

# Six Dead-Ends, One Cliff-Edge, Only One Way Out

*Foreword by Margaret Beckett MP and Dominic Grieve QC MP*



# Contents

---

3	<b>Foreword</b>
5	Dead-end 1: <b>Try to negotiate the removal or time limitation of the backstop</b>
7	Dead-end 2: <b>Try to negotiate a Northern Ireland-only backstop</b>
9	Dead-end 3: <b>Get the existing Withdrawal Agreement through Parliament</b>
11	Dead-end 4: <b>Call a general election</b>
13	Dead-end 5: <b>Revoke Article 50</b>
14	Dead-end 6: <b>Request an extension of Article 50 for further negotiations</b>
16	The cliff-edge: <b>Leave with no deal</b>
18	The way out: <b>A People's Vote</b>

# Foreword

---

One of the most depressing features of the Conservative leadership election has been how a contest triggered by Theresa May's acceptance that she had exhausted her options for delivering Brexit has been dominated by endless debate over those same failed options. The more time that has passed since March 29 – and the closer we have stumbled towards the new deadline of October 31 – the more the facts of our predicament have been obscured by re-heated proposals that are unattractive, undeliverable and increasingly unedifying.

Both Boris Johnson and Jeremy Hunt insist that as prime minister they could secure the kind of concessions from the EU that Theresa May has sought in vain over two years of negotiations that left our country humiliated. Both say, as she sometimes did, that if they cannot secure a good deal they will take Britain out of the EU with No Deal. Meanwhile people who should know better have speculated that other options previously rejected either by Theresa May or by Parliament – from calling a general election to proroguing Parliament – could offer a way out of the crisis.

It is time for a reality check. When Parliament returns from summer recess, there will be just 59 days until the Article 50 period is due to expire. The new prime minister, and every MP, will have to face up to some hard facts and make some hard choices. There is no majority in Parliament for the

Withdrawal Agreement. The EU will not agree to remove or put a time limit on the Irish backstop, which simply reflects an existing truth about our commitment to the Good Friday Agreement. A Northern Ireland-only backstop, even if negotiable, would not be acceptable to Parliament. It is in neither of the two main parties' interests to hold a general election. And, despite the blithe assurances from these Conservative leadership candidates that leaving with No Deal would be a price worth paying, there is no majority for it in Parliament – and certainly no mandate for it from the country.

It is, of course, possible that the new prime minister will attempt to run down the clock towards No Deal anyway, using various means to block MPs having any say on the matter. To go down this path would be a gross insult to our parliamentary democracy and we do not believe it would work. The fact remains that there is a large majority in the House of Commons against No Deal and there are numerous devices that could be deployed to block it, including – as a last resort – collapsing the Government.

And yet an accidental No Deal cannot entirely be ruled out because, to avoid it, MPs will have to vote *for* something. When every other option has been ruled out, a final say referendum – a People's Vote – can emerge as the solution to this crisis. We recognise that this is not the first preference of many

# Foreword

---

MPs on both sides of the question and, indeed, no one who went through the 2016 referendum can look forward to the prospect of another with unalloyed joy. But a new vote would be different from the last one not least because it would be about whether or not we want to proceed with a specific, rather than abstract, Brexit proposal. It would provide a clear timetable towards resolution of Brexit one way or another, as well as the prospect of a stable and lasting settlement for the country. Above all, for most MPs, it is preferable to crashing out with No Deal.

In the indicative votes process in early April, a final say referendum was the most popular proposal, with 280 votes. In the face of an imminent No Deal departure, there is every reason to expect support in Parliament to grow. Indeed the Labour leadership has now agreed that the decision should go back to the people. And, following a much-anticipated Cabinet reshuffle by a new prime minister, there are likely to be more Conservative MPs opposed to either No Deal or a General Election and open to our arguments on the backbenches.

Brexit was sold on the basis that the UK would quickly and easily secure a comprehensive agreement on trade and security with Europe that would benefit our economy, our public services and the Union. After three years of pain, broken promises and

endless negotiations, people are now being told by both candidates to become our next prime minister that the vote in 2016 was for something much harsher, even for No Deal. This would be an outcome that would threaten the economy, public services and the Union. Furthermore, as things stand, the only people who would have been given a say over it are the 0.25% of the population who are members of the Conservative Party.

That is simply not right, and it is why, for many of us, this is now coming down to a simple question of democracy. The question is this: can we allow a destructive Brexit to be forced on our country, without the people having the final say? Although this question will, of course, affect jobs, families and our country for generations to come, the answer does not need to be determined by whether you voted Leave or Remain three years ago, but whether you think there is any other route to a lasting and legitimate settlement.

As such, a People's Vote offers both a democratic and a pragmatic solution to a towering political problem that will soon once more become a national crisis.

**Margaret Beckett MP**  
**Dominic Grieve QC MP**

# Dead-end 1: Try to negotiate the removal or time limitation of the backstop

---

## Who is proposing it?

Both the Conservative leadership candidates have said they will either seek to remove the backstop entirely or fundamentally change it. Both have suggested they will be able to secure changes that Theresa May was unable to.

