

Brexit Briefing

Emma Brooksbank

10 April 2019

Introduction

- Where are we now?
- What happens next?
- Status of EU law – Deal or No Deal; transition period and beyond
- EU Settlement Scheme
- Worker rights

Where are we now?

Article 50

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

Current extension is to 12 April 2019 as Parliament **had not** passed the withdrawal agreement by 29 March 2019. The extension would have continued to 22 May 2019 if this **had** been agreed in the House of Commons.

The Cooper-Letwin bill passed by 390 votes to 81, this backbench bill required the prime minister to seek an extension to Article 50. An extension has been sought to 30 June 2019 (the date before the European Parliament sits).

In a letter to EU Leaders, ahead of today's European Summit, the European Council President Donald Tusk argued for a longer extension:

“However, our experience so far, as well as the deep divisions within the House of Commons, give us little reason to believe that the ratification process can be completed by the end of June. In reality, granting such an extension would increase the risk of a rolling series of short extensions and emergency summits, creating new cliff-edge dates. This, in turn, would almost certainly overshadow the business of the EU27 in the months ahead. The continued uncertainty would also be bad for our businesses and citizens. Finally, if we failed to agree on any next extension, there would be a risk of an accidental no-deal Brexit.

This is why I believe we should also discuss an alternative, longer extension. One possibility would be a flexible extension, which would last only as long as necessary and no longer than one year, as beyond that date we will need to decide unanimously on some key European projects.”

Withdrawal Agreement and Political Declaration

The withdrawal agreement sets out the terms of our departure. The political declaration sets out the bare bones of our future relationship with the EU.

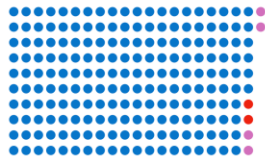
The terms of the withdrawal agreement and political declaration were agreed by Theresa May's cabinet on 14 November 2019 and agreed by the EU on 25 November 2018.

In meaningful votes on 15 January 2019 and 12 March 2019 the House of Commons voted against the Government's withdrawal agreement and political declaration. On 29 March 2019 the withdrawal declaration was defeated in the third meaningful vote, with the political declaration not having been put to vote. It was first defeated by 230, reducing to 149 and then by 58 votes.

How Theresa May's Brexit plan was rejected three times

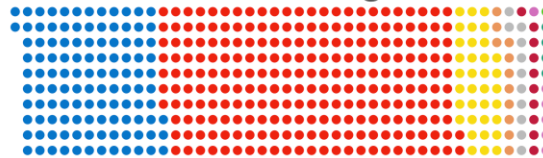
On 15 January, just a handful of independents and Labour rebels joined Conservative loyalists to vote for the deal

For: 202



Con 196; Lab 2; Ind 4

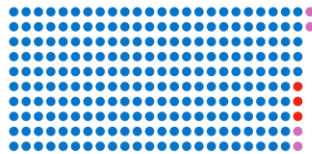
Against: 432



Con 115; Lab 239; SNP 35; Lib Dem 11;
 TIG 11; DUP 10; Ind 6; Plaid 4; Green 1

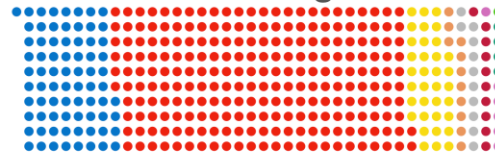
In the follow-up vote on 12 March, the PM reduced the deficit to 149 by winning back about 40 Conservatives

For: 242



Con 235; Lab 3; Ind 4

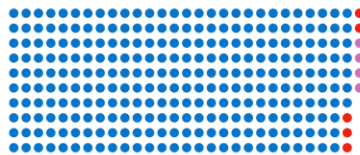
Against: 391



Con 75; Lab 238; SNP 35; Lib Dem 11;
 TIG 11; DUP 10; Ind 6; Plaid 4; Green 1

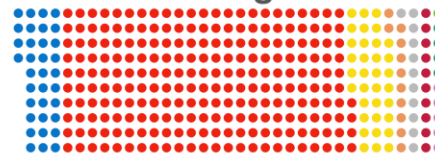
Finally in the vote on just the withdrawal agreement on 29 March the government was defeated by 58 votes

