

# Seven Brexit Endgame

scenarios  
A short guide



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# Seven Brexit Endgame scenarios: A short guide

## Introduction

The moment of truth approaches. After months of debate, of posturing and positioning, the House of Commons is about to vote on the Brexit deal negotiated by the Prime Minister. With so much attention focussed on the debate and the vote that will follow it, it is perhaps not surprising that there has been only limited informed discussion of what might happen once Parliament has expressed its opinion.

The purpose of this report is to provide a short guide to what might happen in Parliament after the vote. We sketch out a number of scenarios and explore the key issues that will be relevant in each.

This is not an exhaustive analysis of all the possible outcomes. We have focussed on seven scenarios, but are aware that there may be others. Nor have we tried to deal with all the complexities inherent in what is an extremely complex subject. We have attempted this in a more detailed study published alongside this report.

This report is a guide to the essentials of what will be the most significant period in the history of our Parliament for years if not decades. Our intention is that even non-specialists will be able to use it to understand what is going on and what it might mean. We hope you find it useful.

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### SCENARIO ONE:

#### DEAL PASSES FIRST TIME

Approval of Mrs May's Brexit deal is clearly the most straightforward possible outcome of the Brexit process. Any scenario following a rejection of the deal is likely to be messier.

Should the deal be accepted at the first time of asking, the main challenge for the government will lie in getting the EU (Withdrawal Agreement) Bill – the legislation necessary to turn the Withdrawal Agreement into UK law – through Parliament before 29 March 2019. Approval of both the deal and the Bill are required for the deal to be ratified.

#### What you need to know

##### To pass the deal first time, MPs must reject amendments that contradict it

On the final day of the debate on 15 January, the Speaker will select amendments tabled by MPs and determine the order in which they will be voted on. This will happen before the vote on the deal itself. Only if all amendments that contradict the deal are rejected can it be approved.

##### Parliament needs to enact the Withdrawal Agreement Bill by 29 March 2019 to ratify the deal

Getting the Brexit deal approved is only half the story of getting it ratified in the UK. In order for that to happen, the legislation to turn the Withdrawal Agreement into UK law – the Withdrawal Agreement Bill – must also be passed by parliament.

There is an obvious historical analogy illustrating why, just because parliament approves the first, it may nevertheless cause problems with the second. When the UK joined the European Economic Community in 1972, the vote on the principle of membership - equivalent to the meaningful vote this week - was won by a majority of 112. However, the European Communities Act 1972 – the legislation enacting the treaty, and equivalent to the EU (Withdrawal Agreement) Bill – was carried by a majority of just 8.

MPs might propose amendments to the Bill which, if enacted, would be incompatible with the Withdrawal Agreement. Expect arguments about the interpretation of what is and is not compatible. For example, the government has already suggested that MPs could be able to request whether to extend transition instead of triggering the backstop.

### SCENARIO TWO:

#### THE DEAL PASSES SUBSEQUENTLY BEFORE 29 MARCH

If the Commons rejects the deal the first time, the government could decide to make a second attempt before exit day.

#### What we need to know

##### Is there a legal barrier to the government making a second attempt to pass the deal?

The parliamentary handbook, Erskine May, sets out a general rule that the House of Commons should

not be asked to consider the same question twice in the same session. However, it also states that this is not an absolute rule. Thus, the Speaker can enable the same question to be put to MPs more than once in the same session.

### **If the Commons rejects the deal, the government must respond within three days by tabling a motion**

By law, the government has to respond to defeat with a statement within 21 days. Within seven sitting days of that statement, MPs must debate it. On 9 January MPs decided to shorten the timetable so that the government now has to respond, potentially with both a statement and a motion, within three days of the defeat.

### **The rules for a further vote haven't been agreed yet**

This motion on the government's statement will be amendable, giving MPs an opportunity to offer the government further direction after any vote. However, the precise terms of the Commons debate - for example its duration and how many amendments could be selected - are yet to be agreed. Moreover, the motion approved by MPs would not be legally binding on the government.

### **Under Commons rules, the default format would be a 90-minute debate with a maximum of one amendment**

However, the Speaker has shown a willingness to stretch the rules to enable MPs to have their say on Brexit. He might enable the Commons to depart from the default format for the debate. For example, MPs could use their one amendment permitted under the default format to change the House of Commons rules and allow unlimited further amendments.

