

The NFU Brexit team takes a look at the key political questions and issues to be addressed as we enter the final stages of the EU Article 50 process and attention focuses on reaching a “deal” on the UK’s departure from the EU.

## What are we expecting to emerge from the Brexit negotiations?

There are two separate but parallel aspects to the negotiations for the UK to leave the European Union. The first is a legally binding **Withdrawal Agreement** that sets out the terms of the UK withdrawal “the divorce settlement” and the second is a non-binding **Political Declaration** that sets out the UK and EU’s intentions for the future relationship between the EU and UK.

## What is still to be agreed?

The government has said that 95% of the Withdrawal Agreement has been agreed by the technical negotiators. The main outstanding issue that has to be resolved relates to the Northern Irish border. It is reported that the EU and UK have now agreed that if at the end of a time limited implementation period (expected to run until at least the end of December 2020) there is still no agreement on how to avoid a hard border on the island of Ireland, the UK would remain in a “temporary customs arrangement” with the EU.

The UK is determined that such an arrangement does not become permanent and result in the UK remaining in an EU customs union indefinitely. Negotiators are considering how best to formulate a review mechanism that will decide at which point the temporary customs arrangement is no longer required as it will be superseded by an agreement on the future relationship. The UK wants the power to unilaterally decide to withdraw from such an arrangement, whilst the EU, led by the Republic of Ireland, is determined that such a decision must not be for the UK alone. Negotiators are discussing the role of the European Court of Justice in the review mechanism.

It is understood that there are also issues relating to fishing rights and commitments on maintaining a level playing field – in other words how long the UK will follow any new EU rules such as environmental legislation, state aid rules and workers’ rights.

## What will happen if negotiators make progress?

If the negotiators are able to make significant progress in the coming days on the outstanding issues, the President of the EU Council Donald Tusk could convene an extraordinary EU Council summit at the end of November of the EU27 leaders and the UK Prime Minister, with the intention of approving the Withdrawal Agreement and the Political Declaration.

Ahead of the EU Council meeting, the negotiated texts will be circulated to EU27 capitals and amongst the UK Government’s Cabinet. The Cabinet will need to approve the texts in order for the Prime Minister to proceed to the EU Summit and conclude the agreement with the EU27.

## What happens if Cabinet rejects the agreement?

The Prime Minister is unlikely to present a final negotiating text to Cabinet that will not command majority support. However it is possible that some members of Cabinet will not be able to sign up and maintain collective responsibility for the UK Government’s position. It is therefore possible that some members of Cabinet may resign. The extent to which this creates a political crisis for the Prime Minister depends on which and how many members of Cabinet find themselves in that position.

## **What happens if cabinet approves the agreement?**

If Cabinet gets behind the Prime Minister then it is possible that an extraordinary Council will be held in Brussels at the end of the month. Failing progress this month, a similar process is envisaged in the run up to December EU Council, presently scheduled for 13<sup>th</sup> / 14<sup>th</sup> December. Even if an agreement is reached between the UK Government and the EU 27 – the deal will not yet be done!

## **What happens once the Withdrawal Agreement and Political Declaration are approved by the EU Council?**

Once the Prime Minister, on behalf of the UK and Donald Tusk on behalf of the EU Council approve the Withdrawal Agreement and the Political Declaration, the next step is for the approved texts to be ratified by the respective Parliaments. In the case of the UK this means the UK Parliament and in the case of the EU 27, the European Parliament.

## **What is the Role of UK Parliament?**

If agreement is reached at the UK / EU level, Section 13 of the EU Withdrawal Act provides the basis for Parliamentary approval of the “deal.” The approval of the House of Commons is required for ratification, but the approval of the House of Lords is not.

The UK Government is legally obliged to present three documents to parliament: a statement announcing that agreement has been reached with the EU, the text of the Withdrawal Agreement and the text of the Political Declaration on the future relationship. Further documents relating to the economic analysis of the deal may also be presented.

