



WELL, HERE WE GO FOLKS!

WITH MPS SET TO VOTE DOWN MAY'S BREXIT DEAL WHAT HAPPENS NEXT?



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As MPs embark on a marathon, five-day session debating the merits and limits of the Prime Minister's Brexit deal, thoughts are already turning to what happens after the meaningful vote on December 11th. In the event of parliamentary approval, the path towards an orderly Brexit would be visible. However, with the government on track for a heavy defeat, some Ministers are reportedly bracing for the onset of a full-blown constitutional crisis. Indeed, ahead of the debate, ministers face an unprecedented contempt-of-Parliament motion over their decision not to release the full legal advice on the deal.

With virtually the entire opposition, up to 100 Tory MPs and Mrs May's Democratic Unionist Party allies set against her, it appears almost certain that, absent a game-changing event, the House will vote down the motion approving Theresa May's Brexit deal. This deal comprises the 585-page legally binding Withdrawal Agreement and the 26-page aspirational, non-binding Political Declaration. The former contains the controversial Irish backstop. The latter outlines the future UK-EU relationship. The two documents come as a package and cannot be voted on separately.

Discussion has moved from whether the PM could win the vote, to the scale of the defeat, then to whether she could keep any defeat to under 100 votes, and finally to whether she could actually lose by over 200 votes. Ironically, one of the few things we can say with confidence is that MPs' rejection of Mrs May's Brexit deal would unleash considerable political uncertainty and potentially also economic turmoil.

Beyond that, there are several potential scenarios, each with its own set of hypothetical outcomes. This note aims to strip away the cacophony of noisy speculation, and instead clearly set out what these scenarios are, and how in turn they could play out based on what we know for definite.

WHY PLOUGH ON IN THE FACE OF LIKELY DEFEAT?

It is worth briefly considering why Mrs May is ploughing on even in the face of a heavy and humiliating defeat, and contrary it would seem to the advice of some Cabinet colleagues. They would rather she postpone the vote and instead push the EU for further concessions. The likely reason is that the PM and her team have concluded that there is simply no way of avoiding this particular roadblock, and that the only course of action is to plough on through.

The EU may or may not be open to further negotiations (more on this below) but it is unlikely they would concede anything if she were to pull the vote. Indeed, the PM may believe that a heavy defeat would strengthen her hand in facing down her fellow EU leaders in demanding changes to the deal.

On the domestic front, Mrs May also needs MPs to buy into her argument that the only two alternatives to her deal are no deal or no Brexit, and voting down her deal will certainly force them to seriously engage with this choice. This argument has received a further boost today after ECJ Advocate General Campos Sánchez-Bordona issued a legal opinion stating that the UK could unilaterally withdraw its Article 50 notification (the legal opinion will still have to be upheld or rejected by the full Court later this month).

Mrs May is likely betting that once emotions have subsided, and MPs have had an opportunity to seriously process the realistic choices facing the country, a cross-party majority will emerge in favour of honouring the referendum result while also securing an orderly if imperfect Brexit. In her view, her deal remains the only way of achieving this combination.

WHAT HAPPENS IF THE DEAL IS VOTED DOWN ON DECEMBER 11?

While the wider political fallout remains hard to predict, in part depending on the scale of the defeat, the EU Withdrawal Act does set out some concrete next steps. The Act stipulates that if parliament rejects the Brexit deal, the government has 21 days in which to set out in writing how it intends to proceed, i.e. by 1st January 2019.

The government must then make arrangements for this statement to be put down as a motion and debated in parliament within seven days of publication, so by 8th January. Parliament is on recess between 21 December and 6 January, leaving just two days to debate the motion, although it is possible recess could be shortened to allow for proper time for any debate.

