



Brexit snapshot

The following is a brief, continuously updated summary of the Brexit story, looking backwards and forwards and at where we are now ...

How we got here

A referendum on the UK's membership of the EU was announced in the government's Queen's Speech on 27 May 2015ⁱ and took place on 23 June 2016. A slim majority (51.9%) voted to leave the EU. Following a vote in Parliament, the UK notified the EUⁱⁱ on 29 March 2017 of its intention to leave under Article 50 of the Treaty on European Unionⁱⁱⁱ (TEU). The original departure date was scheduled for 29 March 2019. Following negotiation of an extension to the deadline with the EU, the UK was then scheduled to depart on 31 October 2019 at 11pm UK time (Exit Day) - unless the UK asked the EU, and it agreed, to postpone Brexit further. This is what ultimately occurred, with the UK requesting a deferral of Exit Day until 31 January 2020. The UK finally departed the EU on 31 January 2020, although a transition period until the end of 2020 was agreed by the UK and the EU, as a result of which the UK will continue to be treated as though it were still a member of the EU until 31 December 2020. The purpose of the transition period is to enable the parties to negotiate, and hopefully agree, their future trading relationship, to apply from 1 January 2021.

Negotiations on the UK's withdrawal initially resulted in a joint report^{iv}, in which UK agreed, among other things, that there would be no "hard border" between Northern Ireland and the Republic of Ireland after Brexit (para 49). This report was followed in February/March 2018 by a draft Withdrawal Agreement, which:

- effectively extended the UK's membership of the EU to 31 December 2020 (the transition or implementation Period) to a date potentially as late as the end of 2022; and
- contained a 'backstop' arrangement (in a Protocol on Ireland) which would have kept the UK in a "bare-bones" customs union with the EU for an indefinite period, with Northern Ireland being more closely bound to the EU, again on an indefinite basis, to ensure that no "hard border" needed to be erected in Ireland.

The planned long-term relationship between the UK and EU was outlined in a (non-binding) Political Declaration which accompanied the Withdrawal Agreement (together "**the Withdrawal Agreement**"), with the detailed future arrangements being left for negotiations after Exit Day.

In the meantime, the UK passed the European Union (Withdrawal) Act 2018^v (EUWA), whose main purpose was to copy EU law into domestic law, to the extent that the former was 'operative' in the UK before Exit Day (section 3) - or (if the Withdrawal Agreement was ratified and the EUWA amended to take account of that) at the end of the Transition Period - see further below.

The government also published a slew of Statutory Instruments to facilitate Brexit.

Although the Withdrawal Agreement^{vi} was agreed in principle by the UK and EU, it was rejected by the UK's House of Commons^{vii} on 15 January 2019, despite the UK Prime Minister, Theresa May, having obtained formal assurances from the EU^{viii} regarding the temporary nature of the controversial backstop. The Labour Party immediately called a vote of no confidence in the government, which the government won the following day.

In a vote held on 29 January 2019, the House of Commons voted in favour of the Withdrawal Agreement, subject to the backstop being "*replaced with alternative arrangements to avoid a hard border*". This obliged the government to attempt a renegotiation of the document. In the event, it succeeded in negotiating supplemental documents^{ix} aimed at preventing the backstop from becoming a permanent arrangement, which arguably changed the effect of the Withdrawal Agreement without modifying it directly. However, in a House of Commons vote on 12 March 2019 the Withdrawal Agreement was once again rejected.^x A few days later John Bercow, the Speaker of the House of Commons, ruled that the Withdrawal Agreement could only be voted on again during the current session if it was changed in terms of its substance.^{xi} The government subsequently attempted to obtain the House of Commons' approval for part of the Withdrawal Agreement - once more, without success.

