



BRIEFING PAPER

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European Union (Withdrawal) (No. 5) Bill 2017-19

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Summary

Context

Yvette Cooper presented the [European Union \(Withdrawal\) \(No. 5\) Bill](#) (No. 5 Bill) (a [Private Member's bill](#)) on Tuesday 2 April 2019.

This Bill would create a mechanism by which the House of Commons exerts greater control over the process of extending [Article 50\(3\) TEU](#)'s two-year negotiating period.

By the automatic operation of EU law, the UK leaves the EU on 12 April 2019 regardless of whether a deal has been ratified. The purpose of the Bill is to reduce the risk of the UK leaving the EU without a deal, or at least to delay that outcome beyond 12 April 2019 if that is what MPs want and the European Council is prepared to agree to it.

Previous Bills and time for debate

Three previous Bills have been presented by the same group of cross-party MPs earlier this year. The Library produced briefing papers on all three of those Bills:

- [European Union \(Withdrawal\) \(No. 2\) Bill 2017-19](#), 19/8476, 18 January 2019
- [European Union \(Withdrawal\) \(No. 3\) Bill 2017-19](#), 19/8480, 23 January 2019
- [European Union \(Withdrawal\) \(No. 4\) Bill 2017-19](#), 19/8502, 19 February 2019

None of these Bills were formally debated in the Commons.

An unsuccessful attempt was made by Yvette Cooper on Tuesday 29 January to secure time for debate for the [No. 3 Bill](#) on Tuesday 5 February. Her amendment (to a Government motion under [section 13](#) of the [EU \(Withdrawal\) Act 2018](#)) [was defeated by 321 votes to 298](#).¹

The prospect of time being made for the [No. 4 Bill](#) led to concessions being made by the Prime Minister. She agreed to hold two legally non-binding votes on "leaving without a deal" and on extension. Those debates took place on 13 and 14 March.² Acting on the resolutions eventually adopted, the PM requested an extension to no later than 30 June 2019. This led to the decision of the European Council of 22 March, which (given the failure of the House of Commons to approve the Withdrawal Agreement last week) served to extend [Article 50](#) from 29 March to 12 April 2019.³

Being a presentation [Private Member's bill](#), there are limited opportunities for this proposal to be debated (and thus to become law). This is because Government business normally takes precedence under the Standing Orders of the House of Commons.

If, however, MPs were to agree to adapt the rules of the House, time might be secured for a Second Reading and subsequent stages for this Bill in the Commons. Such an attempt is contemplated in a Business of the House motion (in the name of Oliver Letwin) for consideration on Wednesday 3 April 2019.

Even if it completed its Commons Stages, the Bill would still have to complete its passage through the Lords. It effectively has a veto power over this Bill given the proposal's time-sensitivity.

¹ [HC Deb 29 January 2019 Vol 653 cc770-774](#)

² Commons Library Insights, [Yvette Cooper's Private Member's Bill explained](#), 19 February 2019 and [The Brexit timetable: One promise. Two weeks. Three key votes](#), 1 March 2019.

³ [European Council Decision taken in agreement with the United Kingdom, extending the period under Article 50\(3\)TEU](#), EUCO XT 20006/19, 22 March 2019

What would the No. 5 Bill do?

The [No. 5 Bill](#) would restrict the Prime Minister's discretion about whether and when to seek an extension to the two-year negotiating period under [Article 50\(3\) TEU](#).

The day after the day on which this Bill gets Royal Assent, the Prime Minister would have to table a motion. This motion must seek Commons approval for a proposal that the UK asks the European Council for an extension to [Article 50](#). The motion must set out the Prime Minister's preferred extension date.

An amendable, legally binding, motion to seek an Article 50 extension

Should the Commons approve a resolution for the Prime Minister to seek an extension to [Article 50](#), she would then be required, legally, to seek that extension. The Commons would be able, if it wished, to insist that the Prime Minister seeks an extension to a different date from the one she originally proposed.