This motion will be made in 'neutral terms', meaning parliament may not amend it to instruct government to adopt a different approach, unless the Speaker were to rule otherwise. This debate would give MPs an opportunity to express their views on the government's proposed course of action, and to seek to influence this. Either way, the government will be mindful of the need to proceed in a way that is able to command a parliamentary majority, and the initiation of contempt proceedings over the publication of the legal advice highlights parliament's intention to make its voice heard.

IN DEFEAT, WHAT HAPPENS NEXT? 6 POTENTIAL SCENARIOS

Alongside the timetable set out in the Withdrawal Act, we've highlighted below some potential scenarios that could follow a defeat on December 11th for the government, alongside a brief description of how they could play out based on what we know for definite. These scenarios are not mutually exclusive, they could occur sequentially. They cover both how the government might respond, as well as how its opponents could respond.

1) UK-EU renegotiation: With the meaningful vote taking place just two days before the regular European Council summit (13th-14th December) the question of re-opening the negotiations would be unavoidable. EU leaders have ruled out such a scenario, but the deal's defeat in the House of Commons could bring them back to the table. If the government pursues this course action and then concludes that "no agreement in principle" exists between it and the EU, it must make a statement setting out how it intends to proceed by January 26. While fundamental changes to the Withdrawal Agreement are unlikely, the Political Declaration would be easier to amend. Any such changes probably wouldn't be enough to win over trenchant critics of the deal, but they could provide political cover for more moderate MPs if the government tried again to force the deal through in a second vote.

2) Second parliamentary vote: Widely seen as the most likely outcome in Westminster, depending on any UK-EU renegotiation, Mrs May could put the newly tweaked deal to a second parliamentary vote. The question is whether she would do so unless she felt reasonably confident of a more favourable outcome, which could require her making a big, bold offer to Labour. This vote could take place in the week immediately after the December European Council summit or not until January, when the impending prospect of no deal and the potential for negative market reaction might just focus MPs' minds.

3) The Prime Minister faces a leadership challenge (or quits): Brexiters tried to initiate a vote of confidence in Mrs May two weeks ago but failed to reach the required threshold - 48 letters from Tory MPs as required under party rules. However, many MPs critical of the deal who held their fire recently might yet change their minds depending on the government's next move. If for example the PM were to pursue an even softer Brexit in order to try to win round Labour rebels, she'd almost certainly face a leadership challenge. Mrs May would then need a simple majority of her colleagues (158 MPs) to win that confidence vote, and if that were to happen, she could not be challenged again for one year. One other possibility - a very heavy defeat on December 11th and the previously determined, unmoveable Mrs May might just decide enough is enough, and quit. Unlikely, but not impossible.

4) Early general election: Under the Fixed Terms Parliament Act, an early general election can only be triggered in one of two ways. Either parliament approves one with a two-thirds majority, or the current government loses a motion of confidence, is unable to subsequently win such a motion within 14 days, and no alternative government is able to win one either. Labour's Shadow Brexit Secretary Kier Starmer has said Labour would table such a vote, but hinted it might not be immediate, and would depend on the government's response. Either way, in order to trigger a snap election, it would either require the government itself to vote in favour, or for the DUP and/or Tory rebels to vote against the government. Both are of course possible but seen as unlikely.

5) People's Vote: Against the backdrop of parliamentary deadlock, the prospect of putting the decision back to the people appears increasingly attractive, reportedly even to some Brexiters. Last week Labour's Shadow Chancellor John McDonnell said the party would back a second referendum in the event they are unable to force a snap election. With some Tory MPs also on board there could just be a majority in parliament in favour, but it would still require the active support of government as primary legislation would be needed, and this remains a big practical obstacle. It would also require a six-week campaign period at least, meaning the UK would have to request an Article 50 extension from the EU.

6) No deal: Given how firmly Mrs May has now set her stall against a no deal it remains hard to see how the current government could pivot towards accepting this outcome and ramping up emergency preparations. There is no majority in parliament for no deal, and Dominic Grieve's amendment is aimed at giving parliament the ability to take it off the table and instruct the government to pursue a different policy. Nonetheless, if all other viable alternatives - Mrs May's deal, a softer Brexit, a snap general election or a second referendum - are also unable to command a majority, no deal remains the default outcome, whether anyone actually wants it or not.