On 13 March 2019 a "no-deal" Brexit was rejected by the House of Commons, although it remained the default position under both UK and EU law. The EU then granted a postponement: initially to 22 May 2019 if the Withdrawal Agreement was approved by the House of Commons before 29 March 2019, or to 12 April 2019 if it was not. The EU subsequently granted a further postponement - a so-called 'flexextension' - under which the UK would leave the EU by the end of October 2019, but also allowing it to depart earlier than that in certain circumstances.^{xii}

The precise arrangements were as follows:

- If the UK had not ratified the Withdrawal Agreement by 22 May 2019 it would be required to hold elections to the European Parliament: if these elections did not take place then the extension to the Article 50 period would end at 11.00pm on 31 May 2019 (UK time) (*note: in the event, the European elections did take place, so this provision did not apply*);
- If the ratification procedures for the Withdrawal Agreement were subsequently completed: the extension to the Article 50 period would end at 11.00pm (UK time) on the last day of the month in which such ratification procedures were completed; and
- If the Withdrawal Agreement was not ratified: the "longstop" extension to the Article 50 period would end at 11.00pm on 31 October 2019 (UK time) and the UK would leave the EU without a deal.

Any request by the UK for a further extension to the Article 50 period would require the unanimous consent of the EU27 leaders in the European Council. (A further, albeit highly unlikely, possibility would have been for the UK to unilaterally revoke the article 50 withdrawal notice, which would not have required EU consent.)

As well as obtaining parliamentary approval for the Withdrawal Agreement itself, a European Union (Withdrawal Agreement) Bill would also need to be passed, to give the terms of the Withdrawal Agreement legal effect in domestic legislation (the Withdrawal Agreement being an international treaty).

On 15 May 2019, it was announced^{xiii} that the government would be bringing forward the European Union (Withdrawal Agreement) Bill during the first week of June 2019, despite having previously lost a meaningful vote to ratify the Withdrawal Agreement on three occasions. (*A "meaningful vote" was required under the terms of Section 13 of the EUWA, which required the government to bring forward an amendable parliamentary motion at the end of the Article 50 negotiations between the government and the EU in order to ratify the Withdrawal Agreement.*)

On 21 May 2019, Theresa May delivered a speech^{xiv} setting out her proposed amendments to the deal in a last-ditch attempt to get the House of Commons to pass the European Union (Withdrawal Agreement) Bill. In a "*serious offer to MPs across Parliament*" it set out additional protections in the areas of workers' rights, the environment and consumer protection, and also included an offer to give MPs a vote on whether to hold another referendum - **provided** they backed the EU (Withdrawal Agreement) Bill. However, rather than successfully wooing Labour MPs into voting for the Bill, it was rejected by shadow Brexit secretary Sir Keir Starmer as being "too weak"^{xv}, and incensed Conservative Brexiteers so much that they asked the Conservative backbench 1922 Committee to consider a rule change to allow a no-confidence vote in Mrs. May's leadership. Backed into a corner,

the Prime Minister was forced to announce her resignation as Tory leader on 24th May,^{xvi} opening the way for a new Conservative Prime Minister and a new approach to Brexit.

The resulting contest for the leadership of the Conservative Party began on 7th June, with candidates being whittled down to a final two (Boris Johnson and Jeremy Hunt) by successive votes by Conservative MPs, followed by a "run-off" between Johnson and Hunt based on the votes of the 160,000-odd Conservative Party members.

In a hustings speech on 1st July, Jeremy Hunt said^{xvii} that, as PM, he would decide by the end of September whether there was a "*realistic chance*" of reaching a new Brexit deal with the EU, and would abandon talks after that date if there was no "immediate prospect" of progress - and then move to a no-deal footing. Boris Johnson instead vowed to leave the EU "*come what may, do or die*" by 31st October. Following the run-off by party members it was announced on 23rd July that Boris Johnson had won the Conservative leadership contest, beating Jeremy Hunt, by 92,153 votes to 46,656.

