

## What Happened?

Over the period since the overwhelming rejection of the Withdrawal Agreement by Parliament on 15 January, Prime Minister May's tactic has been to try to bring the pro-Brexit wing of the Conservative Party, and the Northern Ireland Democratic Unionists, back on side. No.10 appears to have been successful in whittling the pro-Brexit wing's nominal resistance to the Withdrawal Agreement (which was very wide ranging at the time of the vote) down to just the Northern Ireland backstop – the failsafe mechanism in the Withdrawal Agreement to ensure that there will be no hard border on the island of Ireland, but which the Pro-Brexit wing fear is a trap to keep the UK permanently in customs and regulatory alignment with the EU.

Until the morning of Tuesday 29 January, No.10 hoped to achieve this without attempting to renegotiate the Withdrawal Agreement, something the EU has been adamant is not in the cards. However, No.10's aim for a legally binding side agreement looked unlikely to bring the Brexiteers on side. So, Prime Minister May announced that she was willing to go back to the EU to seek changes to the Withdrawal Agreement. This, some would say desperate, volte-face by the Prime Minister is very significant background to Tuesday's votes in Parliament.

The House of Commons voted on seven amendments to the (neutrally worded) government motion:

1.	Labour Party amendment to rule out "no deal" and require a permanent customs union	Defeated by 327 votes to 296
2.	Scottish and Welsh National Parties amendment, which notes Scotland and Wales voted to remain in the EU, calls for extension and Article 50 timetable and to rule out "no deal"	Defeated by 327 votes to 39
3.	Former Attorney-General Dominic Grieve QC amendment to give Parliament six days to debate Brexit and put forward alternative plans	Defeated by 321 votes to 301
4.	Labour's Yvette Cooper amendment to create legal obligation on government to extend Article 50 timetable unless a deal is approved by Parliament by 26 February	Defeated by 321 votes to 298
5.	Labour's Rachel Reeves amendment similar to Yvette Cooper but not legally binding	Defeated by 322 votes to 290
6.	Conservative Caroline Spelman amendment to reject "no deal" Brexit (not legally binding)	<b>Passed by 318 votes to 310</b>
7.	Conservative Sir Graham Brady amendment (with tacit government backing) calling on government to replace Northern Ireland backstop with "alternative arrangements", and stating that with this change the Withdrawal Agreement would be accepted	<b>Passed by 317 votes to 301</b>



The most significant of these amendments were Nos. 3, 4, 6 and 7. Nos. 3 and 4 were the mechanisms by which Parliament could take control of the Brexit process. The Prime Minister's undertaking to seek to renegotiate the Withdrawal Agreement, by bringing the Brexiteers on side, combined with an undertaking to hold a new "meaningful vote" in about two weeks' time, which kept a number of Ministers who would have resigned in order to support the Cooper amendment from doing so, saw these two amendments off. No. 6 is non-binding, but is an important reminder of where parliamentary opinion sits if the Prime Minister fails to secure changes to the Withdrawal Agreement. No. 7 is being portrayed, perhaps with rather exuberant optimism, within the Conservative Party and pro-Brexit press as the Prime Minister's mandate to secure changes to the Withdrawal Agreement. The wording of the amendment – "alternative arrangements" – deliberately mirrors the EU's own language.

The government's narrow majority held up uncharacteristically well through the evening; a small number of Conservative rebels being compensated for by a dozen or so Labour MPs from strongly pro-Brexit constituencies voting with the government in order not to be accused of voting against Brexit. Support for the Brady amendment (the only "positive" amendment to pass) was, however, a handful of votes lower than the government majority against the other amendments (fewer Labour MPs supported it). Furthermore, enough Conservatives supported the Spelman amendment to send the government a clear message for the future.

## What Is Next?

The action now passes to Brussels. EU Council President Donald Tusk immediately responded to the Brady amendment by saying that the Withdrawal Agreement could not be re-opened. Chief Negotiator Michel Barnier stated that the backstop is "part and parcel" of the overall deal. Jean-Claude Juncker, President of the European Commission, reiterated that the Withdrawal Agreement is the best and only agreement available. Despite all these public declarations, even if there were an unspoken willingness on the EU's part to try to help secure a deal that will pass, it remains very unclear what is meant by "alternative arrangements" in practice (even the Brexit Secretary was unable to provide an answer on the BBC Today Programme). As such, the Prime Minister's task looks like a tall order. Given the damage "no deal" is likely to do to both the UK and EU economies, and to some EU member states in particular, the EU will want to ensure that it couches its rejection of the UK's attempt to re-open the Withdrawal Agreement, and that it also avoids any blame for "no deal" if that is where the process ends – perhaps opportunity for some creative "writing around" the Withdrawal Agreement? However, would that be enough to keep sufficient numbers of the Brexiteers on side? Something that is sufficient for Sir Graham Brady may not be sufficient for more outspoken MPs like Jacob Rees-Mogg.

