

Brexit - where do we stand at the end of February 2019



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Where are we now?

The UK's progress towards leaving the European Union has been a tortuous and turbulent affair. It has been marked by Prime Minister Theresa May's Government suffering repeated heavy defeats in Parliament, which would normally have led to a change of policy if not of Government, but carrying on with its Brexit stance unchanged. So you could be forgiven for assuming that a series of votes initiated by backbenchers at the end of February in which the Government suffered no defeats would also signal no change. Not so. Even more paradoxical, the significant change to the Government's approach at the end of February may make the outcome the Government has been aiming for all along a little more likely.

What happened? In mid-February, the Government headed off a serious push to give Parliament more influence over the process through an amendment tabled by Labour's Yvette Cooper, by promising more opportunities to vote at the end of the month. Amid rumblings of discontent among the hitherto loyal Brexit Delivery Group (100+ Leave and Remain supporting Conservative MPs who have supported the PM throughout) and the threat of mass resignations of Ministers, at the end of February the PM effectively adopted the Cooper amendment as her own policy, which led Cooper to propose a further amendment designed to bind the PM to stick to her commitment - this passed with a very comfortable majority, though around 110 Conservatives failed to support it (most abstained, 22 voted against).

What does it all mean? On 12 March, Parliament will vote again on the Withdrawal Agreement, with whatever adaptations the Government has been discussing with the EU (see below for the likely status of these). If Parliament accepts, this will form the basis for the UK's departure from the EU. If not, on 13 March Parliament will vote whether to proceed to leave the EU with no deal. If Parliament declines to do that, it will vote on 14 March whether the Government should request an extension to the Article 50 deadline of leaving the EU on 29 March.

If the Withdrawal Agreement does not pass on 12 March, it is virtually certain that Parliament will then vote against "no deal" and to ask for a delay to the Brexit process, in the belief that the EU will grant such a delay. The risk of a "no deal" exit on 29 March has therefore been reduced to close to zero (though of course the EU has also to agree any delay - see below), but, as the PM was at pains to stress in Parliament, delay does not remove "no deal" at the end of the delay period. The Parliamentary arithmetic however seems inexorable. It is doubtful that, as some have asserted, the risk of "no deal" was putting much pressure on the EU side of the negotiation: the EU can read the Parliamentary arithmetic as well as anyone. The moves in Parliament at the end of February increase the likelihood that Parliament will assert the majority against "no deal" Brexit into the future.

What will Parliament vote on 12th March?

But the Withdrawal Agreement may yet pass on 12th March. The pro-Brexit Conservative European Research Group (ERG) split for the first time in the Parliamentary vote, with most abstaining but a core of 20 voting against. The language of their more publicly known spokesmen (all of whom abstained) about what they need to see in out of the Government's negotiations with the EU has moderated considerably, though not yet to a point that reflects a realistic outcome to the Government's negotiations with the EU. On 12 March, the ERG will face a choice between voting to ensure that Brexit happens, through the Withdrawal Agreement, or the near certainty it will be delayed, the likelihood of a softer Brexit, and the possibility (still in my judgement remote, but growing) of it being frustrated altogether.

What will be on the table? The EU will want to avoid any risk of the ERG pocketing whatever has been negotiated and coming back for more. So they are more likely to say something along the lines of: "if you can show a Parliamentary majority for X, we will consider it at the European Council on 21-22 March". 'X' is likely to consist of some more legally worded version (in a codicil or separate document) of what the Commission has already said about the Irish border backstop provision not being intended by the EU to be a permanent solution (it would of course be against the EU's own interests to grant the UK a permanent Customs Union and a measure of Single Market access without free movement of people), and some more specific language in the accompanying Political Declaration about exploring alternative arrangements for the Irish border during the future relationship negotiations. Given the mind-concentrating effect of the risk to the Brexit process noted above, this may just be enough to get the Withdrawal Agreement through, with the support or abstention of between 20-30 Labour MPs who represent strongly pro-Brexit constituencies and who are disturbed by the latest turn of Labour policy (see below).

