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Brexit votes explained

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Highlights

- MPs have exerted most influence by winning concessions on procedure, such as on the terms of the meaningful vote, rather than through defeats on the floor of the Commons.
- If an extension of Article 50 is agreed, the choice facing the Commons will remain the same: whether or not approve the deal in more or less its current form.
- There are a number of concessions the Government could offer to help get the Withdrawal Agreement approved:
 - Hold indicative votes on the future relationship
 - Offer MPs a veto over the treaty on the future relationship
 - Give MPs a veto over the negotiating mandate for the future relationship
 - Commit to a general election once the UK has left the EU
 - Guarantee a referendum on the Withdrawal Agreement
 - Promise a super-majority lock on the approach to the future relationship
 - Ensure MPs have a veto over any extension of the transition period
- The Government may want to try and fast-track the Withdrawal Agreement Bill to complete the ratification process as quickly as possible. MPs will have a decisive say over whether or not this happens when they vote on the programme motion setting out the parliamentary timetable for the Bill.

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The Brexit endgame has been shaped by MPs extracting concessions from the Government. At a number of crucial junctures in the Commons, MPs have put forward demands, often through amendments, and the Government has responded with its own compromises in order to avoid defeat. This report maps out the opportunities that MPs could have in the next stage of votes on Brexit— currently scheduled for 12-14 March — and beyond to extract further concessions from the Government.

Ahead of the first meaningful vote on Theresa May’s Brexit deal, on 15 January, there was little scope for negotiation between MPs and the Government because it was clear that the deal would be rejected by a significant margin. This indeed turned out to be the case when the deal was rejected by a thumping margin of 230 votes. But this is not how the Commons normally works. The Government controls the Commons timetable and therefore does not usually hold votes that it knows it will lose, especially by such a large margin.

Between now and exit day, there will be a number of Commons votes that are much closer. These will provide opportunities for MPs and the Government to negotiate over potential concessions to break the deadlock.

What have we learnt from the Brexit process so far?

At key points so far in the Brexit endgame, MPs have put forward several demands that have gained momentum in the Commons and prompted the Government to change its position and offer concessions. These offer some insight into what might happen in the negotiations to come.

Concessions secured by MPs without a Government defeat

Lead backbencher	What the MP asked for	Government concession	Context
Dominic Grieve (20 June 2018)	A legally binding meaningful vote and a role for the Commons if and when the deal was rejected	The Government put forward what became section 13 of the EU (Withdrawal) Act, which provides the legal framework for the meaningful vote process and provided for a post-rejection role for the Commons	It took place during ping-pong—the final stage parliamentary stage in the legislative process— of the EU (Withdrawal) Bill
Graham Brady (29 January 2019)	A change to the Withdrawal Agreement that ‘requires the Northern Ireland backstop to be replaced with alternative arrangements’.	The Government supported the amendment and then sought to negotiate binding changes to the backstop with the EU.	Vote on a motion which was required by Section 13 of the EU (Withdrawal) Act after the rejection of the deal.

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Yvette Cooper (27 February 2019)	A bill to enable the Commons to vote on no deal or an extension to Article 50 if the deal was not passed by 13 March.	The Government accepted some elements of the bill—to hold votes on no deal and an extension if the Brexit deal was rejected a second time—and supported an amendment tabled by Cooper to a Government motion.	Vote on a free-standing Government motion on Brexit.
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Government defeats in the Commons have also played an important role in the Brexit endgame. The most significant was the rejection of the deal on 15 January, by 418 votes to 218. However, in the context of the Brexit process, the exercise of a veto has limitations. The Commons can stop a deal being ratified, but MPs cannot use the veto shape the content of either the Withdrawal Agreement or the future relationship. None of the amendments put forward ahead of the first meaningful vote had any significant impact.

However, a number of other Government defeats in the Commons on amendments put forward by backbench MPs have had a significant impact, albeit that they resulted only in relatively specific procedural changes.