Although resolutions of the House of Commons typically carry significant political weight, they do not normally have legally enforceable consequences.⁴ A resolution adopted under the provisions of this Bill would therefore have a different status from an ordinary resolution of the House of Commons. The Prime Minister would be in clear breach of domestic law if she simply refused to ask for the extension MPs had instructed her to seek.

A role for the Commons if the European Council proposes an alternative date

The Act also provides a further role for the Commons in the event that the European Council does not agree to the Prime Minister's request but proposes an alternative date. In those circumstances, the Prime Minister would have to seek further Commons approval before agreeing to that revised date and thereby giving effect to it in EU law.

Why does the Bill only let Parliament instruct the Prime Minister to "seek" an extension?

The two-year period under [Article 50\(3\)](#) cannot be extended unilaterally. Even if the UK "requests" an extension, it can only happen by way of a "unanimous decision" of the European Council. **Any extension, and any new date of withdrawal, would need to be agreed to by the Governments of all 27 other Member States of the EU.**

Library resources on extending Article 50

The Library has several key resources on the extension of Article 50. See, among others:

- [Extending Article 50: could Brexit be delayed?](#)⁵
- [Extending the Article 50 Period: FAQs](#);⁶
- [Extending Article 50 and European Parliament elections](#);⁷
- [EU 'exit day' is changed in UK law](#);⁸ and
- [What is "exit day"? Dispelling misconceptions about the extension of Article 50](#).⁹

⁴ Notable exceptions to this include resolutions made under the [Constitutional Reform and Governance Act 2010](#) (in relation to the ratification of treaties), the [Fixed-term Parliaments Act 2011](#) (in relation to early dissolution of a Parliament), and the [EU \(Withdrawal\) Act 2018](#) (in relation to the ratification of a withdrawal agreement). See also Public Administration and Constitutional Affairs Committee, [Status of Resolutions of the House of Commons](#), HC1587, 7 January 2019

⁵ [Extending Article 50: could Brexit be delayed?](#), 19/8496, 21 March 2019

⁶ [Extending the Article 50 Period: FAQs](#), 21 March 2019

⁷ [Extending Article 50 and European Parliament elections](#), 19 February 2019

⁸ [EU 'exit day' is changed in UK law](#), 28 March 2019

⁹ [What is "exit day"? Dispelling misconceptions about the extension of Article 50](#), 19 March 2019

1. Parliament's role in Article 50

Summary

This Bill is a response to the absence of an EU exit deal commanding the support of the House of Commons. By the automatic operation of EU law, the UK leaves the EU, by default, on 12 April 2019 at 11pm BST irrespective of whether a withdrawal agreement treaty has been ratified.

The [stated concern](#) of those advocating this Bill (and its predecessors) is their wish to avoid the outcome of the UK leaving the EU without a deal: a so-called “no-deal” exit.¹⁰

At the very least as things stand, they want to prevent it happening on 12 April 2019. However, such an objective can only be achieved (in legal terms) by:

- ratifying a deal negotiated by the UK Government;
- revoking the UK's notification and staying in the EU; or
- securing an extension to [Article 50\(3\)](#)'s two-year negotiating period.

The UK Government has repeatedly stated its policy preference for the first and against the second of these outcomes.¹¹ Having initially resisted an extension, the Government asked for and then agreed to an extension with the European Council in late March. However, it has continued its stated opposition to a long extension of Article 50 (i.e. one beyond 22 May 2019). This is because the Prime Minister opposes the holding of European Parliamentary elections in the UK in May, but the EU maintains such elections would be a precondition of a longer extension.

In practice, an extension request can only be sought if it becomes Government policy or the Government is otherwise legally compelled to ask for it. Parliament cannot seek an extension on the UK's behalf: the executive, not the legislature, conducts foreign affairs for the UK.

1.1 How Article 50 works

The legal default position is that the UK leaves the European Union (with or without a deal) on **12 April 2019 at 11pm BST**. This date represents the expiry of a two-year negotiating period provided for in [Article 50\(3\) TEU](#). Parliament authorised the Prime Minister to start this process by passing the [EU \(Notification of Withdrawal\) Act 2017](#).