If the Withdrawal Agreement does pass on 12 March, and is concluded at the European Council on 21-22 March, it is probable that a short “technical delay” to the date of Brexit would still be necessary, to allow time for the necessary implementing measures to be put in place in both the UK and EU (the European Parliament has also to ratify the Withdrawal Agreement). This is unlikely to be contentious on either side.

Never put off to tomorrow what you can put off to next month...

What happens if Parliament votes for delay? The PM asserted that this would be a limited, one-off delay (to the end of June) to keep trying to find a way forward, with the possibility of “no deal” at the end (though she had to concede that Parliament could itself decide the length of the delay to be requested of the other 27 Member States of the EU). The PM’s stance frankly looks highly unrealistic, from both a Parliamentary and an EU perspective. Parliament having voted to block “no deal” and defer Brexit once would be very likely to do so again. And it is very hard to see the EU agreeing simply to string out the current process for another three months.

If Parliament has voted for delay on 14th March, the likelihood is of intensive negotiations between the UK and the EU about how long the delay should be and for what purpose, running up to the 21-22 March European Council which would then decide whether to agree to the delay. Apart from the PM’s view (which could be unkindly characterised as: “I have run out of road along which to kick the can, so please extend the road”), there are a number of possible models of delay. The delay could be shorter (so not complicating the European Parliament elections) but with a clear commitment that Parliament will be given an opportunity to vote for different models of Brexit to see what would command support, something the Prime Minister has adamantly resisted up to now. This need not lead to much change to the Withdrawal Agreement, but would affect the terms of the Political Declaration on the future relationship. The risk of course is that Parliament would be unable to coalesce as a majority around any model of Brexit. If it can, it is almost certain to be a softer form of Brexit (Norway+ or Common Market 2.0).

The alternative would be a much longer delay, through perhaps to what was intended to be the end of the implementation period in December 2020, to allow time for a proper re-think of the way forward. Some in the EU seem to favour this, though it would probably mean UK participation in the European Parliament elections (politically difficult in UK and EU).

In both cases, it is hard to see how Theresa May continues as Prime Minister (though her resilience to Brexit reverses is remarkable). Longer delay increases the chances of a General Election – a highly uncertain prospect given the divisions in both parties.

Meanwhile....

Theresa May is not the only leader finding her Party difficult. Jeremy Corbyn has been forced into a significant reverse of his personal stance (though in this case in line with the policy adopted at the last Labour Party Conference), and to come out in support of a fresh referendum. He has done so, as one commentator put it, with the

visible enthusiasm of a schoolboy approaching a plate of Brussels sprouts. Senior Labour figures instantly gave contradictory accounts of what the new policy means, and what the questions would be, though they all agreed that “no deal” would not be among the questions, and “remain” would be. Mr Corbyn had to shift towards a further referendum to stave off further defections from his party to a new Independent Group of MPs (8 have gone so far, plus 3 Conservatives). The defections have been caused by a number of issues, including persistent allegations of anti-semitism in the Party, but the defectors – along with many Labour MPs – all favour a fresh referendum on Brexit. Mr Corbyn could not afford more defections. Does the shift of Labour policy materially increase the chances of a fresh referendum? Probably not. Any proposal for a referendum would still struggle to get through Parliament: the Government would vote against, and Conservative Party discipline would be likely to hold for all bar a small number of MPs, whereas a larger number of Labour MPs from strongly pro-Brexit constituencies would find it very hard to support a referendum. Mr Corbyn has not committed to including a referendum in the Labour manifesto for an election.

So what does it all mean?

As before, there is no outcome to which looks more than 50% likely. The Withdrawal Agreement (with additional accompaniments), a delay to Brexit, and an election have all become a little less unlikely. “No deal” Brexit has become more unlikely. And a referendum and no Brexit remain very unlikely. If the Withdrawal Agreement does not gain Parliamentary support on 12 March, is it dead? Again, probably not. Most of it is necessary for the UK to leave the EU in any agreed scenario. The true debate is likely to be about the shape of the future relationship (which is covered in the Political Declaration), and therefore what the provisions of the Withdrawal Agreement lead to. A debate some would say the UK would have been wise to have had, in Parliament and in the country, before serving the Article 50 notice.

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