

# UK AND EU AGREE REVISED BREXIT DEAL: WHAT DOES IT MEAN AND WHAT NEXT?

18 October 2019 | UK, Europe

Legal Briefings - By **Paul Butcher, Dorothy Livingston, Nihar Lovell and Eric White**

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At the EU Summit today, the [UK Government and European Commission agreed a revised Brexit deal](#), reaching agreement on the key outstanding issue of the Irish backstop and revising the terms of the future relationship. The European Commission has asked the European Council to endorse the [revised Withdrawal Agreement](#) and [revised Political Declaration](#) on the future relationship and the European Parliament to give its consent to both. It is anticipated, although not yet certain, that the European Council will agree the deal during this EU Summit.

The fact that the UK Government and European Commission have reached agreement on a revised Brexit deal is an enormous development in the Brexit process. However, as we explain below, this does not mean that the risks of a no-deal Brexit have been eliminated, nor that the Brexit process is finished. It is far from over.

## THE COMPROMISE ON THE IRISH BACKSTOP

On 2 October 2019, the UK's Prime Minister, Boris Johnson, wrote to the European Commission President, Mr Juncker, to set out the UK's plan for resolving the Irish backstop issue. The Irish backstop had become the remaining sticking point, albeit extremely challenging, for the EU and UK to agree in relation to the Withdrawal Agreement that is required for an orderly exit from the EU.

We have discussed various options for resolving the Irish backstop over the last couple of years, most recently [here](#) and [here](#).

The revised Brexit Withdrawal Agreement goes further than the latest UK proposal since it not only keeps Northern Ireland in the single market for goods but also requires EU custom legislation to be applied to goods moving to Northern Ireland. Although the Protocol expressly states that Northern Ireland will be part of the UK customs territory, EU duties will be charged unless there is no risk of the goods moving the EU and they will not be subject to commercial processing. Rebates of these duties will be possible in certain circumstances subject to state aid control by the EU Commission.

We attach a comparison of the changes that have been made to the [Protocol on Ireland/Northern Ireland](#) and [Political Declaration](#) on the future relationship since the last version agreed between the UK Government and European Commission in November 2018.

## **HURDLES TO RATIFICATION REMAIN - THE UK AND EU PARLIAMENTS**

Firstly, the revised Brexit deal is still subject to agreement by both the UK and EU's respective Parliaments. We understand that the UK Parliament will be asked to vote on Saturday 19 October on approving: (a) the texts of the revised Withdrawal Agreement and revised Political Declaration on the future relationship (ie whether it accepts the revised Brexit deal); or (b) if the revised Brexit deal is not approved, whether it approves the UK leaving the EU on a no-deal basis. However, what the House of Commons will vote on may be subject to any other amendments introduced on the day. For example, it is possible that the Labour Party will table an amendment to hold a confirmatory referendum.

To recap, the UK's Parliament voted against the previous deal three times, which led to the European Parliament not putting the Withdrawal Agreement to a vote. Since then, the UK Government has lost its majority in the UK House of Commons and a new European Parliament has been elected.

Note, however, that the vote on Saturday is only a so called '[meaningful vote](#)'. The UK Parliament would also subsequently have to pass the implementing legislation as well (the Withdrawal Agreement Bill).

It is unclear at this stage, whether such approval will be forthcoming from either Parliaments for the revised deal although it is anticipated that the challenges of the revised deal being approved by the UK Parliament are the greatest. At present, the Democratic Unionist Party (DUP) do not support the revised Brexit deal.

If successfully approved by both the UK and EU Parliaments (without the requirement for a confirmatory referendum) the revised Brexit deal would then finally go back to the Council of the European Union for final adoption before the Withdrawal Agreement is entered into as an EU Treaty (although this aspect is anticipated to be a formality given that the European Council will already have approved the revised deal). The Political Declaration on the future relationship is not legally binding, but sets the scene for negotiations on a new Free Trade Agreement (FTA) between the UK and the EU 27.

At the time of writing, both the European Commission and UK Government contend that it will be possible to complete the necessary ratification procedures related to the revised Brexit deal before 31 October 2019. If this is not the case, it is likely that a short technical extension to the Brexit deadline may be granted by the EU. If the UK House of Commons requires that a confirmatory referendum be carried out as part of its ratification procedures of the revised Brexit deal, it is likely that a much longer extension than 31 January 2020 may be required.

