



## 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 2015<sup>i</sup> 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 EU<sup>ii</sup> on 29 March 2017 of its intention to leave under Article 50 of the Treaty on European Union<sup>iii</sup> (TEU). The original departure date was scheduled for 29 March 2019. Following negotiation of an extension to the deadline with the EU, the UK is now scheduled to depart on 30 October 2019 at 11pm UK time (Exit Day) unless the EU is asked, and agrees, to postpone Brexit further, or the Article 50 notice is withdrawn, cancelling Brexit altogether. In certain circumstances (see below for further details) the UK may decide, or be obliged to, depart the EU before 30 October 2019.

Negotiations on the UK's withdrawal initially resulted in a joint report<sup>iv</sup>, 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<sup>v</sup> (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<sup>vi</sup> has been agreed in principle by the UK and EU. However, it was rejected by the UK's House of Commons<sup>vii</sup> on 15 January 2019, despite the UK Prime Minister having obtained formal assurances from the EU<sup>viii</sup> 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<sup>ix</sup> 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.<sup>x</sup> 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.<sup>xi</sup> The government subsequently attempted to obtain the House of Commons' approval for part of the Withdrawal Agreement - once more, without success.

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. The EU then granted a postponement: initially to 22 May if the current Withdrawal Agreement was approved by the House of Commons before 29 March, or to 12 April if it was not. The EU subsequently granted a further postponement - a 'flection' obliging the UK to leave by the end of October, but also allowing it to depart earlier than that.<sup>xii</sup> The precise arrangements are as follows:

- If the UK has not ratified the Withdrawal Agreement by 22 May 2019 it will be required to hold elections to the European Parliament: if these elections do not take place then the extension to the Article 50 period ends at 11.00pm on 31 May 2019 (UK time);
- If the ratification procedures for the Withdrawal Agreement are subsequently completed: the extension to the Article 50 period ends at 11.00pm (UK time) on the last day of the month in which such ratification procedures are completed; and
- If the Withdrawal Agreement is not ratified: the "longstop" extension to the Article 50 period ends at 11.00pm on 31 October 2019 (UK time).

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 possibility is that the UK could unilaterally revoke the article 50 withdrawal notice, which would not require EU consent.

The Prime Minister is currently attempting to agree with the Labour Party a way out of the current impasse.<sup>xiii</sup> If that initiative leads to nothing, further House of Commons votes on alternative plans may follow, this time organised by the government rather than backbench MPs.

In addition to obtaining parliamentary approval to the Withdrawal Agreement itself, a European Union (Withdrawal Agreement) Bill also needs to be passed, reflecting its terms. Other domestic legislation will also have to be passed before Exit Day, e.g. to deal with agricultural subsidies.

On 15 May 2019, it was announced<sup>xiv</sup> 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" is required under the terms of Section 13 of the EUWA, which obliges 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 Brexit withdrawal agreement.)*

This is effectively a "last throw of the dice" by the Prime Minister, setting the wheels in motion for the necessary parliamentary stages to enact Brexit before the parliamentary summer recess. It is a high-risk strategy, and indicates that we are reaching the "end game" stage, given that the ongoing Conservative-Labour party talks appear to be going nowhere. The timing for bringing forward the proposed Bill is significant, coming as it does a

week after the European elections. Presumably the Prime Minister is working on the premise that a very poor showing by the Conservative Party in the European elections would focus the minds of Conservative MPs and bring them into line to vote through the Bill, despite their misgivings on the terms of the Withdrawal Agreement.

According to the Brexit Secretary, Stephen Barclay, <sup>xv</sup>if Mrs May's deal is defeated, then the only options left on the table are either "No Deal" or "Revoke Article 50". Given that there is a majority in the House of Commons opposed to a No Deal outcome (as evidenced by the swift passage of the European Union (Withdrawal) (No. 5) Act 2019 in April 2019, whose purpose was to create a mechanism under which the House of Commons could exert greater control over the process of extending the Article 50 negotiating period) this statement is presumably intended to bring the Brexiteers in the Conservative Party into line and to vote through the Bill, despite the virtual breakdown in the parliamentary whipping process that there has been on Brexit-related matters.

