



**Demand a vote on the Brexit deal**

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**Why Voting Against the Brexit Deal Won't Lead to No Deal**

## **Foreword**

It is increasingly clear that there is no majority in Parliament for any particular form of Brexit. At present, there appears to be little likelihood of the Government securing sufficient support for the agreement negotiated with the European Union to pass through the House of Commons. Two and a half years on from the 2016 referendum, nobody has come forward with a proposal that could secure a majority in the present circumstances. The blunt reality is that such a proposal does not exist.

This has led to some concern that the UK could simply leave the EU with no deal, by default, on 29 March 2019. After all, Article 50(3) states that a member state leaves the EU two years after notifying its intention to withdraw “unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.” With senior figures in the EU having consistently ruled out the prospect of an extension of the Article 50 timetable to allow for a renegotiation of the agreement to take place, the argument that MPs should vote for the deal on the table or else trigger a no deal outcome may seem persuasive.

But this argument, which has been made repeatedly by the Government, is flawed. The reality is there is a large majority in the House of Commons against a chaotic no deal Brexit. No responsible Government would allow that to happen, as several ministers have already confirmed. If the Withdrawal Agreement and Political Declaration are voted down, Members of all parties in Parliament will make sure that we do not leave the EU without a deal.

As this paper makes clear, there will be numerous opportunities for MPs to reject no deal and to propose an alternative way forward. If the deal has been rejected, we believe the best – and possibly only – option available to MPs will be to hand the decision back to the people. Regardless of what the Government says today about its opposition to offering a People’s Vote, it is highly plausible that events will force it to rethink and to embrace the idea as the best means of breaking the logjam and avoiding a no deal exit. It is our view that the sooner this reappraisal happens, the better.

It is time to drop the threatening rhetoric about allowing the UK to fall out of the EU with no deal. Ministers do not hold all the parliamentary cards, and nor will they be able to either manipulate the Commons into backing a deal via procedural sleight-of-hand or – if the deal is rejected – simply carry on regardless. Ignoring the will of the House of Commons is never a good idea, and the blunt political reality is that it will not be a credible option available to the Government. The sooner this is fully appreciated, the better.

**Rt. Hon. Dominic Grieve QC MP**

Attorney General for England and Wales (2010-14)

**Chris Bryant MP**

Shadow Leader of the House of Commons (2015-16)

## Introduction

The first principle to establish is that there is no majority in the House of Commons for a no deal Brexit. The main opposition parties have made clear their opposition to it. Labour's Keir Starmer says there is "a clear majority in parliament against no deal", Liberal Democrat leader Vince Cable describing it as a "fantasy" designed to motivate MPs to "jump behind" the Government's plan<sup>1</sup>, and the SNP's Ian Blackford insisting "there is not a majority" for it in the Commons.<sup>2</sup>

Meanwhile, recent comments by a number of Conservative ministers and backbenchers confirm the view that a majority of the Conservative Party would also reject such an outcome. Amber Rudd, the Work and Pensions and Secretary, has said that the House of Commons "will stop no deal". Alistair Burt, the Foreign Office Minister, believes that "Parliament will not support no deal." And Jonathan Djanogly is one of a number of backbenchers to express the view that "Parliament will not allow a no deal outcome."

Importantly, the Prime Minister effectively conceded that falling out of the EU with no deal is not a plausible scenario, when on 18 November she said that if MPs reject the deal they may "risk no Brexit at all".<sup>3</sup> The reasons for this are obvious. The Prime Minister knows perhaps better than anyone the extraordinary harm that could be done by a no deal exit. She would have to answer to the business community and to the country at large if, after two years of negotiations, she allowed Britain to simply crash out. Such an outcome is unthinkable. And it is clearly not in the interests of the Prime Minister or her Government to allow it to happen.

But even if the Government were to seek to push things to the wire, in an attempt to force a last minute capitulation by enough MPs to get the deal through the Commons, there are a number of ways in which MPs will be to assert their authority and encourage or even force the Government to change course.

First, MPs will have an opportunity at the meaningful vote to express the clear opposition of the House to leaving the EU with no deal. Amendments to the Government's motion on the withdrawal agreement, including the cross-party amendment tabled by Hilary Benn, could, if successful, see MPs reject no deal and enable the House to express its view about what should happen next if the Prime Minister's deal is defeated.