The government is set to return to the House of Commons probably around 14 February for a further "meaningful vote", either on an amended version of the Withdrawal Agreement, if they can secure that, or – unusually, Parliament generally does not vote twice on the same thing – on the existing Withdrawal Agreement if no amendments have been secured. If the latter, the current truce in the Conservative Party is likely to end again, and the government is likely to return to defeats rather than victories.

On the plus side, Prime Minister May has re-established her majority and secured parliamentary approval for an – albeit vague – proposal for approving the Withdrawal Agreement. Yet, the price of doing so is an undertaking to achieve, something that looks at best at the outer limit of achievable. It is hard to see what incentive the EU has to give the Prime Minister what she now needs: substantive changes to the text of the Withdrawal Agreement. First, many in the EU think the Withdrawal Agreement goes too far already. Second, they know that the full force of the anti-"no deal" majority has not yet materialised in Westminster. Third, it is hard to see how any alternative approach works for the Irish border unless the UK is willing to relax at least some "red lines". Currently, within the legally determined timetable, there remain only two options: (1) the Withdrawal Agreement, or (2) "no-deal" Brexit. Commission President Juncker has hinted at a third, but it would involve UK membership of a permanent customs union, to be negotiated through the implementation period, and could only happen through the Withdrawal Agreement, but could create a guarantee that the backstop would never enter into force.

For the time being, Prime Minister May has successfully managed to avoid the choice between a position the pro-Brexit wing of the Conservative Party could not accept, and a position which the pro-European wing of the Party could not accept; however, that moment of choice is coming closer – in effect a choice between re-defining the UK's red lines to secure a deal which could command substantial cross-party support but would be implacably opposed by the pro-Brexit wing of the Conservative Party, or continuing to try to produce a solution which the Brexiteers would support, but with the increased risk of a "no-deal" Brexit. Opting for either path would greatly increase the chances of a general election, which could throw the deck of cards up in the air.

## What Remains the Same?

In a sense, "nothing has changed" (as the Prime Minister is fond of saying) because of events in Parliament this week. Three possible short-term scenarios remain:

- The UK parliament ratifies a Withdrawal Agreement concluded between the UK government and the EU (see below), in which case the UK enters a transition period (also see below), which will last until at least 31 December 2020.
- The UK parliament does not ratify a Withdrawal Agreement, in which case the UK leaves the EU on 29 March 2019, and does not enter into a transition period.
- The UK government requests an extension of the Article 50 period beyond 29 March 2019, or unilaterally revokes the Article 50 notification.

## Scenario: No Ratification

If the UK fails to ratify a Withdrawal Agreement, it will leave the EU on 29 March 2019, will not enter into a transition period and will immediately be treated by the EU as a third country. It will, as a matter of law, cease to be subject to the rights and obligations under existing EU agreements, including free trade agreements. The UK would need to revert to the World Trade Organization (WTO) General Agreement on Tariffs and Trade to govern its trade in goods, and the General Agreement on Trade in Services to govern its trade in services. It remains unclear precisely how this would work in practice and whether the UK would be in a position immediately to apply WTO rules and tariffs on 30 March in relation to trade with the EU and other countries with which the EU has trade agreements. The UK government has been seeking to “roll-over” existing EU treaties with third countries so that they would in effect continue to apply with the UK after Brexit on a bilateral basis: media reports suggest that the UK has made limited progress toward this objective (there are 236 third country treaties, of which around 40 are free trade agreements (FTAs)).

Both the UK and EU have issued guidance as to what will happen in the event of the UK leaving the EU without ratifying a Withdrawal Agreement, and have made preparations. The UK has, for example, awarded contracts to private companies to run ferry services at additional ports, as it anticipates severe congestion around UK ports, particularly Dover, caused by additional border checks arising as a result of the UK becoming a third state. The concern is that without such measures, the UK could run out of food and medicine. See also UK’s Department for International Trade [notice on export of dual-use goods to EU member states](#) in the event of a “no-deal” exit.

Precisely how a “no-deal” Brexit would affect the UK and the EU is impossible to predict, as is the response of the UK government and EU in the weeks and months following such an outcome. Regardless, should the UK leave the EU without ratifying a Withdrawal Agreement, the potential of the disruption to impact not only the UK and the EU, but also to cause contamination in other key global players, such as the US, China and Japan, should not be underestimated. The ill will that would be created between the EU and the UK (particularly if the UK government decided not to honour what it had previously accepted as UK financial obligations on leaving the EU) could complicate both the EU-UK relationship and the development of new UK relationships with other countries, including the US, for some years to come.