Changes secured by MPs via Government defeats on amendments

Lead backbencher	What the MP asked for	Context
Dominic Grieve (13 December 2017)	A limitation on how the Government could use a delegated power to implement the Withdrawal Agreement.	Amendment at the Committee stage of the EU (Withdrawal) Bill.
Dominic Grieve (4 December 2018)	Assurance that all of the Government's Brexit motions under section 13 of the EU (Withdrawal) Act 2018 could be amended by MPs.	A vote on the Business of the House Motion that set the rules for the debate on the first meaningful vote.
Dominic Grieve (9 January 2019)	Assurance that the Government had to respond within three days to the Commons' rejection of the Brexit deal (rather than the 21 days set out in section 13 of the EU (Withdrawal) Act).	A vote on an order to amend the Business of the House Motion that set the rules for the debate on the first meaningful vote.

Three lessons can be drawn from all this.

- Concessions won by MPs have had greater impact than Government defeats.
- Most of these successes have related to procedure.
- All have been focused on the Withdrawal Agreement rather than the future relationship.

What does this mean for the forthcoming votes in the Commons?

MPs have shown that they can force the Government to enhance the role of the Commons in the Brexit process. However, the concessions won in January and February have shown that such procedural manoeuvres will not necessarily offer a substantive breakthrough in terms of

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either approving the deal or avoiding no deal. Non-legally binding Commons motions, such as the defeat of the Government's motion on its negotiating strategy on 14 February, have had limited effect in terms of moving the Brexit process forward.

It is unclear whether it will be possible for an MP, or a group of MPs, to put forward a substantive, rather than procedural, proposal on Brexit that could gather sufficient support to break the deadlock. Although the Brady amendment showed that a Commons majority could be achieved for a substantive change to the deal, it is not clear whether this is possible with a change that might be deliverable via negotiations with the EU.

A compromise on the future relationship be brokered in the Commons?

A proposal seeking a permanent customs union and/or a closer relationship to the single market has long been touted as providing a possible solution to the deadlock. However, this would rely upon the Government to deliver such a compromise. And it could only be legally delivered after exit day.

The transition period, set out in the Withdrawal Agreement, is designed to allow time to negotiate and implement the future relationship over a period up to 31 December 2022 at the latest. Under the Fixed-term Parliaments Act 2011, the next general election must be held by 23 June 2022, and many expect it to occur before then.

As a result, discussions of guaranteeing a different approach to the future relationship are, of necessity, partly about procedure rather than merely changing the text of the Political Declaration.

At what points in the process will MPs be able to influence the government?

The influence of MPs equates to the amount of leverage they have. The chart below maps the process to come, and highlights points in the process where MPs will be able to exert influence.

Several factors impact on this influence.

Is a vote binding?

The first factor is whether a vote is binding. This has both a legal and political aspect: only legislation—or motions provided for in legislation—passed by MPs can bind the government. However, politically, governments can decide to treat other motions of the House as binding, as is the case with the scheduled votes on no deal and an Article 50 extension. In general, MPs have more influence when votes are legally binding because the government knows it will be forced to enact the outcome. Non-binding motions can also carry significant weight because the Commons can ultimately remove the Government from office if it ignores them.

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Is a vote decisive?

In the context of Brexit, this is affected by the timing of a vote in relation to exit day. The first meaningful vote was understood not to be decisive because it was known that the Government could make a further attempt at passing an approval motion on the deal before exit day. By contrast, if the Government brought forward a vote on the deal just before exit day, and there was no opportunity for an extension, this would make the vote on the deal more decisive.

Decisiveness is also affected by the procedural rules. For example, in contrast with the vote on the approval motion, when the Commons votes on second reading of the EU (Withdrawal Agreement) Bill MPs will know that if it is rejected the Bill cannot be reintroduced in the current parliamentary session. To reconsider it, the session would have to be brought to a close and Parliament reconvened. This will make this vote more decisive than the meaningful vote itself. The more decisive the vote, the more leverage MPs will have.

Is a vote close?

The third aspect is whether the result of a vote is expected to be close. Any vote where a number of MPs could plausibly swing the result is one in which MPs—from all sides of the House—have sizeable influence.

Is a vote procedural or substantive?