This legal default can only be changed in three ways. Either:

- a ratified withdrawal agreement could specify that the UK leaves on a different date;
- the UK could unilaterally revoke its notification, ending the [Article 50](#) process and remaining indefinitely in the EU;¹² or
- the European Council and the UK Government could unanimously agree to “extend” the two-year negotiating period.

This Bill is principally concerned with the third of these three scenarios.

Three outcomes can avoid no-deal Brexit

Unless the Commons approves a deal and Parliament passes an implementing Bill, the default outcome is that UK leaves the EU **without a deal** on 12 April 2019.

This could only otherwise change if the UK **unilaterally revokes Article 50** or if it **unanimously agrees** with the European Council to **extend Article 50**.

¹⁰ BBC Andrew Marr Show, [Interview with Yvette Cooper](#), 27 January 2019

¹¹ [HC Deb 21 January 2019 Vol 653 c25](#); [HC Deb 14 February 2019 Vol 654 c1071](#)

¹² This would likely require primary legislation to avoid legal uncertainty. See Gavin Philipson and Alison Young, [Wightman: What Would Be the UK's Constitutional Requirements to Revoke Article 50?](#), *UK Constitutional Law Association*, 10 December 2018

1.2 Role of the Government in seeking an extension

As a matter of EU law, the question of whether [Article 50](#) should be extended is one for the European Council in agreement with the departing Member State. The UK is represented by HM Government in matters concerning the European Council, since foreign affairs and the negotiation of treaties fall under the Royal Prerogative.

In practice this means it is the Prime Minister who would request or agree to any extension under [Article 50](#) for the purposes of EU law.

The UK Government previously resisted calls to seek an extension of Article 50. However, following a series of non-binding Parliamentary votes on [13](#) and [14 March](#), the Prime Minister did seek, and then agreed to, a short extension. The effect of that agreed extension, and MPs' subsequent rejection of the Withdrawal Agreement last week, was to extend [Article 50](#) until 12 April from 29 March 2019.¹³

The Government has indicated its continued opposition to a long extension of [Article 50\(3\)](#). In Prime Ministers' Questions [on 20 March 2019](#) Theresa May said:

As Prime Minister I could not consider a delay further beyond 30 June. This is the point at which this House has the decision to take as to what it wants the future to be. That is what is facing this House, and that is a decision I believe we should take honouring the result of the referendum.¹⁴

1.3 No formal role for Parliament in "seeking" extension

MPs (and Peers) can already express a view about whether the UK's exit should be postponed beyond 12 April 2019 by e.g. adopting resolutions following debates, setting out a view, or even calling on the Government to take a given course of action. However, a resolution of either House does not normally have any legal effect. Whether the Government adopts the substance of the resolution as its policy is ultimately a political question.

MPs therefore have at most an indirect role in settling the question of whether the UK should seek an extension to [Article 50](#), and if so for how long. It remains a discretionary matter for the Prime Minister unless new legislation provides otherwise.

Given the Government's apparent policy against either a long extension or revocation, and the fact that the House rejected the Government's deal (or part of it) by a substantial margin on three separate occasions, the possibility of a "no-deal" exit cannot (yet) be discounted.

Role of Government in extension

HM Government represents the UK on the international stage. At the moment, it has full discretion about whether to seek an extension of Article 50(3)'s two-year negotiating period.

The Government has thus far resisted the suggestion that it should ask for an extension to Article 50.

Role of Parliament in seeking an extension

At the moment, Parliament can pass motions seeking to influence Government policy on asking for an extension to Article 50. However, these lack legal force and may be considered "non-binding" by the Government.

This Bill would provide a limited mechanism by which motions could become legally binding on the Government.

¹³ [European Council Decision taken in agreement with the United Kingdom, extending the period under Article 50\(3\)TEU](#), EUCO XT 20006/19, 22 March 2019

¹⁴ [HC Deb 20 March 2019 Vol 656 c1041](#)

Such an outcome could happen, by default, against the recently expressed preference of the House of Commons. MPs explicitly said that they “rejected” leaving without a deal on [29 January 2019](#) and again on [13 March 2019](#). Neither resolution had any direct bearing on the legal position in the absence of a deal, revocation or an extension.