Given the short time available between the end of July and the end of October (particularly taking into account the parliamentary summer recess and the party conference recess) this would have allowed very little time for the UK to negotiate a settlement with the EU – and therefore increased the risk of a "no-deal" departure from the EU. However, a significant number of opposition MPs, as well as some Conservatives, were strongly opposed to a no-deal outcome, with Conservative MP and Father of the House, Ken Clarke, as well as the former attorney general, Dominic Grieve, saying that they would support a motion of no confidence in the government in order to avoid a no-deal Brexit. Around this time, the idea that Boris Johnson might seek to "prorogue" (i.e. suspend) parliament, in order to effectively run down the clock until 31st October, and force through a no-deal Brexit, began to be talked of as a real possibility.

On 10th July, the former Conservative prime minister, John Major, had said^{xviii} that, were Boris Johnson to seek to prorogue parliament in order to force through a no-deal Brexit outcome, then he would personally seek to have such a decision judicially reviewed, on the basis that it would be an attempt to bypass the will of parliament. Anti-Brexit campaigner, Gina Miller, threatened^{xix} to do likewise. In addition, according to HuffPost,^{xx} the then Chancellor, Philip Hammond, told colleagues that he would be prepared to effectively stage a Commons "sit in" to avoid a no-deal Brexit being forced through by Boris Johnson, even if parliament were to have been officially prorogued.

With the outcome of the Brexit process so uncertain, the UK and EU began stepping up preparations for a 'No-Deal' Brexit, with the UK government publishing various technical notices^{xxi} and activating contingency plans^{xxii} and the European Commission's publishing its Contingency Action Plan^{xxiii} and confirming that it was also prepared.^{xxiv}

In early August, a case was brought^{xxv} in the Scottish courts by a cross-party group of MPs, backed by the Good Law Project, for a declaration that the Prime Minister could not lawfully advise the Queen to prorogue parliament, in order to force through a no-deal Brexit.

Despite the ongoing court hearing, on 28th August 2019, parliament was ordered to be prorogued by Queen Elizabeth II upon the advice of the prime minister, Boris Johnson. The prorogation was to begin on a date to be agreed between 9th and 12th September 2019, and last until the State Opening of Parliament on 14th October 2019.

Aware that the clock was ticking down to prorogation, on 3rd September, taking advantage of an 'emergency debate' under Standing Order No. 24, MPs voted to give precedence on 4th September to all the stages of a Private Member's Bill put forward by Hilary Benn MP,^{xxvi} which gave the government until 19th October to do either of two things: viz. seek and secure the approval of MPs for either (a) a withdrawal agreement, or (b) leaving the European Union without a withdrawal agreement. If by the end of 19th October the House of Commons has done neither of these things, the Bill provided that the prime minister would then be obliged to seek from the European Council an extension of Article 50 (i.e. the mechanism for deciding the UK's departure date from the EU) for a further four months – until 31 January 2020. The Bill received Royal Assent on 9th September, becoming the EU Withdrawal (No.2) Act 2019, generally referred to as the "Benn Act". Boris Johnson subsequently expelled from the Conservative Party a significant number of Conservative MPs who had supported the Benn Act, leaving the government with a parliamentary *minority* of 43.

On 11th September, Scotland's highest civil court ruled^{xxvii} that Boris Johnson's suspension of the UK Parliament had been unlawful, declaring that *"The Court will accordingly make an Order declaring that the prime minister's advice to HM the Queen and the prorogation which followed thereon was unlawful and is thus null and of no effect."* The government appealed the case to the Supreme Court. Gina Miller had launched parallel legal proceedings in England against the government's decision to prorogue parliament, and the two cases were ultimately joined by way of a hearing before the Supreme Court on 17th September 2019. On 24th September 2019, the Supreme Court ruled unanimously that the prorogation had been unlawful and that parliament should be immediately recalled.