For: 286



Con 277; Lab 5; Ind 4

Against: 344



Con 34; Lab 234; SNP 34; Lib Dem 11;
 TIG 11; DUP 10; Ind 5; Plaid 4; Green 1

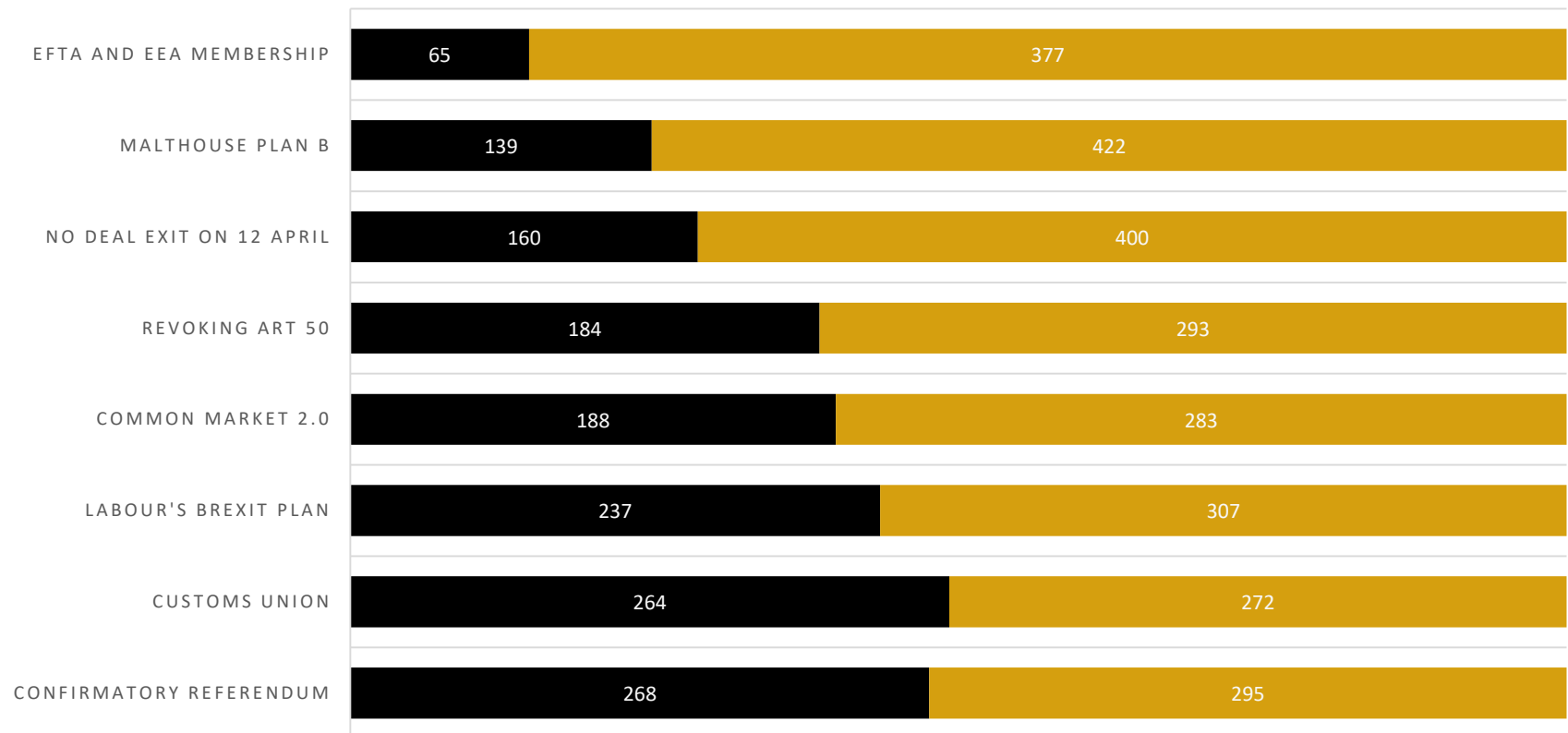
Key considerations

- Single market and the four freedoms
- Customs Union
- Irish backstop
- End to the jurisdiction of the ECJ in the UK