1.4 Parliament’s role in giving domestic effect to an agreed extension

Although Parliament has no formal role in any **request** to extend [Article 50](#), it does have a formal role in dealing with the **consequences** of an extension having been agreed.

Parliament has already made arrangements for UK law to function in the immediate aftermath of having left the EU. The [EU \(Withdrawal\) Act 2018](#) commences significant changes to domestic law “on exit day”. This day was originally defined in legislation as 29 March 2019 at 11pm GMT.¹⁵

If the date of exit in EU law changes however, domestic law will need updated to reflect that new reality. A Minister can make regulations to change the date and/or time of “exit day” in that scenario. Those regulations have to undergo the “[affirmative procedure](#)” which means a majority of MPs and Peers must first vote in favour of the change.¹⁶

When the first extension to Article 50 was agreed by a decision of the European Council, the Government brought forward a statutory instrument to approve the consequential change in exit date in domestic law.¹⁷ This was approved by both Houses on Wednesday 27 March 2019.¹⁸ Accordingly, “exit day” is now defined as 12 April 2019.

If either House withheld its consent for regulations concerned with a further extension, and assuming the *EU (Withdrawal) Act 2018* had been fully commenced the UK would risk being unable to honour its EU law obligations between 12 April 2019 and any new exit date agreed at the EU level. For example, the [2018 Act](#) ends the jurisdiction of the Court of Justice of the European Union “on exit day”, but as a continuing Member State the UK must allow for references to be made to that court.¹⁹

Parliament’s role in changing “exit day”

The [EU \(Withdrawal\) Act 2018](#) makes sweeping changes to the UK’s constitutional arrangements “on exit day” to reflect the fact the UK has left the EU.

If Article 50 is extended, these changes must be delayed. However, “exit day” is fixed by the Act.

Ministers can change “exit day” to deal with this situation, but both Houses of Parliament must approve regulations to change the date to a later one.

If these regulations do not pass, the UK risks breaching its obligations in EU law as a continuing Member State after 12 April 2019.

¹⁵ [s. 20\(1\) EU \(Withdrawal\) Act 2018](#)

¹⁶ [s. 20\(4\) EU \(Withdrawal\) Act 2018](#)

¹⁷ [The European Union \(Withdrawal\) Act 2018 \(Exit Day\) \(Amendment\) Regulations 2019](#)

¹⁸ [HC Deb 27 March 2019 Vol 657 cc453-456](#); [HL Deb 27 March Vol 796 c1843](#); see Commons Library Insight, [EU ‘exit day’ is changed in UK law](#), 28 March 2019

¹⁹ Commons Library Insight, [What is “exit day”? Dispelling misconceptions about the extension of Article 50](#), 19 March 2019

2. How does this Bill change Parliament's role?

Summary

This Bill, following Royal Assent, would give MPs a legal mechanism to compel the Prime Minister to seek an extension beyond 12 April 2019. The day after Royal Assent is given, the Prime Minister must table a motion proposing to seek an extension to a date of her choosing. That motion will be amendable. If the motion is adopted as a resolution, the Prime Minister must seek (from the European Council) an [Article 50](#) extension to the date demanded by MPs.

This proposal does not envisage that the House of Lords would have a say in whether the Prime Minister should seek an extension to [Article 50](#). Unlike the various procedures under the [EU \(Withdrawal\) Act 2018](#), it does not even require any Lords debates to take place. This greater Parliamentary role is therefore confined to giving MPs a greater say.

The Bill itself would, however, require the consent of the House of Lords to become an Act of Parliament. Because of the nature of the subject matter and the timescale on which such a Bill would need to pass, the Lords' "power of delay" is effectively a "power of veto" over this legislation.

2.1 A formal role in "seeking" extension

This Bill proposes to give the House of Commons a role in the process of **seeking** an [Article 50](#) extension. On Royal Assent, the Government must move a motion in the House of Commons the following day. That motion must take a specific form of words and must propose to seek an extension of Article 50.