Boris Johnson has said “we need to junk the backstop”<sup>1</sup> He has also proposed both a time limit and a unilateral exit mechanism, saying: “We would have to be able to get out by a certain time. And we’d have to be able to get out of our own volition.”<sup>2</sup>

Jeremy Hunt says he wants “a deal that doesn't involve the backstop as it's constituted at the moment”.<sup>3</sup> He has claimed that “if [EU leaders] were approached by a British prime minister who had ideas on how to solve the Northern Ireland backstop, they would be willing to renegotiate the package”.<sup>4</sup>

## Why it's a dead-end

### **The EU has consistently opposed removal of the backstop**

The backstop is intended to ensure an open border is maintained between Northern Ireland and Ireland after Brexit and to protect the Good Friday Agreement. The EU has always held the view that without a non-time-limited backstop, there is no Withdrawal Agreement. This view has not changed. As Michel Barnier has said: “An insurance is of no use if it is time limited... We cannot tie the backstop to a time limit.”<sup>5</sup> The route proposed by Johnson and Hunt has been tried repeatedly with no success. Following the Brady amendment in January 2019, Theresa May sought to negotiate “alternative arrangements”. These produced further documents clarifying the provisions of the backstop, but the backstop itself remained intact.

When the EU granted an extension of Article 50 to 31 October, it was specifically to allow for ratification of the existing deal and not for renegotiation. EU leaders have since underlined this position, over and over again. Michel Barnier has said “the Withdrawal Agreement is not going to

be reopened... and that continues to be the case”<sup>6</sup>; French President Emmanuel Macron has said it is a “non-starter”<sup>7</sup>; and Irish Taoiseach Leo Varadkar has said “we certainly can’t accept the deletion of the backstop”.<sup>8</sup>

### **Whoever becomes prime minister, the problem remains the same**

Both candidates have talked about technological solutions as a substitute for the backstop as though these haven’t already been extensively debated. Boris Johnson has said “there are abundant, abundant technical fixes that can be introduced to make sure that you don’t have to have checks at the border”<sup>9</sup> – without ever specifying what these are. Similarly, Jeremy Hunt has said “it’s going to be a solution that’s based around technologies, what the Germans call an ‘intelligent border’”<sup>10</sup> without providing any detail.

### **The argument that preparing for No Deal increases the chances of a different deal is flawed**

This idea was tested to destruction by Theresa May. The EU knows that the UK would be hurt most by No Deal and sees huge risks for its credibility as a negotiating partner if it were to suddenly change its position. As Ivan Rogers, the former UK permanent representative to the EU, has said: “Seen from the other side of the Channel, there is simply no political upside whatever for the 27 to offer a

new PM, particularly an avid Brexit campaigner and a populist with Trumpite attributes, the basis on which to say that he had delivered some fundamentally different and better deal.”<sup>11</sup>

# Dead-end 2: Try to negotiate a Northern Ireland-only backstop

---

## Who is proposing it?

The EU originally proposed that the backstop should only apply to Northern Ireland, but this was rejected by Theresa May because it would create a customs border along the Irish Sea, dividing the internal UK market and threatening the Union. The EU made what it considered to be a significant concession in granting a UK-wide 'single customs territory' instead, thereby avoiding the need for customs checks between Great Britain and Northern Ireland.

But the idea of a Northern Ireland-only backstop has resurfaced in recent weeks. In March, the EU offered a "unilateral exit" from the UK-wide parts of the backstop, effectively reviving the idea.<sup>12</sup> A new prime minister might be tempted by this option. Indeed, unless and until 'alternative arrangements' can be found for the Irish border, it is the only way of securing the kind of 'Canada-style' free trade agreement being promised by Boris Johnson. There has been speculation, including by the former defence secretary Michael Portillo<sup>13</sup> and the former Northern Ireland secretary Peter Hain<sup>14</sup> that Johnson will pursue this.

## Why it's a dead-end

### **It could destabilise the peace process**

A Northern Ireland-only backstop would create an economic and regulatory border in the Irish Sea which would, in time, lead to divergence between Northern Ireland and the Great Britain. Nobody knows where this would ultimately lead but many believe it would increase the likelihood of a border poll and eventual Irish reunification. When a Northern Ireland-only backstop was proposed in February 2018, Theresa May said "no UK Prime Minister could ever agree to it" because it would threaten the "constitutional integrity of the UK".<sup>15</sup> It would be extraordinary if a new prime minister from the Conservative & Unionist Party took a different view, given there is no doubt that having a customs border at Larne and Belfast would be every bit as destabilising to the peace process as having it at Newry and Derry and would lack democratic legitimacy.