## Scenario: No or Delayed Brexit

At any point until 29 March 2019, the UK can decide unilaterally to revoke its Article 50 notification and remain in the EU on its existing terms of membership. The UK could also request an extension of the Article 50 period, but this would require the consent of all 27 member states, and would likely involve questions as to the reason for the UK requesting an extension. In principle, the UK could unilaterally revoke its Article 50 notification during an extension period.

It is not clear whether the UK government could unilaterally revoke its Article 50 notification without an Act of Parliament authorising it to do so. Former President of the Supreme Court of the United Kingdom, Lord Neuberger, indicated in a BBC interview in January that he considered it likely that a new act would be required. In practice, there is insufficient time before 29 March 2019 to introduce legislation for, and hold, a second referendum, including an option on whether the UK should remain in the EU or not, and there is currently little appetite in the UK government or Parliament to legislate for one.

As things currently stand, neither the UK government nor Parliament show an inclination to revoke Article 50, or request an extension. On the other hand, as a purely technical matter, it is difficult to see how the UK will be in a position to pass, before 29 March 2019, the necessary domestic legislation that it considers it needs to effect Brexit, even if as a matter of international law all that is needed for Brexit to occur is for the clock to strike 11 p.m. UK time on that date. There are 14 Acts of Parliament required, and at the time of writing this publication, only five have become law.

Parliament is faced with a choice of unilaterally revoking or leaving without a deal on 29 March – a choice which it is overwhelmingly against – or to revoke Article 50 unilaterally at the last minute; its decision unclear.

## How We Can Help

We can help you understand and plan for the various permutations of Brexit in 2019.

With fewer than 60 days before the UK leaves the EU as a matter of law, it is essential for businesses with financiers, operations, suppliers or customers in the UK or EU to ensure that they are satisfactorily prepared in the short- and medium-term for the end position of 29 March 2019.

We have been providing legal, strategic and policy advice to clients in the US, as well as the UK, the EU and around the globe, since immediately after the Brexit referendum result in June 2016. The analysis continues to be extraordinarily complex and evolves, often on a daily basis. As the date of the UK’s departure from the EU draws closer, we are assisting numerous of clients every day across the globe in ensuring that they are as well prepared for every outcome as they can be, including in areas that may not be readily apparent from the headlines.



## We are uniquely positioned to be your partner to take advantage of the opportunities posed by Brexit and its impact on global trade.

Whether the UK leaves the EU having ratified a Withdrawal Agreement and enters into a transition period, or whether it leaves without having done so, the UK is likely to aspire to conclude new FTAs, including with the US, as soon as it is able to do so. If the Withdrawal Agreement is ratified, the earliest an FTA could come into effect is 1 January 2021. If the Withdrawal Agreement is not ratified, then in theory, an FTA could be concluded and come into effect at any point after 29 March 2019.

The UK and other governments, including the US, have already initiated actions to take the preliminary steps necessary to lay the groundwork for the formal negotiation of new bilateral trade agreements. For example, in the US, the Office of the US Trade Representative formally notified Congress on 16 October 2018 of the Trump Administration's intent to negotiate new FTAs with the UK, as well as with the EU and Japan. Under US law, this formal notification to Congress must precede the start of any actual negotiations, which by law may now begin on 14 January 2019. The UK has established working groups and high-level dialogues with the US, Australia, China, the Gulf Cooperation Council, India, Japan and New Zealand. In addition, the UK may consider participation in the Trans-Pacific Partnership.

The US and the UK have confirmed the launching of a US-UK of a trade and investment working group. In his 16 October 2018 notification letter to Congress, US Trade Representative (USTR) Robert Lighthizer stated, "we will consult regularly with Congress in developing our negotiating positions to ensure they are consistent with Congressional priorities and objectives." While the procedures for UK approval of post-Brexit FTAs remain uncertain at this point, US law requires congressional approval of any such agreement, and one can anticipate that congressional representatives will play an active consultative role as the negotiations approach and get underway.

On Tuesday 29 January, the Office of the US Trade Representative held a hearing on the US-UK Free Trade Agreement. Witnesses included the US-UK Business Council, AFL-CIO, the American Apparel and Footwear Association, the Semiconductor Association, the US Grains Council, the National Milk Producers, the Securities Industry and Financial Market Association (SIFMA), the Pharmaceutical Research and Manufacturers of America (PhRMA) and several other groups ([full witness list](#)). The public comment period for the US-UK negotiating objectives closed on 15 January 2019. The Office of the US Trade Representative received [135 comments in the public docket](#). Then on Thursday 31 January, the US International Trade Commission (ITC) was scheduled to hold its own hearing, focusing on the potential economic effects of the US-UK Free Trade Agreement. However, citing the government shutdown, the ITC cancelled the hearing and [stated](#) that it anticipates re-scheduling the hearing in the near future.