Given the level of parliamentary opposition to the withdrawal agreement, it seems unlikely the Government will secure sufficient support for it at the first time of asking. It seems likely, therefore, that the agreement will be brought back to the Commons in the days or weeks that follow, perhaps on multiple occasions. On each occasion, MPs will have further opportunities to amend the motion.

The EU (Withdrawal) Act ensures that, in the event of Parliament refusing to endorse the deal, the Government has to make a statement within 3-4 weeks and present a motion on how it intends to proceed. Such a motion is meant to be in unamendable 'neutral terms', but ultimately a decision on whether a motion is amendable or not is a matter for the Speaker. Ministers may not like it, but it may well be that amendments will be possible at this point. And if the Hilary Benn amendment has earlier been passed at the meaningful vote, this 'neutral terms' motion will definitely be amendable.

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<sup>1</sup> <https://talkradio.co.uk/news/sir-vince-cable-talk-no-deal-brexite-fantasy-get-mps-jump-behind-theresa-mays-plans-18111328756>

<sup>2</sup> <https://www.theyworkforyou.com/debates/?id=2018-11-15a.431.0&s=%22no+deal%22+speaker%3A25361#g437.3>

<sup>3</sup> <https://news.sky.com/story/theresa-mays-risk-of-no-brexite-warning-leaves-her-situation-critical-11557271>

Other opportunities will follow. It is inconceivable that the Government could go for months on end without any legislation passing through Parliament. If it really were to threaten leaving the EU with no deal, a number of pieces of legislation would have to be passed in preparation, potentially presenting a series of further opportunities for MPs to table amendments and force the Government's hand. Much of the legislation the Government would need to pass could be done through statutory instruments (SIs) granted by the EU (Withdrawal) Act. But the Commons has the ability to block SIs. Doing so would be a powerful expression of opposition to leaving with no deal.

Though the Government controls parliamentary timetable, it is unlikely they could resist calls for either an Opposition Day debate or backbench business. Either of these would provide another opportunity to test the will of Parliament. Whilst such motions are not legally binding on the Government, a vote in these circumstances would in practice be impossible for ministers to ignore.

Even if the Government were to go on legislative strike in an effort to avoid being pressured, MPs have other tools at their disposal. A vote of no confidence in the Government seems unlikely at present, but if ministers were seeking to force a no deal Brexit it is possible this could change. If MPs wished to apply pressure by expressing no confidence in a particular minister, rather than the Government as a whole, they could potentially use a mechanism called parliamentary censure, which would see MPs vote to cut that minister's salary in a bid to force their resignation.

There is a further crucial point that all MPs should bear in mind. If and when the agreement is rejected by MPs, alternatives should be sought. But the agreement negotiated by the Prime Minister will, presumably, remain on the table. If attempts to secure a different path, or to secure a People's Vote, have not succeeded, the Commons could return to the agreement as a last resort.

Of course, at every stage, the Commons would have a stronger case for rejecting no deal as an option if, rather than simply rejecting things, it offered a credible alternative. A number of people have proposed a renegotiation of the agreement, but that would of course be dependent on the EU granting an extension of the Article 50 timetable for something it has repeatedly ruled out.

The most plausible – and possibly only – alternative would be for MPs to vote to put the decision back to the people. Should the UK need more time for a People's Vote to take place, there is little doubt that the other 27 Member States would agree the necessary extension of Article 50. Support for this is growing in the country and in Parliament, and if other options are closed down over the coming weeks, there may well soon be a parliamentary majority for it. Indeed, it could ultimately prove to be the best solution for the government.

In the event that MPs passed a motion calling for a People's Vote and the Government tried to simply ignore it, MPs would have a number of tools available to them to resist being railroaded into a no deal Brexit. Countless statutory instruments would have to be passed, and MPs could veto these. Or ultimately, they could censure the Government through a confidence motion.

So, Parliament's hands are not tied. MPs cannot be forced to vote for a deal they do not believe is in the national interest. The default alternative is not to simply crash out with no deal – and both the Government and the Commons will have a shared interest in avoiding such an outcome. If MPs have just rejected the deal, an even larger number will line up to reject no deal. And regardless of the legal niceties, the political reality will dictate that the Government cannot simply ignore the Commons.

