



## **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.

#### **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

### *No support for no deal*

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", with 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.

On 10 December 2018, the Court of Justice of the European Union issued its ruling on the revocability of Article 50, which confirmed that the UK can unilaterally revoke its intention to leave the EU under Article 50. Furthermore, it made clear that the UK would keep its existing terms of membership if it did so. This means that in a strict legal sense, the UK could at any point before 29 March 2019 withdraw the Article 50 letter in order to avoid a no deal exit. However, for political reasons, it is far more likely that to prevent no deal MPs will have to vote *against* no deal and *for* an alternative. The most likely alternatives are a withdrawal agreement, or a People's Vote.

### *The meaningful vote(s)*

There are a number of ways in which MPs will be to assert their authority and encourage or even force the Government not to take the UK out with no deal. And now that there is no doubt about the unilateral revocability of Article 50, the Government will simply not be able to claim there is no other option but to fall out with no deal.

First, MPs will have an opportunity at the meaningful vote, which the Prime Minister has now committed to hold in the House of Commons in the week 14 January 2019<sup>4</sup>, to express the clear opposition of the House to leaving the EU with no deal. The Government has confirmed that this vote, which was originally intended to take place on 11 December 2018, will 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>

<sup>4</sup> <https://www.bbc.co.uk/news/uk-politics-46586673>



Failing that, the EU (Withdrawal) Act sets out Parliament's role in the event a no deal scenario. No deal is defined in the Act in the following way:

1. If Parliament has decided not to pass the Government's motion to approve the Withdrawal Agreement and future framework.
2. If, before 21 January 2019, the Government tells Parliament that no agreement can be reached.
3. If after 21 January 2019, no agreement has been reached.

In each of these scenarios, the Government would have to make a statement to Parliament within 21 days and debated within 7 sitting days— by the middle of February – setting out how it intends to proceed. Parliament would then have an opportunity to vote on that plan in a 'neutral terms' motion. Although this would usually mean the motion cannot be amended, a procedural amendment tabled by Dominic Grieve on 4 December guarantees that any motion in any of these three scenarios will in fact be amendable. Although the meaningful vote debate has not been concluded, the Government has confirmed that the Grieve amendment will still apply.

### ***Other parliamentary mechanisms***

But even if the Government were to seek to ignore any such amendment and 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 range of other mechanisms that MPs could use.

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.

### ***A People's Vote***

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'**

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', now scheduled by the Government for the week of 14 February. 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.

### **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



**Demand a vote on the Brexit deal**

would have to be presented to Parliament within 21 days and debated within 7 sitting days. Parliament would then have an opportunity to vote on that plan in a 'neutral terms' motion. Although this would usually mean the motion cannot be amended, a procedural amendment tabled by Dominic Grieve on 4 December guarantees that any motion in any of these three scenarios will in fact be amendable. Although the meaningful vote debate has not been concluded, the Government has confirmed that the Grieve amendment will still apply.

A People's Vote amendment at this stage 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>5</sup>

### **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>6</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>7</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>8</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>9</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

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<sup>5</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)

<sup>6</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>7</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>8</sup> <https://www.instituteforgovernment.org.uk/charts/what-government-needs-do-prepare-no-deal-brexit>

<sup>9</sup> Keir Starmer, BBC Radio 4, 12 November 2018 <https://www.bbc.co.uk/programmes/m00013mv>



**Demand a vote on the Brexit deal**

second referendum, but customs union and effectively no Brexit.”<sup>10</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 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.

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<sup>10</sup> Brandon Lewis, BBC Radio 5 Live, 2 December 2018, <https://www.bbc.co.uk/sounds/play/m0001dhi>