In terms of revoking Article 50, the Court of Justice of the EU has ruled<sup>xvi</sup> 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 2018 to disclose unfavourable legal advice from the Attorney General<sup>xvii</sup> concerning the backstop (he says that it might never end). Further legal advice<sup>xviii</sup>, 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 the outcome of the Brexit process is uncertain, the UK, EU and foreign governments have been stepping up preparations for a 'no-deal' Brexit - see, for example, this page of technical notices<sup>xix</sup> that have been issued by the UK government, and the Commission's own Contingency Action Plan<sup>xx</sup>. Final UK contingency plans are being activated now<sup>xxi</sup> and the EU says that it is also ready.<sup>xxii</sup>

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?

The likelihood of the European Union (Withdrawal Agreement) Bill being approved by the House of Commons is extremely slim, given the parliamentary arithmetic, and the same can be said for the Withdrawal Agreement. If the current Withdrawal Agreement is not approved by the House of Commons but an alternative way forward can be found, that might consist of amendments to the (non-binding) Political Declaration to bring it more in line with a soft version of Brexit - something the EU will be open to in principle. A referendum might also be called, since there is time for that before the new October 2019 deadline. However, it is not clear what options the UK public would be asked to choose between.

A complicating factor is that the Labour Party may soon call another vote of no confidence in the government. If passed, the vote would not necessarily lead to an early general election. Instead, the Fixed-term Parliaments Act 2011<sup>xxiii</sup> 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. Another possibility is that the government itself will call a general election, but that would require two thirds of MPs to vote for it.<sup>xxiv</sup>

At the moment, the most likely outcome is that the Prime Minister will be forced to resign following a failure to secure a Commons majority for the European Union (Withdrawal Agreement) Bill, in which case a new leader may adopt a fresh approach. The Prime Minister has already said that she will resign if her Withdrawal Agreement is accepted by the House of Commons.<sup>xxv</sup> Now that she has agreed a six-month 'flexextension' with the EU, and for the UK to participate in the European Parliament elections at the end of May, she may be forced to resign in any event.

## If you need to know more ...

For key dates in the Brexit process, see our *Brexit Timeline*. 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.

### 16 May 2019

<sup>i</sup> 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>

<sup>ii</sup> 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>

<sup>iii</sup> *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/>.

<sup>iv</sup> 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/>

<sup>v</sup> *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>

<sup>vi</sup> 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/>

<sup>vii</sup> 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>

<sup>viii</sup> 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>

<sup>ix</sup> 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>

<sup>x</sup> 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>

<sup>xi</sup> 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>

<sup>xii</sup> Consilium., (2019). Conclusions [online] Available from:

<https://www.consilium.europa.eu/media/39042/10-euco-art50-conclusions-en.pdf>

<sup>xiii</sup> BBC., (2019). May expected to meet Corbyn to tackle deadlock. [online] *BBC News* [Viewed 3 April 2019] Available from: <https://www.bbc.co.uk/news/uk-politics-47796377>

<sup>xiv</sup> <https://www.bbc.co.uk/news/uk-politics-48275827>

<sup>xv</sup> <https://www.bbc.co.uk/news/uk-politics-48286543>

<sup>xvi</sup> 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>

<sup>xvii</sup> 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/>

<sup>xviii</sup> 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](https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal)

<sup>xix</sup> 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>

<sup>xx</sup> 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](https://ec.europa.eu/info/publications/communication-preparing-withdrawal-united-kingdom-european-union-30-march-2019-contingency-action-plan-13-11-2018_en)

<sup>xxi</sup> 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>

<sup>xxii</sup> EU Commission. (2019). Brexit preparedness: EU completes preparations for possible “no-deal” scenario on 12 April. [online] [Accessed 27 March 2019]. Available from [http://europa.eu/rapid/press-release\\_IP-19-1813\\_en.htm](http://europa.eu/rapid/press-release_IP-19-1813_en.htm)

<sup>xxiii</sup> House of Commons Library. (2017). *Fixed-term Parliaments Act 2011*. [online] [Accessed 04 December 2018]. Available from:

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06111>

<sup>xxiv</sup> Fixed-term Parliaments Act 2011, section 2(1)(b).

<sup>xxv</sup> BBC., (2019). Brexit: Theresa May vows to stand down if her deal is passed. [online] *BBC News* [Viewed 28 March 2019]. Available from: <https://www.bbc.co.uk/news/uk-politics-47725529>

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