



## What happens if Parliament rejects May's Brexit deal?

by Charles Grant

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Theresa May has clinched her deal with the EU and persuaded a majority of the cabinet to support it. Despite the resignations of senior ministers like Dominic Raab and Esther McVey, she is more likely than not to survive any immediate leadership challenge; it suits a lot of Tory MPs, both Leavers and Remainers, to keep her in place until she has delivered Brexit. But after EU leaders sign off the deal at a special summit on November 25<sup>th</sup>, May has promised the House of Commons a 'meaningful vote'. That is likely to be held in early December and it is hard to see how she can win it.

May's deal consists of a withdrawal agreement in the form of a treaty and a political declaration sketching out [the shape of the future relationship](#). She says the choice is between her deal, exiting without a deal – or, as a threat to potential Brexiteer rebels – staying in the EU. The government hopes that momentum will build for backing her draft plan, as an alternative to chaos. Business leaders, many of whom are very fearful of no deal, will speak out in favour of May's proposal. EU leaders will add their voices, saying that no other deal is possible.

May's problem is that a clear majority of MPs appears to oppose her deal. She has a working majority of 13, including ten MPs from the Democratic Unionist Party (DUP), who normally vote with the government. Many eurosceptic Tories in the European Research Group (ERG), led by Jacob Rees-Mogg and Steve Baker, are certain to vote against the government. They object in particular to the prospect of the UK being tied to the EU in a customs union for an indefinite period, and thus unable to negotiate free trade agreements with other countries that cover goods. They bridle at the UK having to be a 'rule-taker' not only on trade policy but also in so called 'level playing field' areas like labour and environmental standards, state aid, competition policy and tax. Nor do they like the commitment to voluntarily follow EU standards on goods. More than 20 Conservatives from the ERG and other eurosceptic caucuses seem likely to oppose the government.

On the opposite wing of the Conservative Party, five to ten pro-Europe parliamentarians will follow the lead of Dominic Grieve and Jo Johnson and vote against the deal, hoping that its defeat will lead to another referendum.

The DUP, having long opposed any regulatory divergence between Northern Ireland and the rest of the UK, will probably vote against the deal. The withdrawal agreement's 'backstop' promises to put Northern Ireland in a deeper customs union with the EU than that between Great Britain and the EU. It also says that Northern Ireland must follow those single market rules that are required to ensure no border checks between the two parts of Ireland. That means that some checks – albeit minimal and 'dedramatised' as much as possible – will have to be made on goods travelling from Great Britain into Northern Ireland.

The Labour Party will vote against the prime minister's withdrawal plan, on the grounds that it cannot deliver the same benefits as membership. The party's leadership hopes that May's defeat would somehow lead to a general election. The Scottish and Welsh nationalists, the Liberal Democrats and the Green Party's one MP have also come out against May's deal.

Nevertheless, the government is counting on some Labour MPs to save its bacon. There are half a dozen eurosceptic ones who may well vote in favour of May's plan. There is also another small group of Labour MPs who are less eurosceptic but worry about annoying their anti-EU constituents by being seen to try to thwart Brexit. The government hopes that other, pro-EU Labour MPs will be 'responsible' and vote to avoid the potential chaos of no deal. But the government seems unlikely to win the backing of more than 10-15 Labour MPs. Even if a number of others abstained, May appears to be heading for defeat on the meaningful vote.

Defeat could well lead to May resigning or to a leadership challenge. If there is a challenge after a parliamentary defeat, it would stand a greater chance of success than one in the next few days. If she falls, her party would need to telescope its process for choosing a leader, normally a couple of months, into a few weeks, given the urgency of Brexit.

But the arrival of a new leader would not change the parliamentary arithmetic of the Brexit deal. The EU would not reopen the withdrawal agreement, whatever a new British prime minister wanted. And any prime minister who pushed for no deal would be defeated in Parliament, since a large majority of MPs are determined to avoid that outcome. Therefore the new prime minister, whatever his or her political slant, would be faced, like May, with the difficulty of getting the deal through Parliament. The EU might indulge the new leader by allowing him or her to tweak the political declaration, to make it more appealing to one or other faction in Parliament. But MPs would have to vote again on essentially the same deal, and there would remain a large chance of it being defeated once more.