### **The DUP would likely withdraw its support for the Government**

The DUP is opposed to the current backstop, but a Northern Ireland-only

backstop could see them end their confidence-and-supply agreement with the Conservatives. When Theresa May put forward a Northern Ireland-only backstop,<sup>16</sup> the DUP suspended its support for the Government, forcing the prime minister to go back to the EU and negotiate the UK-wide backstop that is now part of the existing Withdrawal Agreement.<sup>17</sup> Arlene Foster, DUP Leader, said at the time: “Our problem with the correspondence is that she has essentially... confirmed that there’s going to be a Northern Ireland specific backstop and indeed that as regards her negotiating position, she’s going to have Chequers for the whole of the United Kingdom. In other words, we will have a different regulatory regime from the rest of the United Kingdom and essentially there is going to be a border down the Irish sea and no unionist would be able to support that.”<sup>18</sup>



# Dead-end 3: Get the existing Withdrawal Agreement through Parliament

---

## **Who is proposing it?**

Having failed to secure the promised changes to the backstop, the new prime minister is likely to consider trying to force the existing Withdrawal Agreement through the House of Commons. They wouldn't be able to simply replicate previous votes on it – but they could bring it forward in the form of the Withdrawal Agreement Bill. They may seek to dress it up as a qualitatively different deal. Indeed, Boris Johnson has suggested: “The good bits of it can be taken out [and reused].”<sup>19</sup> Johnson is also reported to have considered extending the transition period until December 2021, to reduce the chances of falling into the backstop.<sup>20</sup>

The new prime minister could seek to negotiate changes to the Political Declaration in a bid to persuade MPs that they have “renegotiated” the deal. Although time is very short, it is not implausible that this could be agreed before being signed off by EU leaders at the October European Council summit. Indeed, the outgoing Council President Donald Tusk said on 21 June: “We are open for talks when it comes to the Declaration on the future UK-EU relations if the position of the United

Kingdom were to evolve, but the Withdrawal Agreement is not open for renegotiation.”<sup>21</sup>

## **Why it's a dead-end**

### **There is no majority for the Withdrawal Agreement in Parliament**

The new prime minister could try to introduce the Withdrawal Agreement Bill – the legislation needed to implement the agreement between the UK and EU. But the Withdrawal Agreement itself has already been rejected by MPs on three occasions,<sup>22</sup> and Theresa May declined to introduce the Withdrawal Agreement Bill in April after it became clear it would be voted down by an increased margin.<sup>23</sup> There is no evidence to suggest that a further attempt to force the Withdrawal Agreement through would be successful. In the most recent vote, 34 Conservative MPs voted against it. Since then, at least 23 more who voted for it in March have said they won't do so again.<sup>24</sup> There is seemingly no chance of the DUP changing their view and voting for it. The party's Brexit spokesman, Sammy Wilson, has said his party would vote against the Withdrawal Agreement “a thousand times”.<sup>25</sup>

## **Changing the Political Declaration wouldn't change the arithmetic**

Even if the Political Declaration could be changed before 31 October, this is highly unlikely to be enough to get the Withdrawal Agreement over the line in Parliament. This was proved decisively on 29 March when Theresa May attempted to remove the Political Declaration from the equation by bringing forward a vote on only the Withdrawal Agreement, only to see it defeated for a third time.<sup>26</sup> Since then, 36 Conservative MPs have signed a pledge to “abandon Theresa May’s Withdrawal Agreement as dead”.<sup>27</sup>

## **Nor would extending the transition period**

It is hard to see how simply extending the transition period, whilst retaining the backstop, could change the arithmetic in Parliament either. The level of opposition to the backstop within the Conservative Party is high and has been further fuelled by Boris Johnson’s repeated pledges to “ditch” it. The DUP have explicitly ruled out the idea of a longer extension. When Theresa May said back in October 2018 it could be extended for just a few months, DUP deputy leader Nigel Dodds said, “an extension of the transition period offers nothing significant on the key issue of the unacceptable EU backstop proposals” and that it would simply mean the UK “continues to pay but have no say in

Brussels”.<sup>28</sup>

## **Both candidates to be prime minister have ruled it out**

Boris Johnson has described the existing Withdrawal Agreement as “dead”.<sup>29</sup> Jeremy Hunt has said “[w]e are never going to have a deal to leave the EU with the backstop, and so it has to change or it has to go.”<sup>30</sup> It would be an extraordinary reversal if whoever becomes prime minister changed their view.

# Dead-end 4: Call a general election

---

## Who is proposing it?

The Labour Party has long been calling for a general election and nearly all opposition parties have said they would vote no confidence in the Government in an effort to force one. Labour could try again to force an election by tabling and winning a motion of no confidence, then waiting a further 14 days to see if an alternative government could be formed. If this were to happen, the EU would likely grant an extension of the Article 50 timetable to allow it to take place.

From the point of view of some Conservatives, an election holds open the prospect that changing the composition of the House of Commons would mean that a Brexit deal – or No Deal – could command the support of a majority of MPs. A number of Conservative MPs – as well as Nigel Farage – have mooted the idea of an electoral pact between the Conservatives and the Brexit Party.

