

# The House of Commons' Last Chance at Taking Back Control?

---

On Wednesday 27 February, MPs will have another opportunity to debate an amendable motion on the Government's approach to Brexit. The debate on Wednesday is likely to focus on the plan put forward by Yvette Cooper MP (Labour) and Oliver Letwin MP (Conservative). They want MPs to have a legally binding say on whether the Prime Minister seeks an extension to Article 50's two-year negotiating period. An amendment on Wednesday (if passed) would make time for legislation to achieve this. This post analyses some of the constitutional implications of the Cooper-Letwin plan.

## Third-time lucky?

On 29 January, the Commons rejected two amendments that granted MPs more of a say over the Brexit timetable. Instead MPs approved two amendments: the Spellman amendment, which rejected no deal but did not take any practical steps to prevent it; and the Brady amendment, which stated that the deal would be approved if changes were made to the backstop. On 14 February, the Commons then rejected a further Government motion on its approach to Brexit (by 303 to 258). Neither of these motions had any legal effect.

The basic logic of the Cooper-Letwin plan is that legislation will be needed for the Commons to be guaranteed an opportunity to influence the Brexit timetable. Unless Parliament passes legislation, it cannot compel the Government to ask for an extension to Article 50. Amendable motions carry only political force. However, in the UK it is unprecedented in modern times for MPs to pass legislation without Government support. As a result the Cooper-Letwin plan has provoked a debate over whether it is constitutionally appropriate for MPs to upend established constitutional practices at this crucial moment in the Brexit process.

## How would the Cooper-Letwin plan work?

The Cooper-Letwin plan has three main steps:

- **Step 1:** On 27 February, MPs would need to approve an amendment to the Government's motion on its Brexit plan. This would secure one day of the Commons timetable where the rule giving Government control of the Commons' agenda (Standing Order 14(1)) would not apply.
- **Step 2:** The day secured by Step 1 would be used to debate a Private Member's Bill, the EU (Withdrawal) (No. 4) Bill.
- **Step 3:** If the EU (Withdrawal) (No. 4) Bill passed the Commons and the Lords and became law, then the provisions in the Bill would create a deadline by which the Government had to get the deal through the Commons: 13 March. If the deal did not pass by the 13 March deadline then the Government would be under a legal obligation to bring forward one of two motions in the Commons: either a motion to approve leaving the EU without a deal; or a motion to request an extension to Article 50. These motions would be put to the Commons the day after the deadline, on 14 March.

If the Government opted for the first option (to bring forward the no deal motion) and this was rejected, it would then be under an obligation to bring forward the second option (the motion to extend Article 50). The Government's motion on an extension would

have to specify the date of the proposed extension, and crucially, MPs would be able to amend this proposed date. If the Commons approved the Government's motion on a proposed extension, the Government would then be under a legal obligation to seek an extension from the EU to the date specified in the motion (for a more a detailed and comprehensive analysis of the EU (Withdrawal) (No. 4) Bill - [the Commons Library has produced an excellent briefing paper](#) ).

## **The case for Cooper-Letwin**

The basic constitutional logic behind the Cooper-Letwin plan is that if the Government's deal is rejected by MPs - or if the deal is not presented for approval - then there is no legal guarantee that MPs would be able to take steps to prevent the UK leaving the EU without a deal. In political reality, the Government would be expected in either scenario to provide the Commons with the chance to consider and vote on the Government's approach to Brexit. However, without a specific plan which legally constrains the Government, the Government would be able to decide how and when the Commons could have its say.

The Government has already demonstrated that it is willing to use its control of the Commons' timetable to limit MPs' ability to influence the Brexit process. On 10 December 2018, the Government decided to delay the first meaningful vote on the deal for a month at the last minute. The Commons' motions on 29 January and 14 February also illustrated the limitations of free-standing motions with no legal effect in the context of a process of constitutional change.

A key strength of the Cooper-Letwin plan is that it specifies the role that MPs should play in relation to an extension of Article 50 if the deal isn't approved by 13 March. At a time of constitutional instability, cross-party plans such as this one have particular value in putting forward a workable framework of rules designed to provide certainty.

## **The case against Cooper-Letwin**

A key part of the case against the Cooper-Letwin plan is that it is unlikely to work without a degree of Government support. The Government is finding it difficult to get its own Brexit legislation through Parliament before exit day. This makes it hard to see how the proposed Private Members Bill (the EU (Withdrawal) (No. 4) Bill) could get through the Commons and the Lords in time to take effect. This fact undermines the ability of the Cooper-Letwin plan to offer a degree of certainty over the role of Commons in the context of an extension to Article 50.

Even if it were possible, it is also arguable that passing legislation of this significance without Government support would set a dangerous constitutional precedent. In the UK, the Government of the day controls the legislative agenda and this underpins a core element of the UK's democratic system: the Government's ability to deliver on the commitments made to the electorate through its manifesto. If the EU (Withdrawal) (No. 4) Bill were to be enacted without Government support, this could undermine the principle that the Government of the day has right to control the legislative programme.

## **Conclusion**

The opportunity to approve or reject the Cooper-Letwin on Wednesday represents the most important Brexit decision that the Commons has taken since the deal was rejected on 15 January. Much of the debate is likely to focus on whether the Cooper-Letwin plan is deliverable in practical terms.

Ultimately, the case for approving the Cooper-Letwin plan is a question of constitutional principle. Supporting the plan sends a clear message to the Government: that the democratically-elected legislature supports a concrete set of arrangements to enable the Commons to request for an extension to Article 50 to be sought from the EU. If it is passed, it will be for Government to respond to the Commons' verdict. If it is rejected, the Commons' will be placing its faith in established constitutional practices and

demonstrating its trust in the Government's ability to deliver. The Government is likely to offer assurances to MPs to persuade them not to back the Cooper-Letwin plan, but this may not be enough. To gain the trust required to avoid defeat, the Government may need to do more than promise more amendable motions.

*This post was originally published in [Verfassungsblog](#) on 26 February 2019.*

URL: <https://binghamcentre.biicl.org/comments/5/the-house-of-commons-last-chance-at-taking-back-control>