## **Options Available to MPs**

### **1. MPs could amend the ‘deal motion’ or a subsequent ‘deal motion’**

The first opportunity to reject no deal will arise when the Government presents its withdrawal agreement to Parliament in the form of the ‘deal motion’. The vote on this motion is expected to take place shortly after agreement has been reached with the EU. An amendment from the Opposition, Conservative backbenchers or cross-party (if allowed by the Speaker) could make clear the House of Commons’ opposition to leaving with no deal. This would not be binding but would have huge political force.

One such amendment has been tabled by Hilary Benn, along with other select committee chairs. This amendment would reject both the Government's deal and the idea of leaving with no deal. It would also give MPs real power to reject any future attempt by the Government to force through a bad deal or no deal, by disapplying Standing Order No 24B to allow amendments to be tabled to any future ‘neutral terms’ motion the Government would have to bring forward within three weeks (detailed below). The amendment already has the support of Conservative and Labour backbenchers, as well as the leaderships of both Labour and the SNP, and therefore has a real chance of success.

Even if that amendment fails, but the deal is also rejected by MPs, there is good reason to believe the Government will bring it back to the Commons in the days that follow. This may even happen more than once. On each occasion, MPs will have an opportunity to amend the motion put before the House.

### **2. MPs could amend the Government’s ‘next steps motion’**

In the event of the ‘deal motion’ being rejected by Parliament or there being no final deal between the UK and EU, the Government is committed to tabling a statement on how it intends to proceed. This would have to be presented to Parliament within 21 days and debated within 7 sitting days. So, if it is rejected before Dec 17, the deadline for the statement would be January 15. Parliament will then vote on this in the form of a motion (or ‘next steps motion’). The motion could propose, for example, to continue negotiations and seek an extension of Article 50, or to leave the EU on 29<sup>th</sup> March 2019 without a deal.

The Government intended for the ‘next steps motion’ to be in ‘neutral terms’ (i.e. unamendable) but have conceded that it will be for the Speaker to determine this, and therefore whether amendments will be selected. The Benn amendment to the ‘deal motion’ may yet take this decision out of the Speaker’s hands. If it passes, the ‘next steps motion’ will definitely be amendable.

But even if the Benn amendment does not pass, it will still be up to the Speaker to decide whether the ‘next steps motion’ is in neutral terms. If it is deemed to be amendable, by this stage, a People’s Vote amendment would certainly be the best – and possibly only option. And it would in effect be binding. According to the UCL Constitution Unit: “it is important to consider the political environment that would exist at this point. Parliament’s refusal to agree a deal would leave the UK facing a ‘no deal’ Brexit unless some compromise could be reached. This is not a situation that the government, or the great majority of parliamentarians, wants. Hence an agreement to proceed with a referendum seems quite possible.”<sup>4</sup>

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<sup>4</sup> [https://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/The\\_Mechanics\\_of\\_a\\_Further\\_Referendum\\_on\\_Brexit](https://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/The_Mechanics_of_a_Further_Referendum_on_Brexit)

### **3. MPs could assert their view through another motions and debates**

Failing an amendment to the ‘next steps motion’, the Commons could force a vote to assert their view of what should happen next. This could occur through mechanisms such as an opposition day or a backbench debate. As Jill Rutter and Joe Owen of the Institute for Government have said, “It is likely that if the motion is neutral... the Speaker would try to find another way to allow Parliament to express its opinion on what should happen next.”<sup>5</sup> Whilst such motions are not legally binding on the Government, a vote in these circumstances would in practice be impossible for ministers to ignore. For example, the UCL Constitution Unit have said that “a clear parliamentary vote in favour of a referendum, rather than the UK heading for an automatic ‘no deal’ outcome, would in practice be politically binding on the government.”<sup>6</sup>

### **4. MPs could amend legislation that has to be ratified before exit day**

The Government published 106 technical notices over the course of the summer. Analysis by the Institute for Government indicates that to prepare for no deal the Government will need to pass further legislation in at least 51 areas.<sup>7</sup> Not all of these will be covered by the delegated powers granted by the EU Withdrawal Act, meaning fresh legislation would have to be passed.