2.2 Motion to be debated

The Prime Minister must, the day following Royal Assent being given to this Bill, move a motion for debate in the House of Commons. It must take the following form:

That this House agrees for the purposes of [this section] of the European Union (Withdrawal) Act 2019 to the Prime Minister seeking an extension of the period specified in Article 50(3) of the Treaty on European Union to a period ending on [date to be set by the Prime Minister].

During any debate on the motion, MPs would be able to amend the motion to change the date from the one preferred by the Prime Minister.

What can MPs influence if this Bill passes?

If this Bill becomes law MPs will be able to insist:

- that the Prime minister seeks an extension; and
- upon how long an extension she must seek.

2.3 Consequences of adopting a resolution

If the Commons approves an extension resolution, the Prime Minister would then be under a legal obligation to seek an extension. She would have to request an extension up to the date stipulated in the final resolution, not just the one she proposed (if different).

2.4 What if the European Council says “no” or proposes an alternative date?

It is possible the European Council might reject an extension request. The date of exit then would not change. Alternatively following discussions with the UK Government – the Council may propose an alternative, mutually agreeable, date.

If an alternative date is proposed, this Bill would then require the Prime Minister to come back to the Commons and seek approval for that extension with another amendable motion in the same form as before.

2.5 Would the House of Lords have a role?

For this Bill to become law, as with any other Bill, the consent of both Houses of Parliament is required. For practical purposes, the provisions in the [Parliament Act 1911](#) (as amended) cannot be used to override the requirement for Lords consent.²⁰

Whereas the original [EU \(Withdrawal\) Act 2018](#) gave a (minor) role to the House of Lords in the Brexit process, this Bill does not propose to give the upper House any formal say or debate on whether the Prime Minister should ask for an extension to [Article 50](#).²¹

The main opportunity for the Lords to influence this process, if at all, is therefore in scrutiny of the [No. 5 Bill](#) itself, if and when it completes its consideration in the Commons.

What if the European Council says no?

An extension can only happen if the European Council unanimously agrees to it.

If it suggests a different length of extension, the Prime Minister must seek MPs approval for it.

The House of Lords

Under this proposal, the House of Lords would not have a formal say in whether the Prime Minister should seek an extension to Article 50.

²⁰ Normally the Lords only has a one-year “power of delay” over the passage of primary legislation, but the time sensitivity of this legislation means in practice it (constitutionally) has a veto over this Bill. See Commons Library Briefing Paper, [The Parliament Acts](#), SN00675, 25 February 2016

²¹ By contrast, the Lords must have the opportunity to debate any deal and consent to the *EU (Withdrawal Agreement) Bill* before the Government can ratify a Withdrawal Agreement ([s. 13\(1\)\(c-d\) Withdrawal Act](#)) and must have a debate to “take note” of any statements made in the event a deal is rejected or not reached.

3. The Bill's provisions

Summary

The structure of this Bill is as follows:

Clause 1 sets out the process by which MPs can effectively “instruct” the Prime Minister to seek an extension to [Article 50](#).

- **Subsection 1** requires the Prime Minister to move a motion for debate the day after the Bill is granted Royal Assent.
- **Subsections 2-3** set out the form of any “proposed extension approval” motion.
- **Subsections 4-5** legally require the Prime Minister to seek any extension MPs approve under a subsection 2 motion.
- **Subsections 6-7** require the Prime Minister to seek Commons approval for any counter-proposal on extension made by the European Council. If the Commons itself makes a counter-offer of a different date, the Prime Minister must again seek an extension on that basis.

Clause 2 indicates that this Bill is to be understood as a “bolt-on” to the [European Union \(Withdrawal\) Act 2018](#). Any terms or definitions should be understood to mean the same thing in both statutes. It confirms that the Act is UK-wide in its territorial extent, comes into effect immediately on enactment, and is to be known as the *European Union (Withdrawal) Act 2019* once passed.