## Why it's a dead-end

### **Most Conservatives don't want a general election until Brexit is resolved**

YouGov polling suggests the Conservatives would be punished for calling an election before delivering Brexit, securing just 20 percent of the vote as opposed to 33 percent if it were held after the issue of Brexit is resolved.<sup>31</sup> Based on current polling, the Electoral Calculus website predicts the Conservatives would be on course to win 193 seats, securing around 23% of the national vote.<sup>32</sup> The same forecast shows the Brexit Party taking 68 seats – far from enough to make a coalition or confidence-and-supply agreement realistic.

Both candidates for prime minister are aware of the enormous risks an election poses. Assuming it took place before 20 November, defeat would make them the shortest serving prime minister of the United Kingdom in history, beating the record set when George Canning died in August 1827 after 119 days in office. Jeremy Hunt has warned: “If we fight an election before delivering Brexit, we will be annihilated.”<sup>33</sup> Boris Johnson, whose own seat could be at risk, has also suggested he would only go to the country in an election after the UK has

left the EU: “[G]et Brexit over the line on October 31 and then move forward. And when that election comes eventually...we need to be ready to wallop Corbyn for six.”<sup>34</sup>

Many Conservative MPs agree. They see the parallels with the 2017 election, when Theresa May asked the country for a bigger majority so she could deliver a hard Brexit – and lost. Iain Duncan Smith, Boris Johnson’s campaign chairman, has said: “What is important is that there can be no general election before Brexit is delivered on October 31.”<sup>35</sup> Foreign Office minister Alan Duncan has stated that an election before Brexit is resolved “will only make things worse”, while a number of backbenchers have explicitly said they would vote against holding one.<sup>36</sup>

### **Going into an election committed to No Deal would be a huge risk for the new prime minister**

It is possible that a new Conservative prime minister will take the risk anyway, perhaps calculating that the vote to stay in the EU will be divided and that a majority could be secured even with a significantly reduced share of the vote. But there is no doubt this would be an enormous risk. It is unclear how successful such a strategy would be in persuading Brexit Party voters to switch to the Conservatives. What is clear is it would alienate millions of voters who once supported the party

under David Cameron and Theresa May. Many of the five million Conservative voters who backed Remain three years ago are now switching to Labour, the Liberal Democrats or the Greens.

There is already enormous resistance within the parliamentary Conservative Party to the idea. David Gauke, the Justice Secretary, has warned that going into an election backing No Deal “would put a ceiling on our support that would make it very, very difficult for us to ever win a parliamentary majority.”<sup>37</sup> Win or lose, the long-term consequences for the Conservative Party could be disastrous.

### **An election would not necessarily settle the issue and could to further gridlock**

Whatever Brexit policy the new prime minister pursues, most polls currently indicate an election would lead to another hung parliament, meaning there would still not be a majority for any form of Brexit. In those circumstances, whoever formed the new government would face all the same problems that confounded Theresa May.

# Dead-end 5: Revoke Article 50

---

## Who is proposing it?

A number of opposition parties, including the SNP, the Liberal Democrats and Change UK, have at various times backed calls for the revocation of the Article 50 letter in certain circumstances. Over six million members of the public have signed a petition calling for the Government to “revoke Article 50 and remain in the EU”.<sup>38</sup>

The EU has not taken a view on whether the UK should revoke, but it has made clear that it is legally possible. On Monday 10 December, the European Court of Justice (ECJ) ruled on the revocability of Article 50, confirming that the UK can decide to withdraw the Article 50 notification, subject to following its own constitutional requirements. The ruling stated that this can be done “unilaterally, in an unequivocal and unconditional manner, by a notice addressed to the European Council in writing... and that revocation brings the withdrawal procedure to an end.”<sup>39</sup>

## Why it’s a dead-end

### **Whoever becomes prime minister will be vehemently opposed to it**

Both Conservative leadership candidates have warned against what they perceive to be the risks of cancelling Brexit. Boris Johnson has said the Conservative Party “will not be forgiven if we do not deliver Brexit on 31 October” and has warned that MPs will “face mortal retribution” if they fail to deliver it.<sup>40</sup> Jeremy Hunt has said that “we must do one thing above all else: we must leave the European Union.”<sup>41</sup>

### **There is unlikely to be a majority for it in Parliament**

On 1 April, a motion calling on the government to revoke Article 50 as a last resort to prevent No Deal was rejected by 292 votes to 191, a majority of 101.<sup>42</sup> At a crunch moment in October, facing the imminent prospect of No Deal, support might well be higher. But it is our view that in those circumstances it is more likely that a majority would be found for either a People’s Vote or voting no confidence in the government than for revoking Article 50.

# Dead-end 6: Request an extension of Article 50 for further negotiations

---

## Who is proposing it?

While Boris Johnson has “categorically ruled out” seeking an extension, Jeremy Hunt has said he would be open to a short extension of the Article 50 timetable in the event that the UK and EU are close to reaching agreement on an alternative withdrawal agreement.

