amendable vote as indicated by Ministers during the passage of the European Union (Withdrawal) Act 2018,⁵² and it is a procedure well known to the House which allows a wide-ranging debate across issues raised in the main motion and in the amendments selected.
- Since an amended motion may be capable of being interpreted by the courts as having statutory effect, a procedure which allows for amendments will have undoubted legal impact.⁵³ Since it is capable of endowing the expressed will of the House with legal impact, the procedure maximises parliamentary control and sovereignty.
- It allows the main issues of concern to Members to be fully aired and voted on.
- It uses the House's existing procedures for coming to a settled view on a proposal, by allowing that proposal to be tested against one or more alternatives, and enabling the House to come to a settled view. As the Bingham Centre for the Rule of Law indicates, "when making a decision on a final motion through an 'amendment first' procedure—potentially built up through rejection and

51 Recent examples of Business of the House motions with such provision are 20 October 2015 (motion governing proceedings on Standing Order changes to bring in 'English votes for English laws'; 2 December 2015 (proceedings on that day's motion on ISIL in Syria); 13 July 2016 (proceedings on motion on the UK's nuclear deterrent); 24 October 2016 (proceedings on motion to admonish witnesses found to have given false evidence to a select committee), and 31 January 2018 (motions relating to the Restoration and Renewal of the Palace of Westminster).

52 On 14 November 2018 the Prime Minister indicated the Government's position, saying "We have been very clear that there will be a meaningful vote in this House. We have also been clear that the motion on the deal will be amendable". She went on to say that "if you went out and asked any member of the public, "When the Government bring a deal back from Europe, what do you expect Parliament to vote on?", I think they would expect Parliament to vote on the deal.". *Official Report*, [14 November 2018](#), col. 308.

53 An amended section 13(1) resolution is difficult for the Government to disregard: this is because the Government must in practice be able to demonstrate that the section 13 requirement for the House to approve the withdrawal agreement and future framework by resolution has been complied with before it may ratify any withdrawal agreement.

acceptance of amendments—the House will be making an informed decision about the finality and consequence of rejecting the Government’s (potentially amended) motion.”⁵⁴

- For the Government to secure the straightforward choice on the main motion which it seeks, it is simply required to defeat any amendments moved to that motion.

Disadvantages

43. We identify the following disadvantages to this option:

- It does not automatically provide for a vote on the motion, as tabled by a Minister, which is to have statutory effect: members of the public expecting to see the House decide on this matter of key national importance may have difficulty understanding how the House has discharged its responsibilities.
- Successful amendments to the motion would risk a position of legal uncertainty, where the Government’s ability to ratify a withdrawal agreement was in doubt and might expose it to litigation, for instance were it to seek to continue with its original plan irrespective of the expressed will of the House.
- Complex considerations may apply to the tabling of amendments and their likely effect on the motion: some amendments would undoubtedly be fatal to the chances of ratification of the agreement, while others might not be. The Government would have to explain for each amendment its view of the likely effect on the motion, and some decisions would depend on the fate of previous amendments. Proceedings on these amendments, and the rationale behind them, may be difficult for Members, let alone the general public, to follow.
- There is no absolute guarantee that the House will adopt any clear position: the House could vote down the main motion (amended or not), or so many amendments could be agreed that no one would know what agreement to the amended motion meant.

Option B: to provide an initial vote on the Government’s motion, and to allow amendments to that motion to be voted on should the House reject it

44. This option, which appears to be favoured by the Government, would broadly follow the procedure which applies on all Opposition days under Standing Order No. 14(2) when the Government tables an amendment to an Opposition motion. It allows the House to express a view on the motion originally tabled before coming to a view on any amendment. The use of the procedure on Opposition days is predicated on the assumption that the Government is able to carry the House, and that its amendment, if put first, would generally succeed, giving no opportunity for the House to express an opinion on the merits of the Opposition’s proposal. This, however, does not apply in this instance.