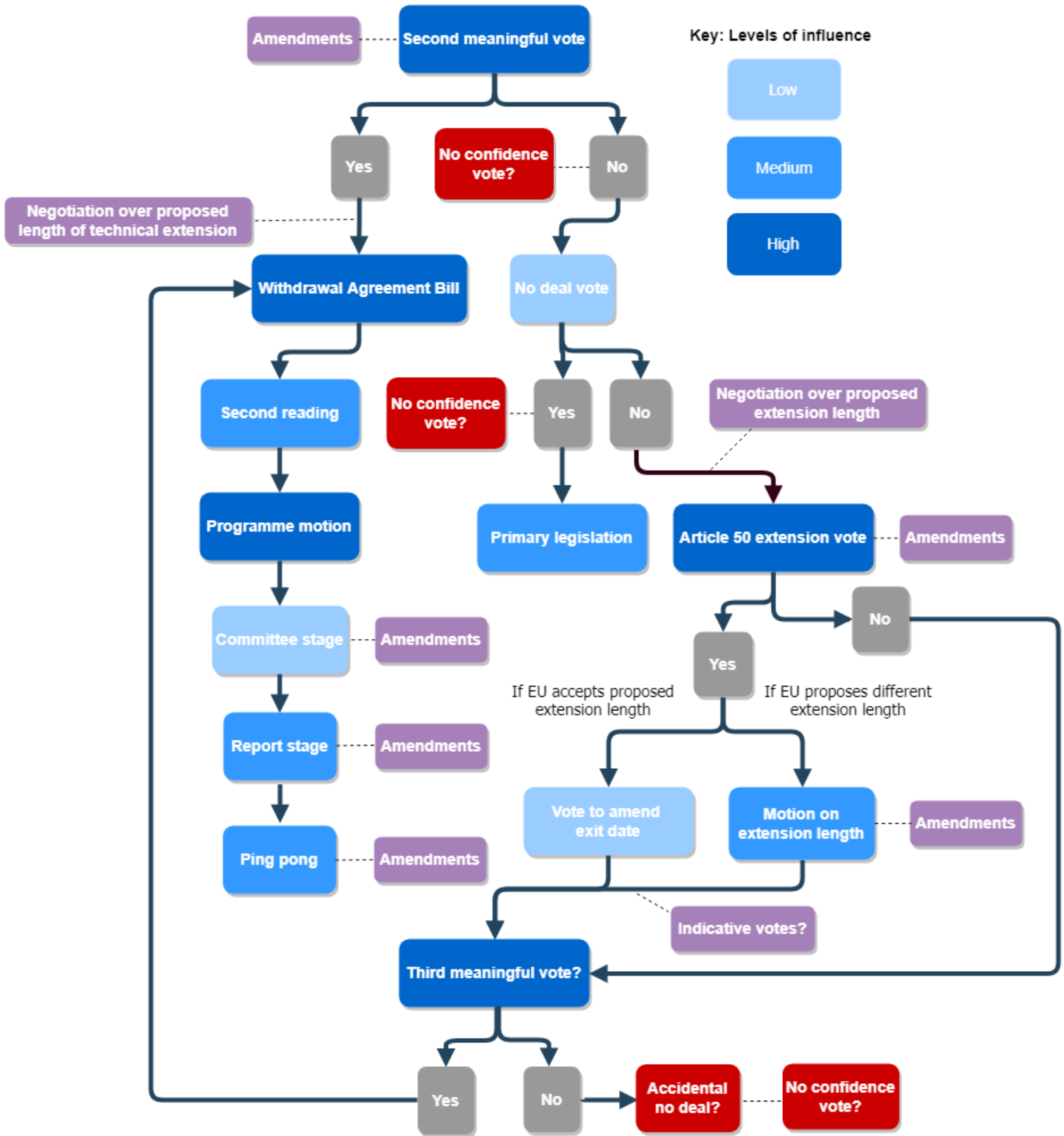
Finally, whether a vote is on a procedural or substantive matter also affects MPs' influence. Because MPs are the ultimate authority when it comes to procedures in the House of Commons, they have much more influence in determining what issues are considered by the House and how than in determining the content of what is being voted on.