It is likely that, as the 31 October deadline approaches, there will be calls in Parliament for a further extension of the Article 50 timetable and there would likely be a majority for this. If the prime minister were to accept such a request from Parliament, the EU would want to know what the purpose was.

## Why it’s a dead-end

### **EU leaders may well reject a request for an extension to continue negotiations**

EU leaders have consistently said that a further extension to the Article 50 timetable will only be available for the explicit purpose of holding a People's Vote, a general election or if there is a radical change in the UK's red lines. French President Emmanuel Macron said recently: “I think this is the final, final deadline because I don't want to have the new Commission and this new executive to deal with (this)... It's feasible if we have the perspective of either a new referendum or a totally new scheme which would be acceptable for the 27 and our negotiator.”<sup>43</sup> Similarly, the Irish Taoiseach Leo Varadkar recently said: “I think an extension could really only happen if it were to facilitate something like a general election in the UK or perhaps even something like a second referendum if they decided to have one. What won't be entertained is an extension for further negotiations or further indicative votes the time for that has long since passed.”<sup>44</sup>

## **It would achieve nothing other than prolonging the uncertainty**

Even if the EU were to agree to an extension for further negotiations, the same problems outlined in this paper would remain. The Withdrawal Agreement would still not be renegotiable, other than perhaps to insert a Northern Ireland-only backstop that is unacceptable to the current Parliament; there would still be no majority in Parliament for any form of Brexit; a general election would still be too big a risk for the Conservatives; and No Deal would still be a disastrous outcome for which there is no majority in either Parliament or the country. Even Theresa May, who showed significant talent for can-kicking, reached the end of the road eventually.

# The cliff-edge: **Leave with No Deal**

---

## **Who is proposing it?**

Both the Conservative leadership candidates have said they are prepared to leave with No Deal. Boris Johnson has said he will ensure “we leave the EU on 31 October, deal or no deal”<sup>45</sup> and has said this will happen “do or die, come what may.”<sup>46</sup> Jeremy Hunt says that if by the end of September “there is no deal to be done, I will immediately cease all discussions with the European Union and focus the whole country’s attention on No Deal preparations.”<sup>47</sup>

In response to the opposition to No Deal in the House of Commons and the country, Boris Johnson has claimed the UK could “get a standstill in our current arrangements under GATT 24” to ensure continued tariff-free trade with the EU.<sup>48</sup> He has also entertained the idea of proroguing Parliament to force No Deal through against MPs’ will, saying “I think it would be absolutely folly to rule it out.”<sup>49</sup>

## **Why it’s a cliff-edge**

### **No Deal would be this country’s biggest ever step away from free trade**

Under WTO rules, on 31 October we would either have to build a tariff wall against imports from our largest trade partner or remove all our tariffs against all our trade partners. The EU has long said what it would do in that situation. If we leave with No Deal, the EU’s common external tariff will apply to us from day one. There would be no parachute for our importers or our exporters

The UK would still need to a trade deal with the EU but would find ourselves negotiating from a far weaker position and still facing the same EU stance on the backstop and the divorce bill. And because a future trade agreement will – unlike an Article 50 agreement – require national ratification by every EU member state, No Deal could last for many years.

### **It would have severe consequences for the economy, national security and the Union**

The Government’s own estimate is that No Deal would leave Britain’s economy up to 9% smaller after 15 years than if the UK remained in the EU. The



independent National Institute for Economic and Social Research estimates an “orderly No Deal” – which it defines as a Brexit in which short-term contingency measures are put in place and financial stability is safeguarded – would mean a 5.5% hit to UK GDP, leaving the economy £140 billion worse off by 2030 than it otherwise would have been. That is equivalent to an economic hit worth £1,330 per head each year.<sup>50</sup>

No Deal would mean an immediate end to the security agreements we have with the EU, with no guarantees about how or when these might be repaired. If EU-wide databases are no longer available to UK authorities, the ability of our police, security and counterterrorism services to keep Britain safe would be severely hampered. By making some sort of border checks inevitable, No Deal would threaten the Northern Ireland peace process and could lead to calls for a border poll. It could also increase the chance of a further independence referendum in Scotland.

### **GATT 24 does not apply to No Deal**

Article 24 of GATT was designed for countries forming a new trade agreement, not for countries choosing to dissolve one. It provides for an interim agreement on trade tariffs provided they have a “plan and schedule” agreed for concluding a final deal. But, crucially, it requires both parties to consent. It therefore doesn’t apply to no deal preparations, because it relies on the cooperation of

your negotiating partner.

### **The Government would likely fall, especially if it prorogued Parliament**

Allowing No Deal to happen against the clear will of Parliament would be a democratic outrage. There is no mandate for it from the 2016 referendum, when the Leave campaign and its main spokespeople promised a comprehensive trade and security deal, and when given the chance to express their view on No Deal at the European Parliament elections a majority of voters rejected it. It has also been repeatedly rejected by Parliament. If a new prime minister prorogued Parliament to force it through, it is inconceivable that they would retain the confidence of the House of Commons, so it would be a kamikaze act.