45. The Opposition day model, as set out in Standing Order No. 31(2), would have to be adapted for this purpose, to provide that the first question to be put is to the effect that “the motion moved by the Minister is agreed to”. If that passed in the affirmative, then the Speaker would declare the motion agreed to and there would be no opportunity to move or decide on any amendments: if the main motion is not agreed to, the question might be put on successive amendments selected by the Speaker which might then be moved.

Advantages

46. We consider that this option has the following advantages:

- It provides the clear initial decision on the Government’s proposal which the Government has sought.
- It is a decision which will be easy to follow and to explain to the general public.
- It mitigates, but does not remove, the risk of legal uncertainty from a conditional approval of the withdrawal agreement.
- If the House rejects the main motion, it may still consider and pass amendments which give conditional approval to the agreement or indicate how the House believes the Government should proceed.

Disadvantages

47. We identify the following disadvantages to this option:

- It confines the House’s role in this stage of the process of approval and ratification of the withdrawal agreement to the exercise of a veto power.
- It denies the House the certainty of an amendable vote which Ministers indicated would be available.
- It would not allow all the main issues of concern to Members to be debated and voted on.
- It was not discussed in the context of the debates on the “meaningful vote” when the provisions of section 13 were enacted.
- There is no identifiable precedent for a question of this character being put first in relation to any motion moved by a Minister.
- As the Bingham Centre told us, “under the Government’s approach, any Members that wish to approve the Government’s motion in amended form will have to take a huge risk. These Members would have to decide to reject the Government’s motion without knowing whether there is a majority to approve any proposed amendments”.⁵⁵

55 The Bingham Centre for the Rule of Law and The UK in a Changing Europe ([MUS0007](#)), para 13

- The ‘amendments after’ approach “does not remove the risk of procedural deadlock. If the Commons rejects the Government’s motion and then there is also no majority for any of the proposed amendments, then there is no further route to a majority.”⁵⁶
- By reversing the usual order it would create unfamiliar procedural complexities, for example, following the initial defeat of the motion, an amendment simply to insert or add words to it would in effect reinstate all the words which the House had just disagreed to; amendments to leave out specific part of the text would similarly have the effect of reinstating all the remainder. It may thus increase the chances of the House agreeing contradictory positions.

Option C: to provide for a series of indicative votes on freestanding motions prior to a decision on the section 13(1) motion

48. This option, which both Mr Grieve and Sir Oliver Letwin identified as a possible alternative arrangement for a ‘meaningful vote’, would allow a general debate on the Government’s motion as well as on a number of alternative propositions, which would be tabled as motions rather than as amendments. These free-standing motions would be decided upon before the House decided on the section 13(1) motion. They would allow a range of opinions to be expressed without risking the integrity of the statutory motion, and the House could vote on that motion in full knowledge of the strength of support for various alternative propositions. The Clerk of the House has described the procedural arrangements which would be necessary under this option.⁵⁷

49. Since the freestanding motions are expressions of opinion only, and will have no legal effect, the Government can disregard them, unlike amendments to the statutory motion, even if they are passed with substantial support.

Advantages

50. We consider that this option has the following advantages:

- It allows for a clear decision on a section 13 (1) motion, as the Government has sought.
- It allows a full discussion of a range of considerations in relation to the withdrawal agreement and future framework.
- It allows the opinion of the House on a series of proposals to be tested in a way which does not affect the integrity of a section 13(1) motion.

Disadvantages

51. We identify the following disadvantages to this option:

- It denies the House the certainty of the amendable vote indicated by Ministers.

⁵⁶ *Ibid*, para 14

⁵⁷ Clerk of the House of Commons ([MUS0017](#)). The Chairman sought an additional memorandum from the Clerk on this proposal following the evidence session with Mr Grieve and Sir Oliver on 24 October.