Recent developments

OUTCOME OF INDICATIVE VOTES 27 MARCH 2019

■ For ■ Against

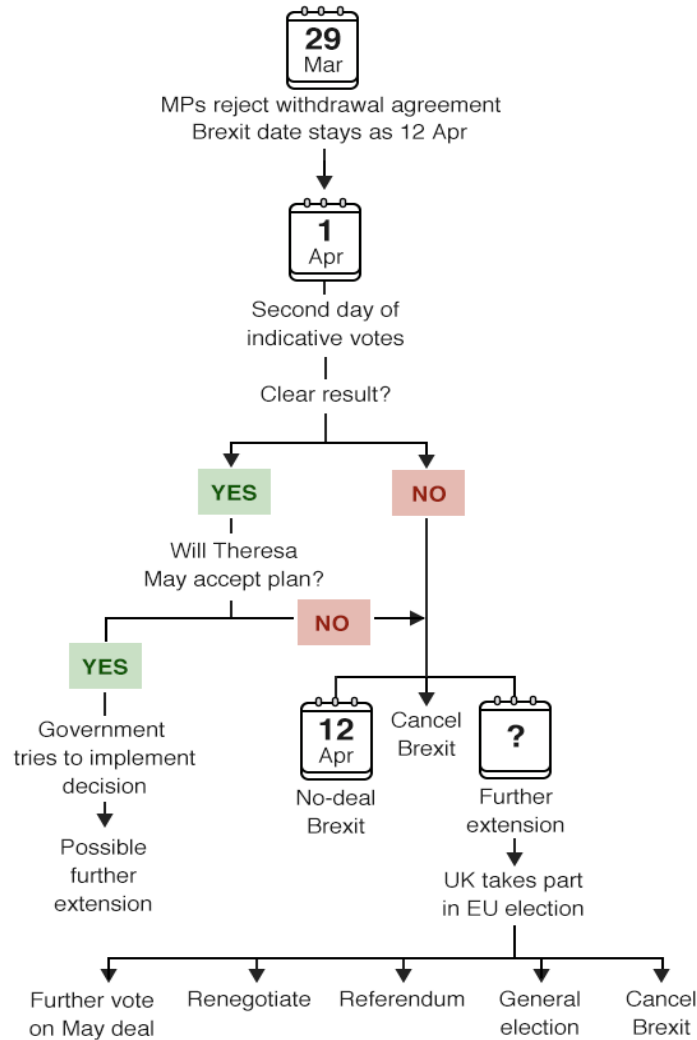


Outcome of indicative votes 1 April 2019

| Motion | Sponsor | Noes | Ayes | Deficit |
|------------------------------|----------------|------|------|---------|
| (C) Customs Union | Kenneth Clarke | 276 | 273 | 3 |
| (D) Commons Market 2.0 | Nick Boles | 282 | 261 | 21 |
| (E) Confirmatory public vote | Peter Kyle | 292 | 280 | 12 |
| (G) Parliamentary Supremacy | Joanna Cherry | 292 | 191 | 101 |

Where do we go from here....

Brexit next steps



Outcome?

Deal

EU (Withdrawal Agreement) Bill, which will enshrine the Withdrawal Agreement into UK law must be debated in both Houses.

The Withdrawal Agreement must be presented to the EU Parliament and passed on a simple majority. Then passed to the European Council and 20 out of the 27 countries, representing at least 65% of the population, must agree to it (super qualified majority).

Likely to require an extension to ratify the Withdrawal Agreement.

No Deal

European Union (Withdrawal) Act 2018 brings EU law into domestic legislation.

UK trade with the EU continues on the basis of WTO rules.

Extension

Further short extension?