Where MPs have had most success up to now in the Brexit endgame is in inserting procedural requirements—most notably the requirement for a meaningful vote—rather than changing the content of the Withdrawal Agreement.

Such procedural votes can of course have a major substantive impact. Even if the meaningful vote is approved, only half of the ratification procedure for the Withdrawal Agreement will have been completed. The Withdrawal Agreement Bill must enter into law for the deal to be ratified. Therefore, if the EU (Withdrawal Agreement) Bill passes its second reading, the Commons will be asked to approve a 'programme motion' to determine the timetable for its stages in the Commons. This is likely to be controversial if the Government proposes a fast-track timetable. Because of the Article 50 deadline, if the programme motion were to be defeated, this could stop the legislation being enacted before exit day, which is necessary to avoid a no deal exit. MPs may, therefore, see this as a means to force an extension—or even further extension—on the Government if and when the legislation is considered.

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MPs' influence in the Brexit endgame



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Three takeaways

1) If MPs approve the Withdrawal Agreement, they still have major influence

There will be myriad opportunities for MPs to amend and disrupt the Withdrawal Agreement Bill. During the passage of the European Communities Act 1972—the equivalent legislation when the UK joined the European Economic Community—the government faced [105 divisions](#), all of which it won, but some by just four or five votes.

One of the crucial points in the process of completing this Bill will be the programme motion, which sets out the timetable for how the Bill progresses through the Commons. This will be put before the Commons following the Bill's second reading. If the Government aims to fast-track the legislation in order to complete ratification as quickly as possible—to meet either the current Article 50 deadline or an extended deadline—this is the point at which it will aim to do so.

However, MPs will be able to amend this motion and prevent fast-tracking. It is not necessarily the case that MPs will divide the same way on second reading and on the programme motion. For example, MPs approved the second reading on the EU (Withdrawal) Bill by 326 to 290, but only approved the programme motion by 318 to 301 on 11 September 2017.

During the committee and report stages in the Commons, MPs will be able to propose amendments to the Bill that could, if turned into law, result in the UK being in breach of its obligations under the Withdrawal Agreement. Votes on any such amendments will, because of their potential legal effect, give MPs considerable leverage.

Finally, the House of Lords also has to play ball. Although the Lords does not have the ability to force changes to legislation, it can slow the process down. The Lords can also propose amendments which are better able to gain cross-party support in the Commons because they are not sponsored by either front bench. Therefore, although the ordinary legislative process for the Withdrawal Agreement Bill may be more predictable in terms of its procedures, it will be far from a merely technical exercise. It could throw up all sorts of points of conflict between Parliament and the Government.

2) Whether MPs approve an extension or not, the choice will most likely come back to the deal or no deal

When it comes to the vote on whether to request an extension of Article 50, currently scheduled for 14 March, the government has made clear the vote will be on whether to approve a 'short extension'. Of course, MPs could try to amend this motion to ensure that the Government requests a longer extension from the EU. However, without a decisive change of circumstances in the UK, it seems most likely that the UK would request and the EU would offer a short extension of up to three months.

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In this scenario, all that MPs would achieve is a temporary reprieve from the threat of no deal rather than making real progress in reaching a decisive conclusion. Moreover, the government could simply run down the clock of the extension period, presenting MPs with broadly the same deal, which they had previously twice rejected, a few months later.

If MPs rejected an extension of Article 50, which seems unlikely, there would remain just two weeks on the Article 50 clock. That would mean, most likely, in order to avoid no deal MPs would have to quickly vote on and pass the Withdrawal Agreement at the third time of asking, along with the Withdrawal Agreement Bill.

Thus, whatever MPs decide to do on the extension vote—even though they may be able to impose their will in terms of the length of extra time requested—they will most likely face broadly the same choice in May or June as they did in March, and indeed December.

3) If MPs keep saying no, we could end up with no deal

Since Parliament approved the triggering of Article 50 in 2017, a no deal has remained a possibility by virtue of it being the default outcome. Therefore, it follows that if MPs keep rejecting the Withdrawal Agreement while failing to coalesce around any alternative approach, no deal could occur by accident if not by design.