On 10th October, the prime minister met his Irish counterpart, Leo Varadkar, in the Wirral for last-ditch talks on a possible solution to the Northern Ireland border issue post-Brexit. The talks were described by both as "very positive and very promising" - and subsequently seen as the turning point in the tortuous process of achieving a Brexit deal, with the concept of a "customs partnership" - whereby Northern Ireland effectively remains in the EU customs union, but is still included in UK trade deals - being acceptable to both sides. The UK and the EU agreed revised^{xxviii} forms of the Withdrawal Agreement and the Political Declaration (together "the New Withdrawal Agreement") on 17th October 2019.

On Saturday 19th October, fresh from his trip to Brussels where he succeeded in getting the EU to agree to amend the terms of the Withdrawal Agreement, the Prime Minister's task was two-fold: to win a "meaningful vote" in the House of Commons to approve the terms of the New Withdrawal Agreement^{xxix} thereby avoiding having to write to Brussels to request an extension to the Brexit deadline, as he would have complied with the terms of the Benn Act (which required Parliament to have passed a motion approving the terms of the New Withdrawal Agreement - or to have voted to leave without a deal - by 19th October). In the end, he failed on both counts.

On 28th October the EU confirmed that it would be granting a 3-month Brexit extension until 31st January 2020 (to be precise, this was a "flexextension" - i.e. if Westminster signed off the draft New Withdrawal Agreement before then, and the related legislation - the European Union (Withdrawal Agreement) Bill - became law, then Brexit could take place sooner.) The same day, the government tabled a parliamentary motion, proposing that an early general election be held on Thursday 12th December. The Liberal Democrats and the Scottish National Party initially said that would support an election taking place three days earlier, on Monday 9th December (the 3 days being important, as it would reduce the risk that the government would be able to railroad the European Union (Withdrawal Agreement) Bill through parliament by then). The Lib Dems wanted an early election because they wanted to capitalise on their anti-Brexit credentials, making it essential to go to the country before Brexit became law; the SNP wanted an election sooner rather than later was because former leader Alex Salmond's trial on various sexual assault charges was scheduled for early in the New Year. In the end, the parties agreed to hold the general election on 12th December 2019, the first December general election in almost a century.

The UK general election returned a significant majority (80 seats) for the Conservative Party. Boris Johnson's primary objective in calling the early general election had been to break the parliamentary impasse on Brexit. The Conservative Party's parliamentary majority saw the Brexit legislation (the European Union (Withdrawal Agreement) Act 2020) obtain royal assent at pace, and the UK finally left the EU at 11pm (UK time) on 31st January 2020 - although it continues to be treated as part of the EU until the end of the transition period, 31st December 2020.

The newly-appointed President of the European Commission, Ursula von der Leyen, made clear her reservations surrounding Boris Johnson's plan to conclude negotiations on the future relationship between the UK and the EU by the end of the year. Speaking at the London School of Economics in early January 2020, she said: *"Without an extension of the transition period beyond 2020, you cannot expect to agree on every single aspect of our new partnership"*, adding that the UK could face difficult trade-offs between market access and regulations: *"Without a level playing field on environment, labour, taxation and state aid, you cannot have the highest quality access to the world's largest single market"*.

In addition, the EU's chief Brexit negotiator, Michel Barnier, in a speech delivered in Stockholm shortly afterwards, reiterated this message, referring to the "hugely challenging timescale" being proposed by the UK. The Guardian newspaper reported: *"A scrappy, relatively unambitious, low-alignment trade deal is arguably the most plausible landing zone, in contrast to a deal that keeps both sides economically close and the UK locked into the EU's regulatory orbit"*.

Despite a slowdown in negotiations in spring 2020 as a result of the Covid-19 pandemic, the UK and EU agreed to start negotiations via six Specialised Committees covering: (1) citizens' rights; (2) other separation provisions; (3) Protocol on Ireland/Northern Ireland; (4) Protocol relating to the Sovereign Base Areas in Cyprus; (5) Protocol on Gibraltar; and (6) financial provisions. However, significant differences soon emerged in relation to the parties' red lines on the issue of the "level playing field" for regulation and state aid, as well as on fishing rights and governance. A summary of the positions of both sides can be found in this^{xxx} House of Commons Library report.

