



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). This means in effect that the UK will depart on 29 March 2019 at 11pm UK time (Exit Day) unless the EU is asked, and agrees, to postpone Brexit, or the Article 50 notice is withdrawn, cancelling Brexit altogether.

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 border after Brexit (para 49). The report was followed in February/March 2018 by a draft Withdrawal Agreement, which has now been finalised and agreed, subject to necessary political approvals (see below). This:

- effectively extends the UK's membership of the EU to 31 December 2020 (the Transition or Implementation Period) to a date as late as the end of 2022, if need be
- ensures a degree of continuity beyond that, to avoid a 'cliff edge'
- contains a 'backstop' arrangement (in a Protocol on Ireland) keeping the UK in a bare-bones customs union with the EU for an indefinite period. Northern Ireland will be more closely bound to the EU, again on an indefinite basis, to ensure that no "hard border" needs to be erected in Ireland.

Subject to all this, the planned long-term relationship between the UK and EU is outlined in a (non-binding) Political Declaration accompanying the Withdrawal Agreement (together "**the Withdrawal Agreement**"), with the detail being left for negotiations after Exit Day.

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

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

Where we are now

The [Withdrawal Agreement](#)^{vi} has been agreed in principle by the UK and EU. However, it was [rejected by the UK's House of Commons](#)^{vii} on 15 January 2019, despite the UK Prime Minister 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. Further votes of no confidence may follow.

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 has [succeeded in negotiating supplemental documents](#)^{ix} which arguably change the effect of the Withdrawal Agreement, but without modifying it directly. They aim to prevent the backstop becoming a permanent arrangement. However, in a House of Commons vote on 12 March 2019 the [Withdrawal Agreement was rejected again](#).^x A few days later John Bercow, the Speaker of the House of Commons, ruled that the Withdrawal Agreement may only be voted on again during the current session if it is changed in terms of substance.^{xi} However, the procedural rule that the ruling was based on can be disapplied by Parliament if it wishes to do that, so the ruling only makes it more difficult, not impossible, for the Withdrawal Agreement to be approved by Parliament in its current form.

On 13 March a no-deal Brexit was rejected by the House of Commons, although it remains the default position under both UK and EU law. On 14 March the House of Commons [voted for the government to ask the EU to postpone Exit Day](#).^{xii} A short postponement (to 30 June 2019) has been [requested](#) by the Prime Minister^{xiii} and is currently being considered by other EU leaders at their summit on 21/22 March. Following a [statement](#) by President Tusk on 20 March 2019, they are expected to grant the request, or to allow an extension until mid-May - but only if the House of Commons approves the Withdrawal Agreement first.^{xiv} It will be asked to do that early this coming week.

If the Withdrawal Agreement is approved, a European Union (Withdrawal Agreement) Bill will need to be passed, reflecting its terms. At that point the Withdrawal Agreement will be ratified (see our Brexit Timeline for an overview of the procedure). Other domestic legislation will also have to be passed before Exit Day, e.g. to deal with agricultural subsidies.

If the Withdrawal Agreement is rejected for a third time, the EU has not ruled out a longer postponement if that is needed e.g. to hold a second referendum. However, this is problematic because of forthcoming European Parliament elections (see below). If a long extension were offered, it would again be on the basis that the House of Commons indicates first the path it wishes to take, and the EU grants an extension when the way forward is clear.

Meanwhile the Court of Justice of the EU has [ruled](#)^{xv} that the UK can withdraw its Article 50 notice unilaterally and continue its membership of the EU on current terms. The government was also forced in December to disclose [unfavourable legal advice from the Attorney General](#)^{xvi} concerning the backstop (he says that it might never end). [Further legal advice](#)^{xvii}, published after the release of the supplemental documents referred to above, confirms that the legal position has not changed unless the EU acts in bad faith or fails to use best endeavours to bring the backstop to an end - something that would be difficult to demonstrate in practice.

Since little time remains, and the outcome of the Brexit process is uncertain, the UK, EU and foreign governments have been stepping up preparations for the alternative: a 'no-deal' Brexit - see, for example, [this page of technical notices](#)^{xviii} that have been issued by the UK government, and the Commission's own [Contingency Action Plan](#)^{xix}. [Final UK contingency plans](#) are due to be activated very soon.^{xx}

In practice, no-deal will involve a series of mini-deals being done with the EU and/or with national governments, before or after Exit Day. Together with unilateral contingency measures, these mini-deals should ensure that urgent practical and legal matters are taken care of in the short term, although there may be severe disruption to start with.

Where next?