- The House may adopt several mutually contradictory positions in the course of voting on non-binding motions, or may adopt none of them: in neither case is the House's reputation as a decision-making body likely to be enhanced.
- In effect, the role of the House with respect to the process of approval and ratification is confined to a veto preceded by expressions of the House's view.
- The process of voting on non-binding motions, followed by a vote on a statutory motion, may be difficult to explain to the general public.
- There is no precedent for the House being asked to express its opinions in this way in advance of a decision with statutory effect.

Conclusions on the approach to the section 13(1) vote

52. We have set out the competing views of the significance of the section 13 decision before the House, and we have outlined some options for the procedures which could be followed in arriving at that decision.

53. *We recommend that, in accordance with the normal practice of the House, amendments to the motion proposed under section 13(1) of the European Union (Withdrawal) Act 2018 are taken first. Ultimately, of course, the House should be able to decide itself, given that these matters are of such moment.*

The decision on a Business of the House motion

54. Whichever option is eventually proposed, a Business of the House motion will be required to govern the length of debate and, almost certainly, the decision-making process on any motion proposed under section 13(1) of the Act. Such a motion may vary or disapply the standard practice of the House and the provisions of any relevant Standing Orders. Business of the House motions are typically proposed by the Government. With the exception of motions which merely disapply the daily 'moment of interruption', they are amendable and are debatable.

55. We welcome the recognition by the Government that the provisions of Standing Order No. 16 are inadequate for any debate on a motion to approve the Withdrawal Agreement and Future Framework. We agree that the Government should bring forward a bespoke Business of the House motion to set out how the debate and any votes on the motion and possible amendments should be organised. We also note the recognition by the Government that the House of Commons has the power to amend, approve or reject such a business motion. We draw attention, however, to the supplementary evidence submitted by the Clerk of the House which makes clear that a Business of the House motion could be tabled well in advance of the section 13(1) debate so any decisions on the Business of the House motion will be known before the first day of the debate on the motion under section 13(1).⁵⁸

56. *We recommend that the Government publishes the terms that it proposes for the Business of the House motion at least five sitting days in advance of the start of the section 13(1) debate. We further recommend that there should be a full day of debate*

58 Clerk of the House of Commons ([MUS0017](#)), para 8

on the Business of the House motion and any amendments to it, and that such debate should take place no fewer than two sitting days before the date scheduled for the debate on the section 13(1) motion.

57. *Although there are differing views as to what should be in the Business of the House motion we recommend that it should include the following:—*

- a) *That there shall be a minimum of five full sitting days for the debate on the section 13(1) motion.*
- b) *That there shall be a subject or series of subjects set down for debate on each of the sitting days for the debate on the section 13(1) motion.*
- c) *That on each of the sitting days for the debate there shall be the opportunity for the proposer of an amendment to the motion to speak to that amendment and for a Minister to respond to that debate at the end of that day's proceedings.*

The decision on a section 13(1) motion

58. The decision on the substance of the motion to be moved under section 13(1) is for the Government. The Government is entitled to propose a motion which in its view fully engages the requirements of section 13(1).

59. A motion under section 13(1) is capable of being amended. Decisions on whether amendments offered to the motion are in order will be taken according to the rules of the House on amendments. The Speaker has the power to select amendments, which he exercises in the interest of the House.⁵⁹ He does not give reasons for his decisions on selection.

60. An amended section 13(1) resolution is not capable of creating a new statutory obligation on the Government binding it to a particular course of action. It nevertheless has considerable political force. If the Government were to seek to ratify the Withdrawal Agreement on the basis of an amended section 13(1) resolution, there may be a risk of litigation. Even if eventually unsuccessful, the litigation might delay or halt the ratification of an agreement.

61. There is therefore an acknowledged risk to an orderly ratification of any withdrawal agreement should the House pass the section 13(1) resolution in an amended form. It is reasonable that Ministers should draw this risk to the attention of the House and should make the case that it should not be taken, and that consequently the House should not amend the motion.

62. The Government has set out its reasons for seeking a modification of the House's procedures on a vote on a section 13 motion. Should Ministers choose to invite the House to disapply its usual procedures in respect of this motion, they must be prepared to argue in the House for whatever alternative which they propose.