On 9th September 2020, the UK government published the United Kingdom Internal Market Bill^{xxxi}, giving powers to ministers to unilaterally decide how to apply the Northern Ireland protocol (a core element of the New Withdrawal Agreement) in relation to checks on goods moving from Northern Ireland to Great Britain. The bill also provided for the disapplication in UK domestic law of article 10 of the Northern Ireland protocol in relation to state aid, with section 45(1) of the bill stating that such provisions (and any related delegated legislation) would "*have effect notwithstanding inconsistency or incompatibility with international or other domestic law*". The EU, in response, warned that the draft legislation was a threat to the Belfast (Good Friday) Agreement and that it had "*seriously damaged trust between the EU and the UK*", and called on the UK government to "*withdraw these measures from the draft bill in the shortest time possible and in any case by the end of the month*".^{xxxii} When the UK failed to do so, on 1 October the European Commission filed a letter of formal notice, marking the first step in an infringement procedure that could culminate in legal action. Under the procedure, the UK has one month to respond to the EU's concerns.

In the meantime, the EU has continued to engage with the UK in terms of the negotiation of a free trade deal. Following the end of the ninth round of negotiations on 2nd October, the EU's chief negotiator, Michel Barnier, issued a statement highlighting the three main outstanding issues: the "level playing field", fisheries and governance.

Although the consensus of opinion among commentators was that the parties would manage to hammer out a deal, - for the simple reason that tariff-free trade would be a very valuable prize for both sides (and would simplify the arrangements relating to the NI Protocol considerably), and because agreeing a trade deal, albeit a "skinny" one, - would create a platform from which to negotiate additional deals in other areas - negotiations dragged on and on through October, November and into December. Supposed "hard stop" deadlines (to allow time, particularly on the European side, for legal "scrubbing", for translations to be prepared and for there to be advance scrutiny by the European Parliament's specialist committees) came and went.

Finally, on the afternoon of 24 December 2020, the EU and the UK finally agreed terms for a free trade agreement. The parties provisionally ratified the agreement, termed a "Trade and Co-operation Agreement" (TCA)^{xxxiii}. On the UK side, on 29 December 2020 the EU (Future Relationship) Bill was published and rushed through parliament: the House of Commons backed the Bill by 521 to 73 votes and, following its passage through the House of Lords it received Royal Assent to become the EU (Future Relationship) Act 2020^{xxxiv} on 30 December 2020. Despite its length of almost 1,250 pages, the TCA reads largely as a framework agreement with many matters yet to be agreed, and some not covered, such as financial services. Although the Brexit transition period has come to an end, this is not yet the end of the story in terms of how the UK and the EU manage their future trading relationship. *Watch this space...*

If you need to know more ...

For regular updates see our Brexit Blog. For more detailed analysis of the issues relevant to a variety of legal sectors, see our client briefings.

14 January 2021

ⁱ BBC., (2015). Queen's Speech 2015: EU referendum, tax freeze and right-to-buy [online] *BBC News*. [Viewed 04 December 2018]. Available from: <https://www.bbc.co.uk/news/uk-politics-32894214>

ⁱⁱ BBC., (2017). Brexit: The UK's letter triggering Article 50 [online] *BBC News*. [Viewed 04 December 2018]. Available from: <https://www.bbc.co.uk/news/uk-politics-39431070>