Unless MPs can once again insert a mechanism to force the Government to request an extension—or plausibly threaten a no confidence vote to bring it down—rejecting the Brexit deal a third time could be incredibly risky. We could therefore finally reach the decisive moment in the Brexit process where MPs have to face the prospect of supporting the Withdrawal Agreement or facing the consequences of, and taking partial responsibility for, no deal.

Ways for MPs to break the deadlock

Breaking the Brexit deadlock will require a compromise to be struck. For that to happen, the Government is likely to have to yield concessions. However, MPs will also have to determine the price for their support.

There are broadly two types of concession that could be won: those that can be delivered before exit day and those that can only be delivered after exit day.

Pre-exit day proposals

A long extension to the Article 50 process

One way of easing the deadlock in Parliament would be for MPs to try to force the Government to request a longer extension to Article 50 than is currently being suggested by Theresa May.

MPs have so far been reluctant to pursue a longer extension. Yvette Cooper's first attempt to guarantee a process for extension failed because her draft bill suggested requesting an extra

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nine months—which many MPs worried would be seen as a first step in overturning the referendum result.

However, those MPs who are pursuing alternatives to the Government's Brexit deal could see calling for a longer extension as a useful negotiating strategy. The Government would have to negotiate MPs down from a longer extension to a shorter one and, in the process, MPs could demand concessions for acquiescing.

How might this happen?

- If the government's deal is rejected again, this defeat will lead to an intense period of negotiations about the length of any proposed extension.
- Following any vote to rule out no deal, MPs will vote on the possibility of extension and, most likely, on amendments on its length. They will be able to amend this motion to suggest a longer or shorter extension as an alternative to the government's preferred length.

Indicative votes on the future relationship

At multiple points in the debate around the Government's deal in the House of Commons, backbench MPs—including Dominic Grieve, Hilary Benn and Ken Clarke—have tabled amendments calling for indicative votes as a way of substantiating which future route on Brexit has a majority in Parliament.

Given that many MPs are concerned about details around the future relationship, there are good reasons to think that these indicative votes should focus on whether there is an interpretation of ambitions on the future relationship that can command majority support in the House of Commons.

If it could be demonstrated—perhaps through indicative votes—that there was a majority for a particular form of future relationship, this could be significant in sending a message to the Government and the EU about what the House of Commons wants. There is no guarantee, of course, as we saw with the Brady amendment, that this will be enough to convince the EU. However, for MPs to be able to vote on different options for the future relationship, the Government would most likely have to facilitate and timetable that process in the Commons. The problem is that there is no established procedure for negotiating this sort of compromise in the Commons.

If the Government's deal is defeated by a manageable margin, indicative votes could become an attractive option. After all, it is certainly possible that no alternative to the Government's proposed future relationship can command a sustainable majority, and indicative votes would make this clear. After all, any outline of a future relationship will have to be sustained until at least December 2020, when the negotiations on the future are currently scheduled to end, and probably longer.

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How might this happen?

- The process of indicative votes will require an extension of the Article 50 process.
- It is likely to be the result of a concession arising in the process of agreeing the terms of the length of an Article 50 extension. This is for two reasons: first, the process of agreeing an extension is a moment of high leverage for MPs and, second, indicative votes are a way of moving the process towards finding a majority solution in the House of Commons.

A referendum on the Government's negotiated deal

The strategy of the People's Vote campaign has crystallised around an acceptance of the Government's Withdrawal Agreement, subject to a ratification referendum. The Government is not likely to formally support an amendment of this type. However, advocates of a referendum hope that, in the absence of a clear majority for any alternative, and if Theresa May remains wedded to her deal following a second (or even third) failed attempt to pass it, then this could become an attractive cross-party option.

How might this happen?

- An amendment of this type is likely to be attached to both the second meaningful vote, and any potential third meaningful vote.
- There are two ways that this referendum could then be passed and the details of any public vote decided.
 - The first is through a discrete piece of primary legislation.
 - The second is through the EU Withdrawal Agreement Bill, which needs to pass into law before the Withdrawal Agreement can be formally ratified.

