

The House of Commons and the Brexit Endgame: what can the Commons achieve before exit day?

This was originally published in the UK in a [Changing Europe blog](#) on 23 November 2018, republished here with kind permission.

Amid all the noise around leadership challenges and a People's Vote, it is easy to forget that the role of the House of Commons in the Brexit Endgame is focused on two core tasks:

- Approving the Withdrawal Agreement and the Framework on the Future Relationship (the meaningful vote); and
- Turning the Withdrawal Agreement into domestic law through the EU (Withdrawal Agreement) Bill.

If the Commons refuses to do either, then other options could come into play. However, it is worth focusing on what the Commons can achieve within the parameters of the forthcoming parliamentary processes.

Beyond the more extreme options, there are essentially three different things that it could seek to achieve through the approval and implementing processes:

- First, gain more rights for Parliament over the negotiations on the Future Relationship;
- Second, make substantive changes to the Government's policy on the Future Relationship; and
- Third, change the way in which the Withdrawal Agreement is implemented in domestic law.

Effective parliamentary scrutiny often results in a negotiated compromise between the Government and backbench MPs. Both the approval and implementation processes will offer an opportunity for parliamentarians to use their considerable leverage to secure changes that are compatible with approving the deal.

MPs can use amendments in both the context of the meaningful vote and the EU (Withdrawal Agreement) Bill to attempt to craft a third way. The possibility of such a compromise should not be overlooked - it represents an important alternative narrative to the dominant one that the Commons is facing a binary choice.

More rights for Parliament

The Brexit process is supposed to result in more powers for Parliament. However, the UK constitution does not grant Parliament, or the House of Commons, much in the way of powers to supervise the treaty-making process.

Two of the major Commons rebellions in the Brexit process so far have focused on granting the Commons specific rights over key elements of the Article 50 process.

Both the meaningful vote and the EU (Withdrawal Agreement) Bill could be used to secure rights for Parliament over the forthcoming negotiations on the treaty (or treaties) on the Future Relationship.

The most obvious request would be for a right to veto this treaty with a second meaningful vote so that Parliament has the same basic right as the European Parliament.

The Government has confirmed that Parliament will be able to scrutinise the legislation used to implement the Future Relationship (and existing legislation grants the Commons some powers to delay ratification), but crucially has not confirmed whether Parliament would be able to vote on the treaty negotiated after exit day before it is approved by the European Parliament.

There are further rights, including some derived from those held by the European Parliament, that Parliament could seek:

- The right to scrutinise the Government's negotiation guidelines before the negotiations begin, or at different stages during the negotiations;
- Access to particular negotiating documents;
- A general right to be informed at all stages of the process.

Changes to the Future Relationship

In practice, the Withdrawal Agreement cannot be directly amended by the House of Commons. The same is true of the Framework on the Future Relationship.

However, the crucial difference is that because the latter is a political agreement rather than a treaty with legal obligations, it remains possible for the Commons to seek to change the Government's approach to the Future Relationship, which will be negotiated after exit day.

One of the defining features of the meaningful vote is that it represents the end of one set of treaty negotiations (on the Withdrawal Agreement) and the beginning of another process (on the Future Relationship).

This means that it should be possible for the Commons to formally approve the Framework on the Future Relationship but at the same time seek to influence how the Government approaches the formal negotiations that are yet to begin ([Scenario 6 outlined by Craig and Phillipson on UKCLA](#)).

The EU (Withdrawal Agreement) Bill

The EU (Withdrawal Agreement) Bill must be approved by both the Commons and the Lords before the Withdrawal Agreement can be ratified.

As with any other Bill, all of its provisions can be amended. MPs can use the scrutiny of the EU (Withdrawal Agreement) Bill to achieve both of the potential aims outlined so far (more rights for Parliament and changes to the Future Relationship).

However, the Bill can also be used by the Commons to do something else: change the way in which the Withdrawal Agreement is implemented in domestic law.

Any of the provisions in the Withdrawal Agreement that are designed to create domestic legal rights and obligations will need to be given domestic legal effect through the EU (Withdrawal Agreement) Bill. The most controversial element of the Treaty, the Protocol on Ireland/Northern Ireland, provides a good example.

MPs could seek to alter how the Protocol is implemented in domestic law, or perhaps the role that Parliament plays in the way it operates, by amending the EU (Withdrawal Agreement) Bill.

As long as the changes proposed are compatible with the legal rights and obligations in the Withdrawal Agreement itself, the Commons (and the Lords) could seek to amend the legislative means through which they are to be implemented without jeopardising the ratification process.

The relationship between the Withdrawal Agreement and the EU (Withdrawal Agreement) Bill

In a sense, it will not be possible to evaluate how the Withdrawal Agreement will affect the UK constitution until the text of the EU (Withdrawal Agreement) Bill is published.

For this reason, the [Bingham Centre](#) has argued that the Bill should be published alongside the final version of the Withdrawal Agreement ahead of the meaningful vote so the two can be assessed together.

The Government has committed to publishing a legal analysis of the Withdrawal Agreement to inform the debate, and it would seem logical to supplement and support that analysis with a draft of the implementing legislation.

A possible additional benefit of publishing both alongside each other is that the Government could use the EU (Withdrawal Agreement) Bill as a means of offering concessions during the debate on the meaningful vote.

In practice, the ability to offer legal guarantees for any concessions offered could be a useful way for getting the Withdrawal Agreement over the line.

URL: <https://binghamcentre.biicl.org/comments/17/the-house-of-commons-and-the-brexitexit-endgame-what-can-the-commons-achieve-before-exit-day>