# The way out: A People's Vote

---

## Who is proposing it?

Polling shows that a People's Vote is the most popular way of resolving the Brexit crisis. Indeed, it is increasingly apparent that this is the only legitimate and democratic solution available. A final say referendum is the policy of nearly every opposition party in the House of Commons – the SNP, the Liberal Democrats, Change UK, Plaid Cymru and the Green Party. The Labour Party is moving closer to giving unequivocal support for a People's Vote and has twice whipped its MPs to vote for one in Parliament. A growing number of Conservative MPs, including some who want to see Brexit implemented, are also now – sometimes reluctantly – concluding this is the best way to settle the issue.

Although there is not yet a majority in Parliament for a People's Vote, it secured more votes (280) than any other option in the second round of the indicative votes process in early April. Since then, as the prospect of a new prime minister apparently content to pursue No Deal has emerged, parliamentary support has continued to grow.

## Why it is now the only way out

**1. When presented with any specific form of Brexit option, Parliament will oppose it**

Although a large majority of MPs voted to trigger Article 50, there has never been a stable majority in Parliament for any specific form of Brexit and attempts to force a deal through by postponing the big decisions on the future relationship until after we have left the EU have also failed. The Withdrawal Agreement has been rejected three times. At the last time of asking it lost by 58 votes. No Deal has also been repeatedly rejected. On 1 April, it was defeated by 240 votes.<sup>51</sup> The indicative votes process demonstrated that there is no majority for any specific form of Brexit. Since then, while a few MPs may have moved in one direction or another, there is no reason to believe that a majority can be found by a new prime minister for the same Withdrawal Agreement, a tweaked version of it or for No Deal.

**2. Faced with No Deal in October, more MPs will back a People's Vote, sometimes as the "least-worst" choice**

Parliament is opposed to No Deal. But to prevent No Deal happening by default, Parliament will have to vote for something. The six options highlighted earlier in this paper are all either undeliverable or undesirable. If pursued, they will either increase the risk of an accidental No Deal or, at best, prolong the pain and uncertainty of Brexit. A People's Vote may not be anyone's perfect outcome, but it is a compromise solution that can finally

bring an end to the Brexit crisis and allow the country to move on. Once the choice is truly stark – crash out with No Deal or back a People’s Vote – many more MPs could back a final say. That is because a People’s Vote is not an option in this Brexit crisis, but a solution to it.

### *Conservative MPs*

Some 15 Conservative MPs backed a People’s Vote in the last round of indicative votes on 1 April. That was up from 8 in the previous vote on 27 March, and there is good reason to believe support is increasing. A growing number have publicly acknowledged the risks for the party of either No Deal or a General Election, and many realise that the former could well be followed by the latter. The 15 who voted for a People’s Vote include some, like Huw Merriman, who would like to see a Brexit deal delivered and acknowledge that a referendum is now the best way of securing legitimacy for it.

The formation of a new Government may well free up more Conservative MPs to back a People’s Vote. Of the current members of the Cabinet, some – such as Philip Hammond, David Gauke, Rory Stewart and Greg Clark – are known to be strongly opposed to No Deal and they may soon be free to vote against it. Pragmatic Conservative MPs will have to vote for something. None have advocated a general election, which could be disastrous for their party. Many know that No Deal would be a catastrophic outcome. So the attractiveness of a People’s Vote as the only viable route will grow.

It is also possible that the new prime minister could allow a People’s Vote to be “forced” on them. Regardless of what Boris Johnson and Jeremy Hunt say today about their opposition to it, once in No 10 their zeal for delivering – and owning – No Deal could dissipate. At that point, they may recognise that a People’s Vote offers the best means of breaking the deadlock.

### *Labour MPs*

Support is also growing among Labour MPs. Some 203 Labour MPs voted for a People’s Vote on 1 April. That was up from 198 on 27 March. The number of Labour MPs prepared to vote against a People’s Vote has fallen continuously over the past two years, with 24 voting against in April. Even among those who have publicly opposed supporting a People’s Vote, a significant number – 16 – chose to abstain rather than vote against. Given nearly all Labour MPs are strongly opposed to No Deal, in the face of such an outcome, the numbers of Labour MPs a) abstaining rather than voting against a People’s Vote, and b) voting for rather than abstaining, are likely to go up.

### *DUP MPs*

The DUP have consistently voted against a People’s Vote. But it is not inconceivable that the party’s six MPs could abstain on a vote in October, or even vote in favour. Publicly, the party says it would be prepared to see No Deal, but its leadership is understood to be concerned by the prospect of a hard border and the impact that could have on support for a border poll. Once the new prime minister’s attempt to remove the backstop from the Withdrawal Agreement has failed, and

the reality of No Deal draws nearer, the party may change its view. After all, Nigel Dodds, the DUP's leader in Westminster, made clear that he "would rather stay in the European Union and remain than risk Northern Ireland's position".<sup>52</sup> When there is nowhere left to turn, a People's Vote will be the least-worst choice.

