

Brexit: The Long Goodbye?

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The Parliamentary week began with a stark choice between the UK government's Withdrawal Agreement and Political Declaration (WA) and a "no deal" Brexit. The week has ended with no real change. Next week, the government will seek for the third time to secure approval for the WA in order to obtain a short "technical extension" to the Article 50 notice period so that the necessary legislation can be passed. If the WA were to be rejected again, then the government would have to ask for a longer extension, and that request might be vetoed by any EU member state. Consequently, the House of Commons still faces a choice between the government's WA and "no deal".

While it might seem improbable that the government could overturn a 230 vote and a 149 vote rejection of the WA, the imminent prospect of a "no deal" Brexit might be enough to secure a late resolution in its favour. Armed with the House of Commons resolution, passed on 13 March, to rule out a "no deal" Brexit, the government will undoubtedly echo EU statements that the WA is the only available deal. Further, key EU figures including Guy Verhofstadt have emphasised that the WA provides the only credible route to a transitional or implementation period.

A key vote on 14 March narrowly ensured that the government retains control over the scheduling and conduct of Parliamentary business, subject only to the Speaker's discretion to allow urgent questions or emergency debates. Any legislation that is brought forward, outside the limited provision for private members' Bills, is government legislation. That, together with the fact that there are now only eight normal sitting days left before 29 March creates significant pressure to approve the WA.

However, major obstacles remain. Theoretically at least, the Speaker might block a motion that would bring back to the House a motion that has already been rejected. More likely, advocates of a "hard Brexit" such as the European Research Group might maintain their opposition to the WA and vote against it for the third time. There is also the remaining possibility that the government might either lose on a vote of no confidence, or simply fall apart due to Cabinet divisions that saw eight Ministers vote against the government's main motion on 14 March. In any of those scenarios, "no deal" remains a live risk, whether by design or by accident.

It also remains possible that the final week before the 29 March deadline would see a frenzy of activity designed to avoid a cliff-edge Brexit, including arguments in favour of revoking the UK's Article 50 notice. The European Court of Justice ruling (C-621/18) of 10 December 2018 confirmed that the UK could unilaterally withdraw its notice at any time up to the 29 March deadline. While currently unlikely, revocation might provide a last-minute escape route from a "no deal" outcome.

Fail to prepare, prepare to fail

Beyond the solipsistic world of Westminster, businesses have had to prepare for "no deal" while hoping for a more rational outcome. Those preparations remain crucial, particularly as warehouse space and haulage capacity are now at a premium. Key practical steps include:

- Ensuring that any business seeking to move goods from or into the EU is registered under the Economic Operator Registration and Identification (EORI) scheme;
- Checking contracts for the supply of goods to ensure that Brexit-related costs, such as import duties and associated fees are properly allocated. That could be through price adjustment clauses, stating whether the price does or does not include those costs. Alternatively, it could be through the incorporation of Incoterms, often in documents other than the main contract;
- Checking contracts for the availability and level of liquidated damages for delayed delivery. Since the UK Supreme Court decision in *Makdessi v Cavendish Square* [2015] UKSC 67, liquidated damages will not be struck down as an unenforceable "penalty" unless the figure is "out of all proportion" to the claimant's legitimate interest in securing performance of the contract. In practice, this means that liquidated damages figures have tended to rise as the Brexit deadline approaches;
- Ensuring that VAT reporting procedures are updated to include postponed accounting for import VAT; and
- Checking the government guidance issued on 13 March 2019 in relation to the temporary tariffs regime in the event of a no deal Brexit. That guidance is available [here](#).

Business as unusual

On the morning of 15 March, the Parliamentary calendar for the week commencing 18 March continues to show only routine business – though that does include motions on a number of Brexit-related statutory instruments. In practice, that schedule is highly likely to change depending on the government's assessment of its chances in relation to the WA. Another week of uncertainty is, perhaps, the only certainty.

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