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"Government facing significant defeat on amendment to Meaningful Vote... as 15 Tory MPs sign up to Dominic Grieve amendment seeking to strike out the Withdrawal Act provision on making the Governments response to losing MV unamendable."

3:16 AM - 4 Dec 2018

WHAT COULD SHE DO TO TRY TO GET THE DEAL APPROVED ON A SECOND VOTE?

Notwithstanding any potential concessions secured from the EU, Mrs May has three potential routes to getting her Brexit deal passed on a potential second commons vote. Much will depend not only on the margin of likely defeat on December 11th, but also on the outcomes of votes on amendments that will precede that vote.

These amendments will set out a number of alternative approaches – for example a Brexiteer amendment to seek a ‘negotiated no deal’ with the EU or a Labour amendment in favour of a softer Brexit. While none of these amendments are expected to pass, the level of support they are able to attract could point towards the most viable way forward.

1) Rely on MPs to change their minds: In this scenario, Mrs May does not fundamentally amend her deal. As we’ve outlined any tweaks in favour of the UK and offered by the EU are likely to be minor and non-binding. Instead she hopes that MPs are eventually reconciled with the deal. Why would that happen at this stage? Simply because, once all other options have been exhausted, with businesses and the markets increasingly spooked by the prospects of no deal, and with that no deal looming large, MPs may simply feel the imperfect deal on the table is the least worst option.

2) Go softer: The majority of Labour MPs and a significant minority of Tory MPs (including several Cabinet Ministers) want a softer form of Brexit. That means a permanent customs union and closer alignment in areas like employment and environmental legislation. Mrs May could renegotiate the Political Declaration to set out a path towards such a softer Brexit – the so called Norway model. However, that might entail some form of free or freer movement of people – her current deal ends that – and ending free movement is a key red line for her personally, something which seemingly rules out a full EEA/Norway-style Brexit.

3) Go harder: Mrs May could instead try to amend the non-binding Political Declaration to set out a path towards a looser, Canada-style FTA Brexit of the sort favoured by the Brexiteers. That would involve perhaps stripping out the language about the single UK-EU customs territory. Brexiteers and the EU could probably wear that change. However, the problem is that most Brexiteers also oppose the binding Withdrawal Agreement, specifically the backstop. They fear it ties the UK to the EU indefinitely, with no ability to exit this mechanism. The EU is highly unlikely to agree to significantly amend this, given its insistence on no hard border on the island of Ireland, and its refusal (so far) to countenance new technology and customs checks away from the border. For this reason, it will be very hard for the PM to win over the DUP, who oppose the backstop on principle. So, even if she were to seek a harder Brexit, she won’t move the DUP and is unlikely to move many Brexiteers.

IN CONCLUSION

Who’d be a Prime Minister attempting to deliver Brexit? Well, nearly 29 months on from Mrs May’s accidental ascension to No 10, her belief is that her deal is the only deal, and no-one will get a better one. Her mantra is simple – vote for my deal or risk continued uncertainty. She argues that in all probability that uncertainty means a spectacular mash-up of the constitutional, the political and the economic – a car crash – whereby we either leave without a deal, or we don’t leave at all. She must know that defeat next week might just make that car crash more likely. Her hope must be that in careering toward that crash, MPs will have a mighty big re-think over Christmas, and come January decide it just isn’t worth the risk. Quite some hope... Well, here we go folks!



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“Key outcome of ECJ ruling is that it will weaken argument that choice is between “no deal” and “May’s deal”. Quite clearly “no Brexit” a distinct option too. In short term could bolster govt attempts to scare Tory Brexiteers into backing PM’s plan.”
1:15 AM - 4 Dec 2018

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