### **3. Even if the Government pursues No Deal, MPs will have opportunities to back a People's Vote**

Ignoring the clear 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. But if the new prime minister sought to plough ahead with No Deal anyway, there are a number of mechanisms MPs could use to prevent them from doing so, and to secure a People's Vote.

#### *Amending legislation*

To prepare for No Deal the Government would need to pass further legislation in a number of areas. Some of this would be primary legislation, which would provide obvious opportunities for amendments. Much of it 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.

#### *Standing Order 24 motion*

Alternatively, MPs could seek an emergency debate under Standing Order 24. These are usually non-binding, but the Speaker has suggested he could allow a motion which placed a specific duty on ministers, for example to table a motion. He said in March that the "opportunities [with SO24] are fuller than has traditionally been acknowledged or taken advantage of by [MPs]".<sup>53</sup>

#### *Confidence motion*

If all else fails, there is the option of a vote of no confidence in the Government. Nobody knows how many Conservative MPs might be prepared to do this in the event the new prime minister pursues a policy of No Deal and is determined to force it through against the wishes of the House of Commons. Clearly, none would want to do this as their first choice. But a number have already indicated that they would be prepared to do so.

### **4. A People's Vote would mean Brexit can be settled one way or the other by Spring 2020**

Once the principle of holding a People's Vote is secured, the Government would have to seek an extension of the Article 50 timetable. To provide sufficient time for the passage of the necessary legislation, and for full debate about the question and the format of the referendum itself, it would make sense to seek an extension into the new year, with polling day scheduled for sometime in Spring 2020. EU leaders have

consistently been clear that should the UK request an extension to allow for a People's Vote, it would be granted because they do not want to be seen to stand in the way of our democratic process.

Extending Article 50 until Spring 2020 for this purpose would provide a clear timetable towards a resolution of the Brexit crisis. This would give businesses the clarity they need to plan for the future, as well as giving us all the prospect of a lasting and binding settlement that would mean – whatever the result – the end of this never-ending crisis.