- iii *Treaty On European Union And The Treaty On The Functioning Of The European Union*, (26 October 2012). [online]. 2012/C 326/01. [Accessed 04 December 2018]. Available from: <http://eur-lex.europa.eu/>.
- iv European Commission. (2017). *Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union*. [online] [Accessed on 04 December 2018]. Available from: <https://ec.europa.eu/>
- v *European Union (Withdrawal) Act 2018*. (c.16). [online] London: The Stationery Office. [04 December 2018]. Available from: <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>
- vi Department for Exiting the European Union. (2018). *Withdrawal Agreement and Political Declaration laid before Parliament following political agreement*. London: The Stationery Office. [Accessed 04 December 2018]. Available from: <https://www.gov.uk/>
- vii BBC., (2019). Brexit: Theresa May's deal is voted down in historic Commons defeat. [online] *BBC News* [Viewed 16 January 2019]. Available from: <https://www.bbc.co.uk/news/uk-politics-46885828>
- viii Department for Exiting the European Union. (2019). Exchange of letters between the UK and EU on the Northern Ireland backstop [14 January 2019]. Available from: <https://www.bbc.co.uk/news/uk-politics-46567096>
- ix BBC., (2019). Brexit: MPS to vote on Theresa May's deal. [online] *BBC News* [Viewed 12 January 2019]. Available from: <https://www.bbc.co.uk/news/uk-politics-47533666>
- x BBC., (2019). Brexit: MPs reject Theresa May's deal for a second time. [online] *BBC News*. [Accessed 12 March 2019]. Available from: <https://www.bbc.co.uk/news/uk-politics-47547887>
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- xii Consilium., (2019). Conclusions [online] Available from: <https://www.consilium.europa.eu/media/39042/10-euco-art50-conclusions-en.pdf>
- xiii <https://www.bbc.co.uk/news/uk-politics-48275827>
- xiv https://www.gov.uk/government/speeches/pms-speech-on-new-brexit-deal-21-may-2019?utm_source=912ed800-12dd-415b-8828-75ace48490e3&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate
- xv <https://www.bbc.co.uk/news/uk-politics-48360456>
- xvi <https://www.bbc.co.uk/news/uk-politics-48395905>
- xvii <https://www.bbc.co.uk/news/uk-politics-48819260>
- xviii <https://www.bbc.co.uk/news/uk-politics-48934781>
- xix <https://www.bbc.co.uk/news/uk-politics-48980408>
- xx https://www.huffingtonpost.co.uk/entry/mps-commons-sit-in-boris-johnson-no-deal-brexit_uk_5d27989be4b0060b11e993ea?guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAGYCHug9-oXRSNF80mFEqG3ckcP1KzIZZQoGTduRqjfn0M2OIOYrTCR3RfjV4XewFPyHrK8UCUiAoWQGKF5yrxyhPrjQRrXy8UEF54KrYYTAGMHL_QCqCeHIPN0usJPTUDTIeNLBiWKBTY3HXGopQFiDGXLv7M2QF97G-WNazWzj&guccounter=2
- xxi Department for Exiting the European Union. (2018). *How to prepare if the UK leaves the EU with no deal*. [online]. [Accessed 04 December 2018]. Available from: <https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal>
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- xxv <https://www.dropbox.com/s/gtijvkq2tmjxl5u/Petition%20%28as%20lodged%29.pdf?dl=0&fbclid=IwAR3H7ojasiBU8gGwI38U84gbv7C4HSZgslWYGP5QYv7d9s8GuIceT4xKVo>
- xxvi <https://commonslibrary.parliament.uk/brexit/negotiations/the-benn-burt-bill-another-50-extensions/>

xxvii <https://www.bbc.co.uk/news/uk-scotland-49661855>

xxviii <https://www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration>

xxix The "meaningful vote" requirement had been introduced into the European Union (Withdrawal) Act 2018, when Dominic Grieve MP - the former Conservative Attorney General - had convinced the House of Commons to insert it as an amendment to the Bill in 2018.

xxx <https://commonslibrary.parliament.uk/research-briefings/cbp-8920/>

xxxi <https://publications.parliament.uk/pa/bills/cbill/58-01/0177/20177.pdf>

xxxii https://ec.europa.eu/commission/presscorner/detail/en/statement_20_1607

xxxiii [EUR-Lex - 22020A1231\(01\) - EN - EUR-Lex \(europa.eu\)](#)

xxxiv [European Union \(Future Relationship\) Act 2020 \(legislation.gov.uk\)](#)