### **The debate on the government's statement could allow MPs to consider a range of alternative responses**

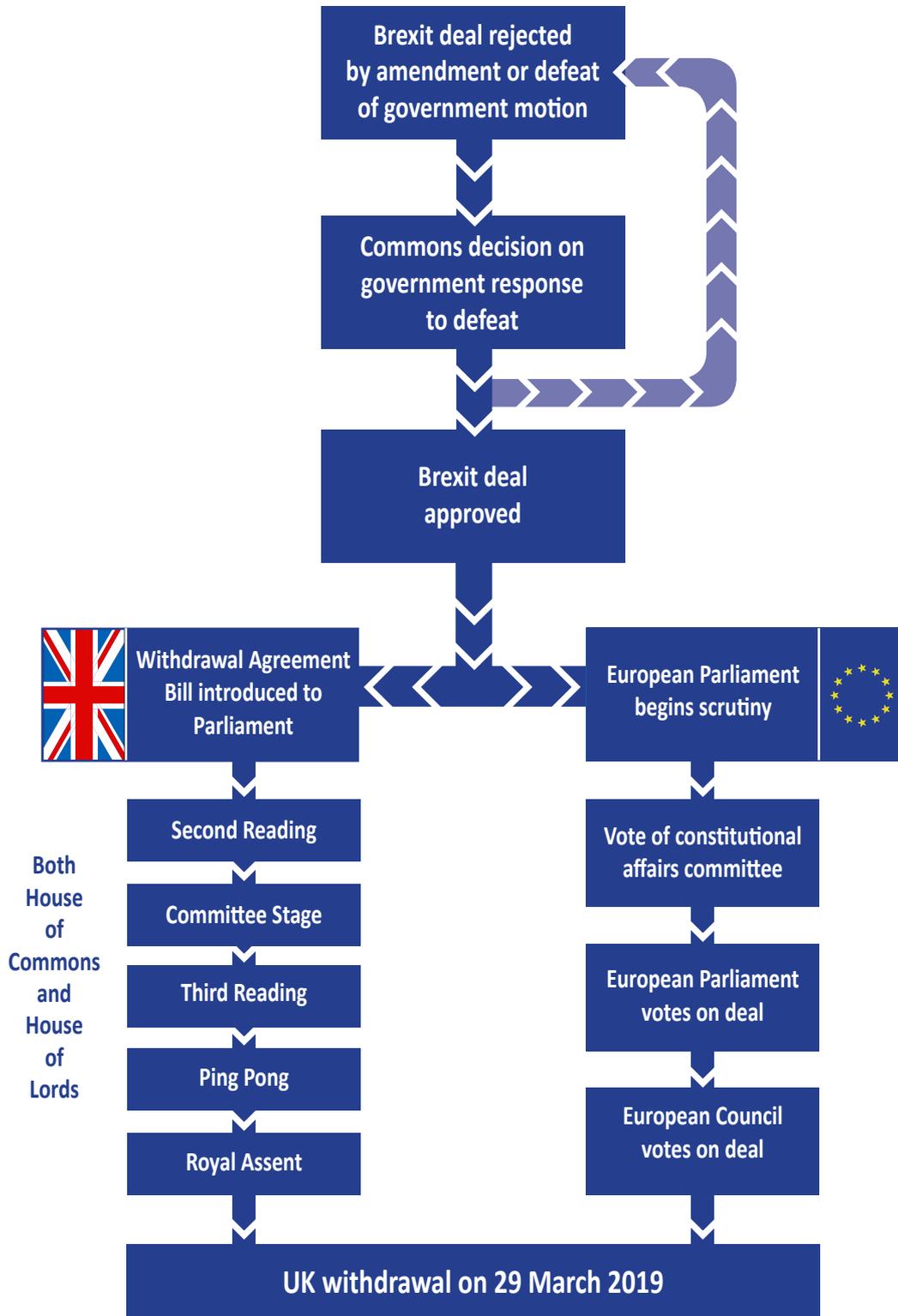
This could be through a series of indicative votes, where MPs express their collective view on a range of alternatives, such as a further referendum. As the outcome of the debate would not be legally binding, it provides an obvious mechanism for assessing where opinion sits collectively among MPs on a range of options.

When it comes to a further attempt (or event attempts) to get the deal through the Commons so that it can be ratified, again MPs could choose to use a different format than was used for the first meaningful vote.

### **How quickly can the Withdrawal Agreement Bill be turned into law?**

Section 13 of the EU (Withdrawal) Act states that the Withdrawal Agreement Bill must be enacted before the Withdrawal Agreement can be ratified. Ordinarily, bills of such importance take many months to pass through Parliament. However, in some cases, bills can be passed in a matter of days using a fast-track legislative procedure (often used for emergency legislation relating to Northern Ireland). Such a special procedure can only be used if there is a consensus in the Commons that it is justified.