If Parliament votes against the deal, there are just five possible outcomes.

First, the default option is for the UK to leave without a deal. This outcome could come in the form of a managed no deal, whereby the two sides acknowledge the UK's inability to ratify a withdrawal agreement, at least for the foreseeable future, but take steps to avoid the worst sorts of disruption for businesses and citizens. There could be mini-deals on aviation, citizens' rights, insurance contracts, border controls and so on; the UK might pay part of the £39 billion that it has promised to the EU, to generate goodwill. The European Commission has sought to prevent discussions between the member-states and the UK on ways to reduce the pain of no deal, so that that outcome does not become attractive to the UK. If no deal really became likely, however, the EU would probably soften its approach.

But no deal could also turn out to be acrimonious and very hard, with the UK paying no money and the EU rejecting mini-deals. Such an outcome is unlikely, since those responsible for the chaos would soon become unpopular with their voters; also, the financial markets' reaction would be more extreme, with a sharp weakening in the value of the pound.

Neither the EU nor the UK – unless by some chance the prime minister was an extreme Brexiteer – would welcome no deal, and if that outcome loomed they would probably try to continue negotiating to find an alternative. But no deal cannot be ruled out if Parliament votes down May's package.

Option two is that Parliament urges the British government to go back to the EU and achieve a better deal. The Labour Party takes this line, arguing for the UK to negotiate a permanent customs union. And there is a majority in Parliament for a softer Brexit, including a customs union and, for many MPs, a future relationship that is closer to the Norway model than to the Canada model. Because the EU wants to encourage Parliament to vote for May's deal, the Union says it would not agree to reopening the Brexit package. It certainly means that when it comes to the withdrawal agreement, which is a treaty. But it might agree to revise the political declaration, which is non-binding and covers the future relationship. If the UK shifts its red lines, the EU could agree to a political declaration sketching out a closer future relationship. Such a deal would still incur strong parliamentary opposition from Tory Brexiteers who oppose the withdrawal agreement and its backstop, but would be more likely to pass muster with Labour MPs.

A variant of this option is discussed by increasing numbers of Labour and Conservative MPs: going all the way to 'Norway'. The UK would join the European Free Trade Association (EFTA) in order to remain in the European Economic Area (EEA) post-Brexit, and thus in the EU's single market. The case for Norway is that both Leavers who want a Canada-style FTA and Remainers who want to stay close to the EU would prefer it to the chaos of no deal. The Leavers would see it as an interim step for a few years – and more comfortable than the withdrawal agreement's transitional provisions – while they negotiated an FTA.

The problem is that neither the EU nor the EFTA countries want the UK to be in the EEA for just a few years. They would be relaxed about the UK seeking to join in perpetuity, but doubt that the UK political class would tolerate the conditions on a permanent basis. They are probably right that Parliament would find it hard to accept single market rules without the UK having a vote on them, free movement of labour and large payments to the EU budget. In any case the EEA route would require a lot of treaties to be rewritten and ratified over a long period.

The third option is that if there is a blockage in Parliament and renegotiation has failed, and the UK is drifting towards the 'cliff edge' of a no deal Brexit, a general election could become attractive. The Labour leadership would like this, believing it could win (although some Labour MPs are unenthusiastic, since they do not want to see a government led by Jeremy Corbyn). Some Tory MPs want to avoid an election, in case they lose their seats. Many others would be horrified at the thought of an election potentially making Corbyn prime minister. But the prospect of no deal also horrifies many Tories, and if it loomed some of them would favour an election as a means of preventing that outcome. Even with the Fixed-term Parliaments Act, a motion of no confidence or a vote of two-thirds of MPs can trigger an election.