59 Oral evidence given to the Committee on Exiting the European Union on 31 October 2018 by Sir David Natzler KCB, Clerk of the House of Commons, HC 372, [Q3105](#)

63. The House must ensure that the debate on a section 13 motion allows a full range of opinions on the issues before the House to be expressed. On this national question of extraordinary importance, members of the public, whatever their views, will be looking to the House in the expectation that those views will be reflected in debate.

64. The section 13 vote has been presented as the key Parliamentary element of the ratification process. There is a further statutory task for the House before ratification of any agreement: the passage of a European Union (Withdrawal Agreement) Bill, the provisions of which, when enacted, will be enforceable on the Government. The section 13(1) vote is therefore the first in the series of “meaningful votes” on the withdrawal process and UK’s future relationship with the EU.

Conclusions and recommendations

The House's decision on approval of the Withdrawal Agreement

1. The procedure which the House adopts to make its decision on the section 13 motion to approve any withdrawal agreement will shape how the decision is made. It is therefore an issue of crucial importance to the House's role. (Paragraph 20)
2. We have set out the competing views of the significance of the section 13 decision before the House, and we have outlined some options for the procedures which could be followed in arriving at that decision. (Paragraph 52)
3. *We recommend that, in accordance with the normal practice of the House, amendments to the motion proposed under section 13(1) of the European Union (Withdrawal) Act 2018 are taken first. Ultimately, of course, the House should be able to decide itself, given that these matters are of such moment.* (Paragraph 53)
4. Whichever option is eventually proposed, a Business of the House motion will be required to govern the length of debate and, almost certainly, the decision-making process on any motion proposed under section 13(1) of the Act. Such a motion may vary or disapply the standard practice of the House and the provisions of any relevant Standing Orders. Business of the House motions are typically proposed by the Government. With the exception of motions which merely disapply the daily 'moment of interruption', they are amendable and are debatable. (Paragraph 54)
5. We welcome the recognition by the Government that the provisions of Standing Order No. 16 are inadequate for any debate on a motion to approve the Withdrawal Agreement and Future Framework. We agree that the Government should bring forward a bespoke Business of the House motion to set out how the debate and any votes on the motion and possible amendments should be organised. We also note the recognition by the Government that the House of Commons has the power to amend, approve or reject such a business motion. We draw attention, however, to the supplementary evidence submitted by the Clerk of the House which makes clear that a Business of the House motion could be tabled well in advance of the section 13(1) debate so any decisions on the Business of the House motion will be known before the first day of the debate on the motion under section 13(1). (Paragraph 55)
6. *We recommend that the Government publishes the terms that it proposes for the Business of the House motion at least five sitting days in advance of the start of the section 13(1) debate. We further recommend that there should be a full day of debate on the Business of the House motion and any amendments to it, and that such debate should take place no fewer than two sitting days before the date scheduled for the debate on the section 13(1) motion.* (Paragraph 56)
7. *Although there are differing views as to what should be in the Business of the House motion we recommend that it should include the following:—*
 - a) *That there shall be a minimum of five full sitting days for the debate on the section 13(1) motion.*