## **IF THE DEAL PASSES THEN THE UK WILL ENTER A STATUS QUO TRANSITION PERIOD**

If the revised Brexit deal passes the remaining Parliamentary hurdles to ratification, then the UK will cease to be an EU Member State at 11pm GMT on 31 October 2019. However, as part of the terms of the Withdrawal Agreement there will be a status quo transition period following Brexit expiring on 31 December 2020 (or after an extension of up to one or two years): during this period EU law will continue to apply in and to the UK and the UK will continue to trade as part of the EU Single Market and Customs Union notwithstanding no longer being an EU Member State. The UK will also be bound by obligations resulting from international agreements concluded by the EU on behalf of the member states. See our [Withdrawal Agreement Q&A](#) for further details (although note that this document has not yet been updated to reflect the revised agreement in relation to the Irish backstop or the Political Declaration on the future relationship).

## **EXTENSION UNDER THE BENN-BURT ACT**

In the event that the UK Parliament does not approve the revised Brexit deal or consent to a no-deal Brexit, the UK Prime Minister will be legally required under the European Union (Withdrawal) (No.2) Act 2019 (the "Benn-Burt Act") to send a letter no later than Saturday 19 October 2019 to the European Council seeking an extension to the Brexit deadline to 31 January 2020. However, the template letter in the Benn-Burt Act proposes that the extension can end earlier than 31 January 2020 if the UK and EU are able to ratify a Brexit deal before then.

If the European Council decides to agree to an extension to 31 January 2020, the UK Prime Minister is required to immediately notify the President of the European Council that the UK accepts this extension. However, if the European Council proposes a shorter or longer extension than 31 January 2020, the Prime Minister must either within two days of the date of the European Council's decision or before the end of 30 October 2019, whichever date comes first: (a) accept the proposed extension; or (b) request approval from the UK House of Commons of the EU's proposed extension.

If no approval is given by the UK House of Commons of the EU's revised extension proposal, the UK Prime Minister can decide whether to accept or reject the EU's revised extension proposal.

There has been intense speculation in the press as to whether the UK Prime Minister will comply with the requirements of the Benn-Burt Act. He has repeatedly stated that "*do or die*" the UK will leave the EU on 31 October 2019, but also that the government would never knowingly break the law. He has not wavered from this stance. There have been suggestions that the UK Prime Minister would rather: (a) avoid sending the extension request letter (and if there was a way to avoid compliance with this legal duty, he has yet to reveal how this is possible); or (b) resign his position than be responsible for sending the extension request letter to the EU.

There is an added complication in that even if the UK Prime Minister complies with the legal requirements of the Benn-Burt Act, the EU may not necessarily agree to the extension request - the decision by the EU must be unanimous. If one EU Member State refuses to agree to the extension request, there may be no extension to the Brexit deadline and the UK will leave the EU on a no-deal basis on 31 October 2019. Mr Juncker today stated: "*This deal means there is no need for any kind of prolongation.*" This is being taken as a warning by some that the EU may not grant a further extension to the Brexit deadline.

## **IF A DEAL IS RATIFIED THEN THE UK MOVES TO THE MAIN NEGOTIATIONS - ON THE FUTURE RELATIONSHIP**

The Withdrawal Agreement covers the key withdrawal issues of citizens' rights, financial contribution and the Irish border. It also covers a range of other withdrawal issues such as issues relating to intellectual property, ongoing public procurement procedures, ongoing judicial cooperation on civil and commercial matters and ongoing judicial and administrative procedures. See our [Withdrawal Agreement Q&A](#) for further details.

However, if the UK does leave with a deal on 31 October 2019 (or such other date as agreed pursuant to a technical Brexit extension), the UK's future relationship with the EU will be negotiated in a separate agreement during the transition period following this. While the Political Declaration on the future relationship, which was agreed by the European Commission alongside the Withdrawal Agreement today, sets out the anticipated scope and high level terms for the future relationship it is non-binding. Clearly the type of agreement negotiated will depend a lot on the result of the UK's next General Election which is expected sometime in the next few months.

The revisions to the Political Declaration on the future relationship reflect the position of the new UK Government under Prime Minister Boris Johnson to have a more standard free trade agreement between the UK and the EU and not be dynamically tied to EU regulation.

In the event that the UK and EU are unable to agree a deal on the future relationship by the end of the transition period following Brexit (including its possible extension), then there would be a 'no-deal' situation at that point.

In the meantime, even in relation to 31 October 2019, a no-deal Brexit is still a possibility. See our [updated Brexit Legal Guide](#) which addresses in detail the legal position if the UK leaves the EU with or without a deal and [our overview of the implications of a no-deal Brexit for business](#).

If you would like to discuss specific arrangements for support through the risk of a no-deal exit or on dispute risks that may arise, or on any other questions or challenges you have, please do contact your regular Herbert Smith Freehills relationship contacts, or any of the experts listed [here](#).

[More on Brexit](#)

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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