An election would shake up the parliamentary arithmetic and perhaps enable a deal to pass. But if the voters returned a similar Parliament, which they might, MPs could still reject May's deal – whether or not

she remained prime minister. The possible arrival of a Labour government would be significant. Such a government would, at the very least, seek a significantly softer Brexit, and could perhaps seek to hold a new referendum.

The fourth option is a so-called People's Vote. The case for a second referendum is that when the British voted in June 2016 they had a choice between the EU they knew, and an abstract Brexit that was never defined. Now they know the reality of the deal that is available, and it is in many respects less attractive than the one they were promised. So they deserve a final say on whether Brexit should proceed.

The case against a People's Vote is that electors made a clear decision in June 2016, that a second referendum would be horribly divisive, and that the result – whichever way it went – would probably be close and thus fail to settle the issue definitively. Some critics argue that another referendum would undermine trust in Britain's democracy and lead to civil unrest. Quite a lot of Remainers are reluctant to back a new referendum on the grounds that it could easily be lost.

Last summer the chances of this outcome seemed minimal. They have grown because the Labour Party has moved towards a more positive view: it says it wants a general election, but that if that is not possible it will back a People's Vote, and that one option should be Remain. Also, some leading Conservatives, such as Jo Johnson and Dominic Grieve, have come out in favour of a referendum. If public opinion shifts decisively towards Remain, more MPs will be emboldened to favour a referendum.

The obstacles remain huge. A referendum cannot happen unless the government introduces the necessary legislation. Most Tory leaders see another referendum as anathema. The party is so EU-phobic that any leader who contemplated a People's Vote would surely be ousted quickly. Corbyn, a long-time eurosceptic, has said Brexit cannot be reversed. He opposes a new referendum, as do certain trade unions and some Labour MPs in Leave constituencies. And what would the question be? If the choice was May's deal or Remain, hard-Brexiteers who favour no deal would see the referendum as illegitimate. Justine Greening, a former Tory minister, has suggested a three-option question, including no deal, but the Electoral Commission is thought to oppose complex questions in referendums.

There are two possible routes to a People's Vote. The most likely is via the election of a Labour government. Although the party is not currently in favour of a referendum as its first choice, there is movement within the party towards that option. If this movement continues, it is possible that by the time of the next election, party policy may be in favour.

The other route is that Parliament asks the government to organise a People's Vote. It is hard to see May or another Tory prime minister agreeing. But it is just possible that if the Brexit deal is blocked in Parliament, and the cliff-edge approaches, a referendum may be seen as a welcome alternative to political and economic chaos. In such circumstances the government could agree to legislate for a referendum. It is even conceivable that a government of national unity could form, with the principal purpose of overseeing another referendum.

The fifth and final option is that, faced with no deal – with neither a renegotiation, nor an election, nor a second referendum proving viable – MPs swallow their scruples and vote for May's deal, in what they consider to be the national interest.

Options two, three and four would require some extension of Article 50, to give the UK more time to sort itself out. May has said firmly that the government will not request an extension, but she could always change her mind (as she did on whether to hold a general election last year). Any EU decision to extend Article 50 would require unanimity among the 27 governments. The EU would be reluctant to take such a step, particularly beyond mid-May 2019, because of the European elections later that month. Britain's seats in the European Parliament have already been reallocated and it would be legally complicated to keep the UK in the EU beyond the elections. But if the EU really wanted to prolong British membership by several months, there could be ways around the European Parliament problem; for example, the UK could appoint MPs as MEPs on an interim basis.

Option two, renegotiation of the political declaration, would probably require just a short extension, if any. But if the UK wanted to hold a general election or a referendum, the prolongation would need to be for several months. One cannot be certain how the EU would react to such a request from a British government. If the request was perceived as frivolous, for example in order for the Tory party to find a new leader with a new plan, the EU would probably say no. But if the request was seen as serious – the purpose being to hold an election or referendum that might stop Brexit – EU leaders would probably agree. Virtually all of them would be happy to see Brexit reversed.

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