3.1 Clause 1

Government to move a motion

Assuming (for illustrative purposes) that this Bill received Royal Assent on Monday 8 April, **subsection 1(1)** would require the Prime Minister to move a motion on Tuesday 9 April (i.e. the next day). The Prime Minister would have to seek Commons approval for asking the European Council for an [Article 50](#) extension.

An extension request approval motion

Subsection 1(2) sets out the form of words the Prime Minister must use in a motion to seek approval for a request to extend [Article 50](#). It must take the form of:

That this House agrees for the purposes of [this section] of the European Union (Withdrawal) Act 2019 to the Prime Minister seeking an extension of the period specified in Article 50(3) of the Treaty on European Union to a period ending on [...]

Prime Minister to propose a date for extension

Subsection 1(3) clarifies that the Prime Minister must choose a preferred date to be included in any extension request motion. It would replace the ellipsis in square brackets in the motion text in **subsection 1(2)**.

Consequences of an extension request resolution

If the Prime Minister's motion is approved unamended

Subsection 1(4) provides that, if the Prime Minister's extension request motion is approved without amendment, she legally must seek the extension she proposed to ask for.

Effect of an extension request approval resolution

If the Commons “approves the Prime Minister seeking an extension” to a particular date legally she would then have to seek it from the European Council.

If the Commons amend the PM's proposed extension date

Subsection 1(5) provides that, if MPs approve an amended extension request motion, the Prime Minister must seek an extension for the date they demanded, rather than the one she would have sought under the original motion.

The European Council's response

Subsection 1(6) identifies the possibility of a situation where the European Council does not agree to an extension request made by the Prime Minister, but proposes an alternative date.

Commons to be asked again about a counter-proposal

Subsection 1(7) requires any proposed alternative date to be put to the Commons the day after the Council makes that counter-proposal. The motion to be debated by MPs would take the same form as the original approval request motion under **subsection 1(2)**, but with the proposed alternative date.

If the Commons were itself to make a "counter-offer" as to an extension date to the Council's alternative proposal, the Prime Minister must (once again) seek that extension on the UK's behalf.

Parliament's role if the European Council proposes an alternative

If the European Council proposes an alternative date, the Prime Minister must move another extension request approval motion.

If the Commons approves a motion with an amended date, the Prime Minister must (again) seek an extension in line with its resolution.

3.2 Clause 2

A "codicil" to the EU (Withdrawal) Act 2018

Subsection 2(1) makes clear that this Bill should be read alongside the earlier [EU \(Withdrawal\) Act 2018](#). Key definitions would mean the same thing for the purpose of both statutes.

Commencement on enactment

Subsection 2(2) stipulates that no commencement regulations (to be made by Ministers) would be needed for the Bill following Royal Assent: it would come into effect immediately.

Territorial application

Subsection 2(3) makes clear that this Act has full UK-wide territorial extent. This is unsurprising given it concerns the UK's relationship with the EU and therefore affects all three territorial jurisdictions of the UK.

Short title

Subsection 2(4) gives the Bill the short title (on enactment) of the *European Union (Withdrawal) Act 2019*.

Commencement on enactment

This Bill will come into effect when it receives Royal Assent. Ministers have no control over whether and when its provisions apply to them.

4. Securing Parliamentary time to debate this Bill

Summary

As a presentation [Private Member's bill](#), this proposal would normally have limited prospects of getting the necessary time for debate in the House of Commons. However, it is understood that its advocates will attempt to change the rules of the House to secure time for a Second Reading, using a Business of the House Order to be debated on Wednesday 3 April.

The key standing order giving precedence to Government Business, [Standing Order No. 14\(1\)](#), has been disapplied on three previous occasions in the last fortnight:

- following an amendment to a Government “next steps” motion by Oliver Letwin [on Monday 25 March](#), the SO was disapplied for Wednesday 27 March. This enabled a first round of “indicative votes” to take place that day against the Government’s wishes;
- Letwin’s Business of the House motion [of Wednesday 27 March](#) then disapplied the SO to set aside Monday 1 April for a second round of indicative votes;
- Letwin’s Business of the House motion [of Monday 1 April](#) then set aside the SO for Wednesday 3 April for another Business of the House motion.