In this environment, which has been made all the more fluid by the Trump Administration's unilateral tariff initiatives – see our [Squire Patton Boggs Tariff Book](#) – private sector businesses, associations and other groups, wherever headquartered, that conduct operations or invest in any sector of the UK and/or the EU economies will find it strategically important to get involved now, at least to the point of monitoring the current situation, identifying emerging trends and issues critical to their activities and factoring them into their own planning, as well as determining whether, and if so how, to engage with policy makers and negotiators in an effective manner.

Even if the UK wishes to prioritise the conclusion of an FTA with the US, it is unlikely that significant progress will be made until the form and scope of the UK-EU FTA has been settled. That, in turn, is likely to be dictated in large part by agreement on the long-term status of the Irish border. In other words, a US business or sector looking to ensure that it benefits under a UK-US FTA will first need to ensure that the UK-EU FTA enables that agreement.

Our dedicated and multidisciplinary team can provide a full range of timely advice and assistance that are based on decades of relevant experience, pragmatic, attuned to the relevant context and tailored to the specific needs of each client as it adapts to, and where appropriate, participates in, the process by which the new era of UK trade relationships with the EU and non-EU countries is created.

As a global firm that actively engages in both a traditional law practice and has a long history of active representations in public policy matters, including US Congress approvals of proposed trade agreements, we understand and can work effectively with both the technical and policy issues and processes relevant to the negotiation of FTAs. Moreover, our work in a broad range of matters for clients headquartered outside the UK, and our global footprint, provides us with an understanding of the "home country" perspectives and constraints actually faced by clients headquartered outside the UK. Finally, we have lived with, and have a deep understanding of, the Brexit process that will enable us to assist clients effectively in identifying and capitalising on opportunities that may be available to them as well as the adjustments they will need to make to adapt to the new environment.

The impact of Brexit on businesses headquartered outside the UK, but conducting operations or otherwise investing in the UK, will by no means be limited to the new network of UK bilateral trade agreements. For example, following Brexit, the UK will have the opportunity to set its own tax policy in a number of areas now governed by EU law, such as VAT and customs duties (except where addressed in a future UK-EU trade agreement). In addition, the UK will no doubt exercise its expanded post-Brexit tax policy powers in other areas, as is evidenced by its recent digital tax initiative. Moreover, the UK may consider the use of new tax and regulatory incentives to induce businesses to locate or remain in the UK. Other areas in which the UK may decide to act include matters related to employment, pensions and immigration; competition law; environmental protection; investor protection; data localisation and transfer; dispute resolution; and supervision of regulated industries such as chemicals and financial services.

We are uniquely situated and qualified to assist clients in all manners of policy and legal matters stemming from Brexit. We can assist in navigating this complex web of changing conditions for inbound investment into the UK and the new domestic as well as international frameworks that will be developed to govern that activity.

## Key Contacts



### Matthew Kirk

International Affairs Advisor,  
International Policy  
London  
T +44 20 7655 1389  
E [matthew.kirk@squirepb.com](mailto:matthew.kirk@squirepb.com)



### Donald Moorehead

Senior Partner, Financial Services & Tax Policy  
Washington DC  
T +1 202 457 5212  
E [donald.moorehead@squirepb.com](mailto:donald.moorehead@squirepb.com)

## Global Team



### Jeremy Cape

Partner, Financial Services & Tax Policy  
London  
T +44 20 7655 1575  
E [jeremy.cape@squirepb.com](mailto:jeremy.cape@squirepb.com)



### Frank Samolis

Partner, International Trade  
Washington DC  
T +1 202 457 5244  
E [frank.samolis@squirepb.com](mailto:frank.samolis@squirepb.com)



### James Wharton

Senior Advisor, International Policy  
London  
T +44 20 7655 1547  
E [james.wharton@squirepb.com](mailto:james.wharton@squirepb.com)



### Edward Newberry

Partner, Public Policy  
Washington DC  
T +1 202 457 5285  
E [edward.newberry@squirepb.com](mailto:edward.newberry@squirepb.com)



### Wolfgang Maschek

Partner, European Public Policy  
Brussels  
T +322 627 1104  
E [wolfgang.maschek@squirepb.com](mailto:wolfgang.maschek@squirepb.com)



### Robert MacLean

Partner, International Trade  
Brussels  
T +322 627 7619  
E [robert.maclean@squirepb.com](mailto:robert.maclean@squirepb.com)



### Annabel Mace

Partner, Labor and Employment  
London  
T +44 20 7655 1487  
E [annabel.mace@squirepb.com](mailto:annabel.mace@squirepb.com)