## Deal passes on second attempt



## SCENARIO THREE:

### NO DEAL

If the government's deal is rejected, some argue that MPs would take steps to prevent a no deal exit. The difficulty, though, lies in identifying what MPs could actually do to avoid no deal in either of two scenarios: if the government decides to adopt no deal as its preferred outcome, or if MPs reject the Brexit deal and the government refuses to seek an extension or revocation of Article 50.

### What you need to know

#### **Without any further action, the UK will leave the EU without a deal on 29 March 2019**

There are only three ways to stop this happening: first, ratify the Withdrawal Agreement, which requires MPs to approve the meaningful vote and Parliament to enact the Withdrawal Agreement Bill. Second, extend Article 50, which could be done without primary legislation. Or, third, revoke Article 50, which would require Parliament to enact primary legislation before the government sent the revocation letter.

#### **Parliament has already enacted legislation to prepare for a no deal exit**

The EU (Withdrawal) Act states that on 29 March 2019 the European Communities Act 1972, which incorporates EU law into the UK's legal system, will be repealed. The EU (Withdrawal) Act 2018 also says that on exit day almost all of the existing body of EU law will be copied into UK law.

#### **Revoking Article 50 requires the prior approval of Parliament, extending it does not**

If the government decides to revoke Article 50, it almost certainly requires an act of Parliament to be passed before it seeks revocation. Conversely, if the government is granted an extension to Article 50 by the EU, a minister could use secondary legislation to change the exit date after the extension was granted.

In reality the government is likely to seek the approval of the Commons for an extension before requesting one. However, this need not be done through legislation - a motion would suffice.

#### **If the government's policy becomes no deal, it will try to enact more legislation to prepare for this outcome**

There are a number of bills currently before Parliament that provide measures which could be used if the UK were to leave without a deal. Some of these, such as the Trade Bill, have already gone through most of their parliamentary stages. Others, such as the Immigration Bill, have yet to get through any of their major parliamentary stages. The bills provide opportunities for MPs to try to impose their will on the government in order to prevent a no deal outcome.

#### **The government controls the parliamentary timetable in the Commons**

The rules of the House of Commons ensure that the government of the day controls what is debated. In either of the main no deal scenarios, if MPs wanted to take steps to prevent no deal, they would be reliant on the government providing opportunities for them to take such steps.

MPs could be more proactive in a no deal scenario if they found a means to take control of the Commons timetable. Amending any Business of the House motions brought forward by the government could allow them to disapply certain standing orders – including the rules that govern House of Commons procedure.

## How the UK Government can avoid a no deal

Possible actions	Temporary or permanent	Who needs to approve
Pass a Withdrawal Agreement & Withdrawal Agreement Bill	Permanent	
Revoke Article 50	Permanent	
Request Article 50 extension	Temporary	
Further referendum and request Article 50 extension	Temporary	
General election and request Article 50 extension	Temporary	

### SCENARIO FOUR:

#### REFERENDUM

If Theresa May's deal is rejected either one or multiple times and MPs wish to avoid no deal, one way through the logjam could be to seek a further referendum. However, this option is fraught with complications.

#### What you need to know

##### Ordinarily, at least 22 weeks is required to enact a referendum

Consequently, an extension or revocation of Article 50 would be necessary for a referendum to take place. Even in the unlikely event of legislation for a referendum being laid a week after the 15 January vote, this would mean a referendum on 28 June.

##### A referendum would require legislation to be passed by the House of Commons

One of the biggest hurdles to a further referendum is the need for an Act of Parliament to make it happen, which by extension requires a government that is willing to table such legislation. Simply amending the meaningful vote motion on the Brexit deal would not be sufficient to bring about another referendum.

If an amendment to a motion on the government's Brexit deal calling for a referendum were accepted, a majority would also have to be found for the specific question to be put to the public.

### **MPs could amend the Withdrawal Agreement Bill to bring about another referendum**

Amending the Withdrawal Agreement Bill could also provide a statutory basis to force a referendum. However, it would not negate the need for a separate piece of referendum legislation setting out the question.

### **Any extension of Article 50 to facilitate a referendum would need approval by all EU member states**

Unlike revocation, which we discuss below, an extension is not solely within the UK's gift. Rather, the UK would have to request it and the European Council would have to agree unanimously. EU officials and member states have consistently said that any extension would have to serve a clear purpose in order to be granted. A referendum would presumably fulfil this criterion, though this is not a given.

### **The UK would most likely participate in EU parliamentary elections in the middle of any referendum campaign**

Given the need for an extension of Article 50 to allow time for a referendum to take place, if it were granted this would almost certainly mean the UK remaining an EU member during the European Parliament elections on 23-26 May.