- b) *That there shall be a subject or series of subjects set down for debate on each of the sitting days for the debate on the section 13(1) motion.*
- c) *That on each of the sitting days for the debate there shall be the opportunity for the proposer of an amendment to the motion to speak to that amendment and for a Minister to respond to that debate at the end of that day's proceedings.*
(Paragraph 57)
8. The decision on the substance of the motion to be moved under section 13(1) is for the Government. The Government is entitled to propose a motion which in its view fully engages the requirements of section 13(1). (Paragraph 58)
9. A motion under section 13(1) is capable of being amended. Decisions on whether amendments offered to the motion are in order will be taken according to the rules of the House on amendments. The Speaker has the power to select amendments, which he exercises in the interest of the House. He does not give reasons for his decisions on selection. (Paragraph 59)
10. An amended section 13(1) resolution is not capable of creating a new statutory obligation on the Government binding it to a particular course of action. It nevertheless has considerable political force. If the Government were to seek to ratify the Withdrawal Agreement on the basis of an amended section 13(1) resolution, there may be a risk of litigation. Even if eventually unsuccessful, the litigation might delay or halt the ratification of an agreement. (Paragraph 60)
11. There is therefore an acknowledged risk to an orderly ratification of any withdrawal agreement should the House pass the section 13(1) resolution in an amended form. It is reasonable that Ministers should draw this risk to the attention of the House and should make the case that it should not be taken, and that consequently the House should not amend the motion. (Paragraph 61)
12. The Government has set out its reasons for seeking a modification of the House's procedures on a vote on a section 13 motion. Should Ministers choose to invite the House to disapply its usual procedures in respect of this motion, they must be prepared to argue in the House for whatever alternative which they propose. (Paragraph 62)
13. The House must ensure that the debate on a section 13 motion allows a full range of opinions on the issues before the House to be expressed. On this national question of extraordinary importance, members of the public, whatever their views, will be looking to the House in the expectation that those views will be reflected in debate. (Paragraph 63)
14. The section 13 vote has been presented as the key Parliamentary element of the ratification process. There is a further statutory task for the House before ratification of any agreement: the passage of a European Union (Withdrawal Agreement) Bill, the provisions of which, when enacted, will be enforceable on the Government. The section 13(1) vote is therefore the first in the series of "meaningful votes" on the withdrawal process and UK's future relationship with the EU. (Paragraph 64)

Appendix: Text of Section 13 of the European Union (Withdrawal) Act 2018

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
 - iii. an Act of Parliament has been passed which contains provision for the implementation of the withdrawal agreement.

(2) So far as practicable, a Minister of the Crown must make arrangements for the motion mentioned in subsection (1)(b) to be debated and voted on by the House of Commons before the European Parliament decides whether it consents to the withdrawal agreement being concluded on behalf of the EU in accordance with Article 50(2) of the Treaty on European Union.

(3) Subsection (4) applies if the House of Commons decides not to pass the resolution mentioned in subsection (1)(b).

(4) 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.

(5) A statement under subsection (4) must be made in writing and be published in such manner as the Minister making it considers appropriate.

(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.

(7) Subsection (8) applies if the Prime Minister makes a statement before the end of 21 January 2019 that no agreement in principle can be 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 EU, and
- (b) the framework for the future relationship between the EU and the United Kingdom after withdrawal.

(8) A Minister of the Crown must, within the period of 14 days beginning with the day on which the statement mentioned in subsection (7) is made—

- (a) make a statement setting out how Her Majesty's Government proposes to proceed, and
- (b) make arrangements for—
 - i. a motion in neutral terms, to the effect that the House of Commons has considered the matter of the statement mentioned in paragraph (a), 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 mentioned in paragraph (a) is made, and
 - ii. a motion for the House of Lords to take note of the statement mentioned in paragraph (a) 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 mentioned in paragraph (a) is made.

(9) A statement under subsection (7) or (8)(a) must be made in writing and be published in such manner as the Minister making it considers appropriate.

(10) Subsection (11) applies if, at the end of 21 January 2019, there is no agreement in principle 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 EU, and
- (b) the framework for the future relationship between the EU and the United Kingdom after withdrawal.

(11) A Minister of the Crown must, within the period of five days beginning with the end of 21 January 2019—

- (a) make a statement setting out how Her Majesty’s Government proposes to proceed, and
- (b) make arrangements for—
 - i. a motion in neutral terms, to the effect that the House of Commons has considered the matter of the statement mentioned in paragraph (a), to be moved in that House by a Minister of the Crown within the period of five Commons sitting days beginning with the end of 21 January 2019, and
 - ii. a motion for the House of Lords to take note of the statement mentioned in paragraph (a) to be moved in that House by a Minister of the Crown within the period of five Lords sitting days beginning with the end of 21 January 2019.