A super-majority lock on the future relationship

One of the key problems with any substantive changes to the Political Declaration on the future relationship is that they would not be politically binding, for two reasons. The first results from the fact that, from a UK perspective, the declaration is not a legally binding document. However vague, it can only be a statement of intent. The second arises from one of the foundations of the British constitution: one Parliament cannot bind its successor. Any terms negotiated on the future relationship with a majority in the House of Commons can always be overridden later, long before negotiations are concluded. In some senses, therefore, a 'blind Brexit'—where we are uncertain about either the end result of the negotiations or even the aims of the government negotiating it—is a fact of political life for MPs.

However, one way this problem could be partially ameliorated is through creating a type of 'super-majority' lock through legislation. This would bind any government to a mandate for negotiations with the EU agreed before we leave, requiring a larger majority—perhaps two-thirds of MPs—to change it. While this legislation could, in theory, still be undone, it would make more secure the political consensus that was reached prior to withdrawal.

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How might this happen?

- A super-majority lock on the future relationship could be legislated for through the EU Withdrawal Agreement Bill.
- It would, however, have to follow a process where the UK and the EU had reformed the Political Declaration. After all, MPs would only want to lock in any agreement that had majority support in the first place.

Post-exit day proposals

A guaranteed general election following the UK's withdrawal from the EU

One thing that could unite opponents of the prime minister both within her party and on the opposition benches is a desire to remove her from office once the UK has left the EU. Within a gridlocked Parliament, where majorities for most key decisions are on a knife-edge, should Theresa May want to pull the trigger she could get the requisite two-thirds majority for a general election at any point. There is a certain logic, therefore, to the prime minister using this majority—particularly if it looks, through a no confidence vote, that an election could be forced on her anyway—as a way of passing her negotiated deal by promising a post-exit election with Labour support.

This would not necessarily be an option popular with Conservative MPs. Another possibility is that the prime minister might promise to step down as Conservative leader following the passage of her agreement. However, both are difficult to offer at once: if the Prime Minister offers to resign as leader, she would not be in a position to offer the opposition a general election.

How might this happen?

- Theresa May could simply promise a general election at the dispatch box, with MPs passing the current Withdrawal Agreement as a quid pro quo.
- Although only a verbal commitment, MPs would have the power to remove the Government anyway should this promise not be upheld.

A guaranteed vote on shaping the negotiating mandate

The successful passage of the Government's Withdrawal Agreement would signal the end of one phase of the Brexit negotiations and the start of another. The negotiating responsibilities of UK Government departments are likely to reshuffle for the next stage of talks. The EU's mandate will also be refreshed by the European Council in light of a new European Parliament and Commission. It might make sense, therefore, that the start of a new negotiation could lead to Parliament voting through a negotiating mandate for the Government that puts some flesh on the bones of the Political Declaration as presently constituted.

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How might this happen?

- The Government could create, in the passage of the Withdrawal Agreement Bill, a legally binding commitment to hold votes after exit day, but prior to the start of the next negotiating period.
- The Government could also commit to creating a mechanism—such as a cross-party cabinet committee—within which MPs could help to shape the future relationship objectives, prior to any vote.

A Legal veto over the future relationship

One way that MPs could have a grip over the future negotiations would be if MPs could be given guarantees over their right to influence the future relationship between the UK and the EU. The UK constitution does not require that the Commons expressly approves the treaty on the future relationship itself. The details of a future vote on the final approved treaty could assuage the fears of some MPs.

How might this happen?

- The Government could add, in the passage of the Withdrawal Agreement Bill, a legally binding commitment to holding a meaningful vote prior to the ratification of the future relationship.

Vote on any extension to transition

At present, it remains unclear whether MPs will be able to legally force the Government to pull the lever which would trigger the two-year extension of the transition period contained within the Withdrawal Agreement. A guarantee on this could reassure MPs that a further cliff-edge after passing the Withdrawal Agreement was less immediate.

How might this happen?

- The government could create, in the passage of the Withdrawal Agreement Bill, a legally binding commitment to holding a vote prior to the decision in June 2020 on whether to extend the period of transition.



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