A longer extension, of possibly one or two years, is supported by the EU and by Donald Tusk.

Further referendum

In/Out referendum unlikely in the near future; motion has been defeated in the Commons.

Close alignment to the EU would leave this open for a future government.

Confirmatory referendum or “People’s Vote” to approve an agreed Deal does have support.

Effect of the European Union (Withdrawal) Act 2018

- Repeals the European Communities Act 1972;
- European Treaties are no longer directly applicable;
- Ends the supremacy of European Union (EU) law in UK law;
- Converts EU law as it stands at exit into domestic law;
- Creates temporary powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left;
- Enables domestic law to reflect the content of a withdrawal agreement under Article 50 once the UK leaves the EU, subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal.

Transition period

- The UK would continue to participate in the EU customs union and single market, and would remain bound by EU trade policy, customs laws and tariffs.
- There would be ongoing free movement of people, goods, services and capital (the four freedoms) during this period.
- The UK would continue to be bound by the jurisdiction of the ECJ.
- We would not be able to participate in EU decision-making, and would no longer be represented at the EU Commission, Parliament and Council.



EU settlement scheme

- The EU Settlement Scheme is now fully open.
- This provides a mechanism for EU nationals and their family members to apply for settled status (indefinite leave to remain) or pre-settled status (limited leave to remain).
- In a deal scenario the scheme will be voluntary until 30 June 2021. Free movement will continue throughout the transition period. A European national would need to be resident in the UK before 31 Dec 2020 to qualify.
- In a no deal scenario European nationals who are currently resident in the UK will have until 31 Dec 2020 to apply for leave on the EU settlement scheme. At the moment a person would need to be resident in the UK before 12 April 2019 to qualify. This deadline will very likely extend with any extension granted by the EU.
- In a no deal scenario European nationals arriving for the first time after we leave the European Union will have a 3 month initial right of residence. They will then need to apply for temporary leave to remain. This will be granted for 36 months. It is intended to be temporary and non-extendable and will not lead to settlement. An extension can be sought under the new 2021 skills based immigration system.
- Any EU national employee who has not applied for status by the deadline will not be able to work legally in the UK.
- The Home Office will not however take enforcement action against employers and will not require new or retrospective right to work checks to be undertaken. As a matter of best practice, many employers will opt to update their HR records.

Who needs to apply for settled/pre settled status?

- All European nationals and their family members, even those who already hold permanent residence.

Who does not need to apply?

- Irish nationals;
- European nationals with indefinite leave to remain (but family members from outside the UK and Ireland will); or
- European nationals and their family members with British Citizenship.

How do EU nationals apply?

- Download the Home Office's app: [EU Exit: ID Document Check](#)
- Scan biometric passport or ID
- Apply online <https://www.gov.uk/apply-stay-uk-leaves-eu-test-phase>

What do they need to prove?

1. Identity
2. Residence
3. Absence of serious criminal convictions

How much will it cost?

No fees, any fee paid will be refunded

How will settled status be issued?

- EU nationals will not receive a biometric card or passport endorsement.
- Proof of status will be accessed through an online system. They will also receive a letter via email but this is not proof of status.
- Non-EU national family members should still receive a biometric residence permit.

Worker rights

Deal

- No change during transition
- Withdrawal Agreement – Part 3 Article 4

Non-regression principle – *“the level of protection provided for by law, regulations and practices is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the transition period in the area of labour and social protection and as regards fundamental rights at work, occupational health and safety, fair working conditions and employment standards, information and consultation rights at company level, and restructuring”*

No Deal

- EU (Withdrawal) Act 2018 brings existing legislation into domestic legislation. Workers in the UK will continue to be entitled to the rights they have under UK law.
- Reassurance on non-regression and suggestion of 6 month reviews of Strasbourg jurisprudence and Parliamentary time to consider adopting new EU law into domestic law.

Contact

Emma Brooksbank

Partner

0845 1666300

emma.brooksbank@freeths.co.uk

Brexit update briefings: <http://www.freeths.co.uk/subscribe/>