(12) A statement under subsection (11)(a) must be made in writing and be published in such manner as the Minister making it considers appropriate.

(13) For the purposes of this section—

- (a) a statement made under subsection (4), (8)(a) or (11)(a) may be combined with a statement made under another of those provisions,
- (b) a motion falling within subsection (6)(a), (8)(b)(i) or (11)(b)(i) may be combined into a single motion with another motion falling within another of those provisions, and
- (c) a motion falling within subsection (6)(b), (8)(b)(ii) or (11)(b)(ii) may be combined into a single motion with another motion falling within another of those provisions.

(14) This section does not affect the operation of Part 2 of the Constitutional Reform and Governance Act 2010 (ratification of treaties) in relation to the withdrawal agreement.

(15) In subsection (1) “framework for the future relationship” means the document or documents identified, by the statement that political agreement has been reached, as reflecting the agreement in principle on the substance of the framework for the future relationship between the EU and the United Kingdom after withdrawal.

(16) In this section—

“Commons sitting day” means a day on which the House of Commons is sitting (and a day is only a day on which the House of Commons is sitting if the House begins to sit on that day);

“Lords sitting day” means a day on which the House of Lords is sitting (and a day is only a day on which the House of Lords is sitting if the House begins to sit on that day);

“negotiated withdrawal agreement” means the draft of the withdrawal agreement identified by the statement that political agreement has been reached;

“ratified”, in relation to the withdrawal agreement, has the same meaning as it does for the purposes of Part 2 of the Constitutional Reform and Governance Act 2010 in relation to a treaty (see section 25 of that Act);

“statement that political agreement has been reached” means a statement made in writing by a Minister of the Crown which—

- (a) states that, in the Minister’s opinion, an agreement in principle has been reached in negotiations under Article 50(2) of the Treaty on European Union on the substance of—
 - i. the arrangements for the United Kingdom’s withdrawal from the EU, and
 - ii. the framework for the future relationship between the EU and the United Kingdom after withdrawal,
- (b) identifies a draft of the withdrawal agreement which, in the Minister’s opinion, reflects the agreement in principle so far as relating to the arrangements for withdrawal, and
- (c) identifies one or more documents which, in the Minister’s opinion, reflect the agreement in principle so far as relating to the framework.

Formal minutes

Wednesday 14 November 2018

Mr Charles Walker, in the Chair

| | |
|-----------------------|----------------------|
| Bob Blackman | Helen Goodman |
| Mr Peter Bone | Mr Ranil Jayawardena |
| Dan Carden | Sir Edward Leigh |
| Bambos Charalambous | David Linden |
| Sir Christopher Chope | Melanie Onn |
| Nic Dakin | Nick Smith |
| Chris Elmore | Alison Thewliss |
| Sir David Evennett | Mr William Wragg |

Draft Report (*Motions under section 13(1) of the European Union (Withdrawal) Act 2018*), proposed by the Chairman, brought up and read.

Ordered, that the Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 38 agreed to.

Paragraph 39 read, amended and agreed to.

Paragraphs 40 to 51 agreed to.

Paragraph 52 brought up and read, as follows:

“We have set out the competing views of the significance of the section 13 decision before the House, and we have outlined options for the procedures which could be followed in arriving at that decision. We make no recommendation as to which option the House should apply to its decision on any motion proposed under section 13(1) of the European Union (Withdrawal) Act 2018. That will be a matter of such moment that it should be for the House itself to decide. We nevertheless have a number of observations to make.”

Amendment proposed, in line 3, to leave out from “decision” to end and add “We recommend that, in accordance with the normal practice of the House, amendments to the motion proposed under section 13(1) of the European Union (Withdrawal) Act 2018 are taken first. Ultimately, of course, the House should be able to decide for itself given that these matters are of such moment.”—(*Sir Edward Leigh*.)

Question put, that the amendment be made.