## **SCENARIO FIVE:**

### **GENERAL ELECTION**

Another option to break the Brexit impasse would be a snap general election.

### **What you need to know**

#### **There are two routes to a general election via the Fixed-term Parliaments Act (FTPA)**

The first is that a two-thirds majority of the Commons (not just those present), or 464 MPs, needs to vote for an election. The second is that a simple majority (50% +1 of those present on the day of the vote) of MPs must pass a specifically worded no confidence motion in the government. This would then be followed by a two-week period during which an alternative government could be formed. If this proves impossible, there would be a general election thereafter.

#### **Only the leader of the opposition is likely to get time for a no confidence vote**

There is a clear constitutional precedent that the leader of the opposition can call a vote of confidence in the government. There is no legal limit on the number of times this can happen, but there may be a political limit.

#### **The DUP abstaining could be sufficient to allow a confidence vote to pass**

Seven Conservative or Democratic Unionist Party (DUP) MPs would have to vote against the government if it were to be defeated in a vote of confidence. Alternatively, if the ten DUP's MPs abstained on a confidence motion, the government's majority would be reduced to just two.

### **A general election would take approximately six weeks**

The Electoral Registration and Administration Act 2013 requires 25 working days for an election campaign. This is likely to mean that a general election would have to be forced before mid-February to take place at some point before the end of the Article 50 period.

### **In practice, an extension of Article 50 would probably be necessary either before or just after a general election**

Although a general election could be called and held relatively quickly – perhaps within the space of six weeks – in all likelihood we would end up with a new prime minister who would almost certainly want to renegotiate at least some aspects of the Brexit deal, requiring more time.

## **SCENARIO SIX:**

### **REVOKE ARTICLE 50**

One of the uncertainties hanging over the Brexit process until recently had been whether the UK could revoke its notice to leave the EU unilaterally without needing the approval of the EU member states and/or institutions. This issue has now been settled following a [judgment](#) by the European Court of Justice. This means that revocation remains a live option in legal terms.

### **What you need to know**

#### **The UK can revoke its notice to leave without the need for approval by the EU**

The uncertainty about whether or not this was possible prior to the ECJ case derived from the absence of any explanation about how this process would work in the text of Article 50 itself – therefore, the court was asked to fill in the silence in the treaty.

#### **It would require an act of Parliament in the UK**

Although Article 50 can be revoked by virtue of an ‘unequivocal and unconditional’ letter to the European Council, following the Miller case that preceded the triggering of Article 50, the government would almost certainly be required to pass an act of Parliament in order to gain the authority to submit such a letter.

#### **The UK can remain in the EU on the same terms**

There is no ‘punishment’ for having triggered Article 50 and member states can return to their previous terms of membership, including any carve-outs that member states might have had. However, the terms of membership negotiated by David Cameron pre-referendum would no longer be available.

## SCENARIO SEVEN:

### NATIONAL UNITY GOVERNMENT

This is clearly not a policy option in itself, but it is a significant and live possibility that could be form an important part of advancing the Brexit endgame. In theory, a coalition of backbench MPs from across parties, including the two main parties, in the House of Commons could form an administration in order to break the deadlock.

#### What you need to know

##### **A no confidence motion in the government would have to be passed by MPs first**

The most likely context in which a ‘national unity government’ could be formed is in the two-week period following a no confidence vote in the government. In a scenario in which the government pursued a no deal exit, backbench MPs from across the House of Commons could club together to prevent this from happening by first declaring no confidence in the government and then entering negotiations to form an interim cross-party administration.

##### **A ‘national unity government’ would then need to win a confidence motion in the House of Commons**

Once a no confidence vote in the government has been passed, there is a two-week period in which another administration has to gain the confidence of the House of Commons, otherwise a general election is automatically triggered. A ‘national unity government’ would need cross-party support – or a commitment from a large number of MPs to abstain – to gain the confidence of the House in this two-week period.

##### **An official confidence motion would not have to be tabled by Jeremy Corbyn**

Unlike a no confidence motion, there is no stipulation that the leader of the opposition would have sole discretion to attempt to form a government. Backbenchers would not be reliant on the leader of the opposition to table any further motion on their behalf, so an alternative prime minister and cross-party executive could emerge.

##### **The EU would be unlikely to renegotiate with an unstable ‘national unity government’**

If it wanted to renegotiate the Brexit deal, any ‘national unity government’ would have to be able to demonstrate that it was stable enough to last for a period of months, and probably years. More likely, such a government would have a single purpose in mind, such as revoking Article 50 or calling a further referendum, and once this had been achieved would dissolve itself.



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