On all three occasions, the change to the rules of the House led only to motions (i.e. statements of opinion) of the House being debated. This proposal is therefore notable: it will be the first instance of this mechanism successfully being used to make time for debating non-Government primary legislation.

4.1 Presentation Bills

[Private Members’ bills](#) have limited opportunities for debate in the House of Commons. This is because Government business takes precedence except where otherwise explicitly provided.

The current Bill is what is known as a “Presentation” bill. Unlike a Ballot bill it is not given any priority or guarantee of a Second Reading debate.

Even more so than with Private Members’ bills generally, a Presentation bill is (normally) unlikely to complete its Commons bill stages without (at least tacit) Government support.

4.2 Precedence of Government Business

[Standing Order No. 14\(1\)](#) provides that (unless the Standing Orders specifically provide otherwise) government business has precedence at every sitting. In practice this means that it is difficult for backbenchers and the Opposition to control the agenda of the House of Commons. Although there are exceptions made for Opposition days, backbench business days and sitting-Fridays for the (limited) consideration of backbench Bills, the Government is generally able to control when these days happen.

Standing Order No. 14(1)

“Save as provided in this order, government business shall have precedence at every sitting.”

4.3 Setting aside Standing Order No. 14(1)

One way in which non-Government MPs can attempt to secure time for debate on a Private Member's Bill they perceive to be urgent is to disapply [Standing Order No. 14\(1\)](#) for a future sitting day. To start a process of this nature, however, an MP would need successfully to pass an amendment to an item of Government business.

There have been two such attempts in recent weeks: one unsuccessful and one successful.

Amendments to Government motions

Yvette Cooper made the first attempt. She sought ([as an amendment to the Government's "Brexit next steps" motion of 29 January 2019](#)) to secure a day in which to debate the [EU \(Withdrawal\) \(No. 3\) Bill](#). However, the House rejected her amendment.

The second attempt, made by Oliver Letwin, was successful. [On Monday 25 March](#), he successfully amended another "Brexit next steps" motion. His amendment set aside Wednesday 27 March for a Business of the House motion, which would in turn set out a process for an "indicative votes" exercise.

Backbenchers' Business of the House motions

Since then, Oliver Letwin has successfully used Business of the House motions on "indicative votes" days to set aside further days for non-Government business on Brexit to be given priority over Government business:

- Firstly, [a Business of the House Order of 27 March](#) set aside Monday 1 April for a Business of the House motion concerning a second round of indicative votes.
- Secondly, [a Business of the House Order of 1 April](#) set aside Wednesday 3 April for a further Business of the House motion in connection with debate on the UK's exit from the EU.

What about this Bill?

It is expected that the Business of the House motion for Wednesday 3 April will make arrangements for all of the Commons stage debates of the [No. 5 Bill](#) to take place that same day. The precise terms of this motion will appear on the Order Paper for the House of Commons shortly following the rise of the House on Tuesday 2 April.

Exceptions to Government business taking precedence

The Standing Orders give precedence to non-Government business in three scenarios:

- Opposition days
- Backbench business days
- Specified sitting Fridays for consideration of Private Members' bills

In the third instance, priority is given to Ballot bills. The [No. 5 Bill](#) is not a Ballot bill so does not have any special priority on sitting Fridays.

4.4 Getting the Bill through the House of Lords

Even if procedural adaptations are made in the Commons to allow the [No. 5 Bill](#) to receive a Second Reading, Committee Stage, Report Stage and Third Reading, it must still do the same in the House of Lords if it is to become an Act of Parliament.

The House of Commons cannot regulate through its Standing Orders or Business of the House Orders the manner in which the House of Lords conducts its own proceedings.²²

For the [No. 5 Bill](#) to have a realistic prospect of being presented for Royal Assent, therefore, political agreement would need to be reached as to an expeditious timetable for consideration of the Bill by the House of Lords.

²² This partly explains the Lords does not have a direct equivalent of "[programme motions](#)", which are routinely used by Government to set the timetable for debate on Bills in the Commons.

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