The Shadow Brexit Secretary, Keir Starmer, has said if the Government tries to take the UK out with no deal, “we’re going to be voting pretty well every day between now and March on legislation” and that there will therefore be countless opportunities for Parliament to amend legislation that prevents that from happening<sup>8</sup>, so long as amendments are in scope. Brandon Lewis, the Conservative Party chairman, has said that in the event that the Government’s deal is voted down, “no deal is not necessarily the automatic outcome” because “there is [sic] lots of other pieces of legislation that need to go through Parliament over the next couple of months and there is nothing to say that we won’t see an amendment or something coming through the House that will allow for the Opposition and others to move not just a second referendum, but customs union and effectively no Brexit.”<sup>9</sup> It is also the case that the Trade Bill and the Fisheries Bill, which are already making their way through Parliament, could also be amended.

Much of the legislation the Government would need to pass to prepare for no deal could be done through statutory instruments (SIs) granted by the EU (Withdrawal) Act. But this does not mean MPs would have no say over that legislation. MPs have an absolute veto on SIs, whether under the negative or the affirmative procedure, and in the event that a motion had been passed calling for a People’s Vote and the Government was refusing to act, this could be a very effective blocking mechanism.

### **5. MPs could censure the Government or individual ministers**

Again, if the House of Commons has spoken clearly and indicated that it wants a People’s Vote, and the Government refuses to provide for one, the House of Commons can choose to sack the Government through a vote of no confidence. Such motions require a simple majority to pass, and in this case it would

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<sup>5</sup> [https://www.instituteforgovernment.org.uk/sites/default/files/publications/brexit-scenarios-final\\_0.pdf](https://www.instituteforgovernment.org.uk/sites/default/files/publications/brexit-scenarios-final_0.pdf)

<sup>6</sup> [https://www.ucl.ac.uk/constitution-unit/constitution-unit-news/The\\_Mechanics\\_of\\_a\\_Further\\_Referendum\\_on\\_Brexit](https://www.ucl.ac.uk/constitution-unit/constitution-unit-news/The_Mechanics_of_a_Further_Referendum_on_Brexit)

<sup>7</sup> <https://www.instituteforgovernment.org.uk/charts/what-government-needs-do-prepare-no-deal-brexit>

<sup>8</sup> Keir Starmer, BBC Radio 4, 12 November 2018 <https://www.bbc.co.uk/programmes/m00013mv>

<sup>9</sup> Brandon Lewis, BBC Radio 5 Live, 2 December 2018, <https://www.bbc.co.uk/sounds/play/m0001dhi>

therefore require a number of Conservative and/or Democratic Unionist Party MPs to vote to bring down the Government, or a significant number of abstentions. In the unlikely event that Parliament decided it did not have confidence in the Government, there would then follow a period of 14 days for the establishment of an alternative government that could command the confidence of the House. Failing that, a general election would be triggered.

A possible alternative would be to censure a particular minister. Parliament's power ultimately comes from its control of the supply – namely the collection and allocation of taxes and other revenues. Here its power is undisputed and ministers and civil servants have no choice, if they wish to behave lawfully, but to obey its instructions. This is why one mechanism – a vote to cut the salary of a minister – is a frequently attempted (if only very rarely successful) approach to forcing a policy change. Should ministers refuse to table legislation for a People's Vote, the Commons could vote, for example, to cut the salary of the Leader of the House. The precise size of the cut is not the issue – for a minister thus censured would have little choice but to resign. Alternatively, of course, any minister named in the press as a road block to People's Vote legislation could find themselves as a potential target.

Perhaps a Prime Minister might try to resist for a bit longer but, especially if the Speaker took up his historic role as the defender of the Commons' rights and privileges and so allowed further such debates, it is hard to see why an administration would want to suffer torture by a thousand cuts.

#### **6. If all else fails, MPs could endorse the Government's deal as a last resort**

If the agreement negotiated by the Prime Minister is rejected by Parliament, it will remain on the table as a fall-back option. As this paper has shown, MPs will have a range of options for preventing no deal and securing an alternative way forward, and it is highly unlikely that none of these paths would be taken. But failing all else, if the Commons really was faced with an impending no deal scenario, the Commons and the Government could – at the eleventh hour – return to the agreement. This would be an unpopular and highly undesirable step, given the agreement had previously been rejected. As such it would only be considered in the unlikely event that all other options had failed.