# References

- <sup>1</sup> <https://blogs.spectator.co.uk/2018/11/boris-johnsons-speech-to-dup-conference-we-are-on-the-verge-of-making-a-historic-mistake/>
- <sup>2</sup> <https://www.irishtimes.com/news/politics/boris-johnson-uk-needs-backstop-exit-mechanism-13789552>
- <sup>3</sup> <https://www.bbc.co.uk/news/av/uk-politics-48764681/jeremy-hunt-i-really-believe-i-could-get-new-brexite-deal>
- <sup>4</sup> <https://www.express.co.uk/news/politics/1143481/Jeremy-hunt-tory-leadership-Brexit-remainer-no-deal-latest-odds-boris-johnson>
- <sup>5</sup> <https://openeurope.org.uk/daily-shakeup/michel-barnier-rejects-time-limited-backstop-but-says-changes-to-the-future-relationship-are-possible/>
- <sup>6</sup> <https://www.heraldsotland.com/news/17560718.michel-barnier-the-withdrawal-agreement-is-not-going-to-be-reopened/>
- <sup>7</sup> <https://uk.reuters.com/article/uk-britain-eu-macron/macron-wants-october-31-as-final-deadline-for-brexit-idUKKCNI41X1>
- <sup>8</sup> <https://www.newsletter.co.uk/news/politics/varadkar-on-brexit-a-deal-without-the-backstop-is-not-a-deal-t-8972953>
- <sup>9</sup> <https://www.bbc.co.uk/news/uk-politics-48752222>
- <sup>10</sup> <https://twitter.com/TheRedRoar/status/1137649369023430656>
- <sup>11</sup> <https://www.bloomberg.com/news/articles/2019-06-18/lying-politicians-leading-u-k-to-no-deal-brexit-ex-envoy-says>
- <sup>12</sup> <https://www.ft.com/content/048107c6-41bc-11e9-b896-fe36ec32aece>
- <sup>13</sup> <https://www.irishnews.com/news/brexit/2019/06/15/news/michael-portillo-makes-prediction-over-boris-johnson-s-brexit-backstop-plan-1642500/>
- <sup>14</sup> <https://www.independent.co.uk/voices/boris-johnson-brexit-no-deal-irish-border-backstop-unionists-tory-leadership-a8973471.html>
- <sup>15</sup> <https://hansard.parliament.uk/Commons/2018-02-28/debates/1FOCE924-51C5-4698-B16B-0CD495082B12/Engagements?highlight=draft%20legal%20text%20that%20Commission%20published#contribution-473037CF-8AC2-4419-82C5-2E30E71F325>
- <sup>16</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-46269685>
- <sup>17</sup> <https://www.politico.eu/article/brexit-uk-northern-ireland-backstop-irish-border-ulster-problem-good-friday-agreement/>
- <sup>18</sup> <https://www.irishtimes.com/news/politics/arlene-foster-says-dup-will-not-support-may-s-brexit-plan-13691931>
- <sup>19</sup> <https://www.thetimes.co.uk/article/johnsons-vow-to-renegotiate-brexit-is-just-campaign-talk-pmdgmxzd3>
- <sup>20</sup> <https://www.express.co.uk/news/politics/1141750/brexit-news-latest-tory-leadership-contest-boris-johnson-no-deal>
- <sup>21</sup> <https://af.reuters.com/article/worldNews/idAFKCNITM110>
- <sup>22</sup> <https://www.politicshome.com/news/uk/political-parties/conservative-party/theresa-may/news/102878/theresa-mays-brexit-deal-left>
- <sup>23</sup> <https://www.ft.com/content/3bac82bc-6768-11e9-9adc-98bfd35a056>
- <sup>24</sup> <https://www.theguardian.com/politics/2019/may/21/tories-line-up-to-reject-convoluted-mess-of-mays-brexit-deal>
- <sup>25</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-47767649>
- <sup>26</sup> <https://www.parliament.uk/business/news/2019/march/mps-debate-and-vote-on-the-withdrawal-agreement-with-the-european-union/>
- <sup>27</sup> <https://standup4brexit.com/>
- <sup>28</sup> <https://www.politicshome.com/news/uk/foreign-affairs/brexit/news/99168/dup-reject-moves-extend-brexit-transition-period-fresh>
- <sup>29</sup> <https://www.bbc.co.uk/news/av/uk-politics-48752002/boris-johnson-interview-in-full>
- <sup>30</sup> <https://www.bbc.co.uk/news/av/uk-politics-48842198/brexit-backstop-has-to-change-or-go-says-jeremy-hunt>
- <sup>31</sup> <https://yougov.co.uk/topics/politics/articles-reports/2019/06/28/jeremy-hunt-now-leads-boris-johnson-publics-prefer>
- <sup>32</sup> <https://www.electoralcalculus.co.uk/homepage.html>
- <sup>33</sup> <https://www.independent.co.uk/news/uk/politics/tory-leadership-contest-jeremy-hunt-boris-johnson-general-election-conservatives-lose-labour-a8952151.html>
- <sup>34</sup> <https://news.sky.com/story/boris-johnson-refuses-to-rule-out-suspending-parliament-to-push-through-brexit-11749639>
- <sup>35</sup> <https://www.telegraph.co.uk/politics/2019/06/29/iaian-duncan-smith-interview-brexit-start-boris-johnson-going/>
- <sup>36</sup> <https://www.theguardian.com/politics/2019/mar/30/furious-tory-mps-tell-theresa-may-they-will-block-snap-election>
- <sup>37</sup> <https://www.bbc.co.uk/iplayer/episode/m0006pgq/the-andrew-marr-show-07072019>
- <sup>38</sup> <https://petition.parliament.uk/petitions/241584>
- <sup>39</sup> <http://curia.europa.eu/juris/document/document.jsf?sessionid=30070EAD3C16AB345376A71509ACC49D?text=&docid=208636&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1>
- <sup>40</sup> <https://www.bbc.co.uk/news/uk-politics-48752222>
- <sup>41</sup> <https://brexitcentral.com/jeremy-hunt-sets-our-his-10-point-brexit-delivery-plan-full-text/>
- <sup>42</sup> <https://www.rte.ie/news/2019/04/01/1039820-brexit-may-house-of-commons/>
- <sup>43</sup> <https://uk.reuters.com/article/uk-britain-eu-macron/macron-wants-october-31-as-final-deadline-for-brexit-idUKKCNI41X1>
- <sup>44</sup> <https://www.express.co.uk/news/uk/1143018/Brexit-news-UK-EU-Leo-Varadkar-Mark-Rutte-Boris-Johnson-Brexit-deal-latest>
- <sup>45</sup> <https://www.theguardian.com/politics/2019/may/24/boris-johnson-favourite-as-uk-to-have-new-pm-by-end-of-july>
- <sup>46</sup> <https://talkradio.co.uk/news/boris-johnson-talkradio-interview-19062531433>
- <sup>47</sup> <https://brexitcentral.com/jeremy-hunt-sets-our-his-10-point-brexit-delivery-plan-full-text/>
- <sup>48</sup> <https://www.ft.com/content/6c12a842-95d4-11e9-8cfd-30c211dcd229>
- <sup>49</sup> <https://www.theguardian.com/politics/2019/jun/27/boris-johnson-refuses-rule-out-forcing-through-no-deal-brexit>
- <sup>50</sup> <https://www.niesr.ac.uk/sites/default/files/publications/NIESR%20Report%20Brexit%20-%202018-11-26.pdf>
- <sup>51</sup> <https://commonslibrary.parliament.uk/brexit/indicative-votes-2-0-where-did-support-lie/>
- <sup>52</sup> <https://www.independent.co.uk/news/uk/politics/brexit-news-latest-dup-revoke-article-50-nigel-dodds-theresa-may-a8846671.html>
- <sup>53</sup> <https://www.telegraph.co.uk/politics/2019/03/20/brexit-latest-news-theresa-may-wont-seek-long-delay-article/>