It is difficult for the EU to postpone Brexit by more than three months, even to accommodate a referendum, because European Parliament elections will take place at the end of May and new MEPs will start sitting at the beginning of July. Without MEPs from all Member States, including the UK if it is still in the EU, the constitution and actions of the new European Parliament (and by extension the European Commission) may not be legitimate. This is a risk that the EU is reluctant to take. Moreover, to participate in the EU elections, the UK would have to take various steps first - see our [Brexit Timeline](#) for the relevant deadlines

There is therefore very little time to renegotiate the deal negotiated by the Prime Minister, even if negotiations are limited to revising the (non-binding) Political Declaration to bring it more in line, perhaps, with the Norway+/Commons Market 2.0 model of Brexit - something the EU might well be open to in principle. As a result, there is an increased chance now of the UK leaving the EU without a Withdrawal Agreement (a no-deal Brexit) or of it taking the opposite course of action: rescinding its Article 50 notice without a further referendum and remaining in the EU for the foreseeable future.

A complicating factor is that the Labour Party may soon call another vote of no confidence in the government. If passed, a vote of no confidence would not necessarily lead to an early general election. Instead, the [Fixed Term Parliaments Act 2011^{xxi}](#) provides for a two week cooling-off period during which the existing government may be confirmed or an alternative government may be formed from current MPs.

If you need to know more ...

For key dates in the Brexit process, assuming that the Withdrawal Agreement is eventually approved by the UK parliament, see our [Brexit Timeline](#), and for other possibilities, our flowchart: [The Way Forward](#).

For an overview of the Withdrawal Agreement, as well as what the alternative versions of Brexit called Norway Plus (or Common Market 2.0) and no-deal would involve, see [How Brexit Works](#). This also explains how votes of no confidence work, and the issues surrounding a second referendum.

21 March 2019 (11.30 am)

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>
- xi Guardian., (2019). Brexit: John Bercow rules out third meaningful vote on same deal. [online] *Guardian* [Viewed 18 March 2019]. Available from: <https://www.theguardian.com/politics/2019/mar/18/brexit-john-bercow-rules-out-third-meaningful-vote-on-same-deal>
- xii BBC., (2019). Brexit delay: What just happened? [online] *BBC News* [Viewed 15 March 2019]. Available from: <https://www.bbc.co.uk/news/uk-politics-47572703>
- xiii UK Government (2019). Prime Minister's letter to President Tusk: 20 March 2019. [Online] *UK government website*. [Accessed 20 March 2019]. Available from: <https://www.gov.uk/government/publications/prime-ministers-letter-to-president-tusk-20-march-2019>
- xiv European Council. (2019). *Statement by President Tusk on Brexit*. [Online]. European Council website. [Accessed 21 March 2019.] Available from: <https://www.consilium.europa.eu/en/press/press-releases/2019/03/20/statement-by-president-donald-tusk-on-brexit/>
- xv Court of Justice of the European Union. (2018). *Advocate General Campos Sánchez-Bordona proposes that the Court of Justice should declare that Article 50 TEU allows the unilateral revocation of the notification of the intention to withdraw from the EU*. [Press Release]. [Accessed 04 December 2018]. Available from: <https://curia.europa.eu>
- xvi Department for Exiting the European Union. (2018). *Exiting the EU: Publication of Legal Advice*. London: The Stationery Officer. [Accessed 18 December 2018]. Available from: <https://www.gov.uk/>
- xvii Department for Exiting the European Union. (2019). *Legal Opinion on Joint instrument and Unilateral Declaration Concerning the Withdrawal Agreement*. London: The Stationery Officer. [Accessed 12 March 2019]. Available from: https://www.gov.uk/government/publications/legal-opinion-on-joint-instrument-and-unilateral-declaration-concerning-the-withdrawal-agreement?utm_source=c6aea1cd-4999-4435-aca9-8b6e01cbb853&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate
- xviii 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>
- xix European Commission. (2018). *Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan*. [Online]. [Accessed 04 December 2018]. Available from: https://ec.europa.eu/info/publications/communication-preparing-withdrawal-united-kingdom-european-union-30-march-2019-contingency-action-plan-13-11-2018_en
- xx National Audit Office. (2019). *Contingency preparations for exiting the EU with no deal*. [Online] [Accessed 21 March 2019]. Available from: <https://www.nao.org.uk/wp-content/uploads/2019/03/Contingency-preparations-for-exiting-the-EU-with-no-deal.pdf>
- xxi House of Commons Library. (2017). *Fixed-term Parliaments Act 2011*. [Online]. [Accessed 04 December 2018]. Available from: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06111>

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