The Committee divided.

| | |
|-----------------------|----------------------|
| Ayes, 10 | Noes, 4 |
| Bambos Charalambous | Bob Blackman |
| Dan Carden | Sir David Evennett |
| Sir Christopher Chope | Mr Ranil Jayawardena |
| Nic Dakin | Mr William Wragg |
| Chris Elmore | |
| Helen Goodman | |
| Sir Edward Leigh | |
| David Linden | |
| Melanie Onn | |
| Nick Smith | |

Question accordingly agreed to.

Paragraph 52, as amended, divided and agreed to (now paragraphs 52 and 53).

Paragraphs 54 to 64 agreed to.

Summary agreed to.

Ordered, That the text of section 13 of the European Union (Withdrawal) Act 2018 be appended to the Report.

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

The Committee divided.

| | |
|-----------------------|----------------------|
| Ayes, 10 | Noes, 4 |
| Bambos Charalambous | Bob Blackman |
| Dan Carden | Sir David Evennett |
| Sir Christopher Chope | Mr Ranil Jayawardena |
| Nic Dakin | Mr William Wragg |
| Chris Elmore | |
| Helen Goodman | |
| Sir Edward Leigh | |
| David Linden | |
| Melanie Onn | |
| Nick Smith | |

Question accordingly agreed to.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, that the Chair do make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134

[Adjourned till Wednesday 28 November at 2.30 pm.]

Witnesses

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

Wednesday 24 October 2018

| | |
|------------------------------------|------------------------|
| Rt Hon Dominic Grieve QC MP | Q1–20 |
| Rt Hon Sir Oliver Letwin MP | Q21–34 |
| Mr Chris Leslie MP | Q35–48 |

Wednesday 31 October 2018

| | |
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| Rt Hon Hilary Benn MP , Chair, Select Committee on Exiting the European Union | Q49–90 |
| Lord Hennessy of Nympsfield | Q91–109 |

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

MUS numbers are generated by the evidence processing system and so may not be complete.

- 1 Bruce Nixon Associates ([MUS0005](#))
- 2 Clerk of the House of Commons ([MUS0010](#))
- 3 Clerk of the House of Commons (supplementary) ([MUS0017](#))
- 4 Department for Exiting the European Union ([MUS0001](#))
- 5 Hansard Society ([MUS0009](#))
- 6 Mr Rhodri Thompson QC ([MUS0015](#))
- 7 Mr Tristram Llewellyn Jones ([MUS0004](#))
- 8 Professor Gavin Phillipson ([MUS0013](#))
- 9 Public Law Project ([MUS0008](#))
- 10 Rt Hon Dominic Grieve QC MP ([MUS0011](#))
- 11 Rt Hon Hilary Benn MP ([MUS0012](#))
- 12 Rt Hon Hilary Benn MP (supplementary) ([MUS0016](#))
- 13 Rt Hon Keir Starmer QC MP ([MUS0006](#))
- 14 Rt Hon Sir Oliver Letwin MP ([MUS0003](#))
- 15 SNP Westminster Group ([MUS0014](#))
- 16 Stephen Lawrence ([MUS0002](#))
- 17 The Bingham Centre for the Rule of Law and The UK in a Changing Europe ([MUS0007](#))

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 | Scrutiny of delegated legislation under the European Union (Withdrawal) Bill: interim report | HC 386 |
| Second Report | Written Parliamentary questions: progress report for Session 2016–17, monitoring in the 2017 Parliament, and electronic tabling | HC 661 |
| Third Report | Debates on Estimates days: piloting new arrangements | HC 739 |
| Fourth Report | Term limits for select committee chairs in the 2017 Parliament | HC 816 |
| Fifth Report | Proxy voting and parental absence | HC 825 |
| Sixth Report | Scrutiny of delegated legislation under the European Union (Withdrawal) Act 2018 | HC 1395 |
| Seventh Report | Time limits on speeches in the Chamber | HC 1157 |
| First Special Report | Review of Estimates memoranda by the House of Commons Scrutiny Unit: response to the Committee's Fifth Report of Session 2016–17 | HC 1156 |