The Withdrawal Act does not stipulate how Parliament will go about considering the detail of any proposed deal. For instance, the question as to whether Select Committees such as the Committee for Exiting the EU, chaired by Hilary Benn, will take evidence is not addressed by the Act itself. The opportunity for parliament to scrutinise the agreement will, for the most part be dictated by the length of time allowed by the government’s business managers between the laying before parliament of the agreements and the point at which government asks for a decision of the House of Commons – in the form of a motion for resolution approving the deal (also known as the “meaningful vote.”) It has been reported that parliament may have sight of the documents for 2 to 3 weeks before the “meaningful vote,” but this is not certain nor legally required.

## **How will the Government seek Parliament’s approval?**

Once the necessary documents are laid before Parliament, a government Minister must move “a motion” in the House of Commons seeking approval. The motion moved by the Minister must seek approval of both the Withdrawal Agreement and the political declaration.

## **How long will MPs have to debate the motion?**

It will be for the speaker of the House of Commons to decide how long MPs will have to debate the motion prior to the vote. It is likely that special business powers will be used in Parliament to establish a multi-day debate with a clear timetable ahead of the vote. When the Commons debated the motion on accession to the EEC it lasted for 55 hours over 6 days. The Exiting the EU Committee expressed the view that the Commons should have at least 5 days to debate any motion approving the Withdrawal Agreement and the Political Declaration. Furthermore the Withdrawal Act also requires that “so far as practicable” the government’s motion be moved before the European Parliament decides whether to consent to the Withdrawal Agreement.

## Can Parliament amend the motion?

It appears that the House of Commons may at the discretion of the Speaker amend the government's motion to approve the deal, thereby providing MPs with an opportunity to, for instance, put conditions on their approval of the deal. If this were to happen, the government will not be legally obliged to do what the amended motion requires. However, if the motion was amended in a way that meant it no longer expresses approval of the negotiated deal, this would effectively operate as a rejection of the agreement, and government would not be able to bring forward the necessary legislation, the EU Withdrawal Agreement Bill, in order to implement the deal. The government's position is clear; it wants the House to 1) vote on its original motion first and 2) not to vote to amend the motion.

## What is the role of the House of Lords?

A government minister will table a motion in the House of Lords relating to the Withdrawal Agreement and the Political Declaration. Unlike the Commons motion, the Lords motion needs simply to "take note" of the two texts. The EU Withdrawal Act requires that the Lords have the opportunity to debate the motion; it does not require them actually to vote on the motion. If the House of Lords' debate on the motion is not concluded within five sitting days after the day the Commons has approved the agreements, the ratification process can proceed regardless.

## Once the motion passes – is the deal done?

Not quite, if the Commons approves both the Withdrawal Agreement and the Political Declaration unconditionally, the government would then introduce the EU Withdrawal Agreement Bill. If an amended motion is passed, the government will need to take a legal view on whether it can proceed with the planned approach of introducing the EU Withdrawal Agreement Bill. Both the House of Commons and the House of Lords will need to scrutinise and approve the EU Withdrawal Agreement Bill under normal Parliamentary legislative procedures, and it will need Royal Assent ahead of the 29<sup>th</sup> March 2019 in order for the deal to be final.

## Does the government have the votes to get an agreement in the Commons?

At the moment the arithmetic is looking tricky for the government. It is likely that Labour will vote against the government and depending on the final agreement reached between the EU27 and the UK Government, there could be a number of Conservative rebel MPs, as well as the 10 DUP MPs the government relies on for its majority.

## What happens if the Commons rejects the government's motion?

If the government fails to pass the motion approving both the Withdrawal Agreement and the political declaration, the EU Withdrawal Act sets out the necessary process that would need to follow. The first step would be for a government Minister to make a statement in writing to parliament setting out how the government intends to proceed in relation to negotiations with the EU. The statement must be made within 21 calendar days of the decision by the Commons to reject the deal.

The government would then have until 21<sup>st</sup> January to conclude negotiations with the EU. In the event of there being no political agreement, the Prime Minister is required to inform Parliament and set out how the government intends to proceed.

## Will there be a 2<sup>nd</sup> vote/"People's vote"?



In the event that the Commons' reject the agreement, some people believe that momentum will grow around there being a second referendum. However the government has been clear to date that under no circumstance will there be a 2<sup>nd</sup> referendum. It is likely that in the event of there being no deal by 21<sup>st</sup> January, the government will either seek an extension to the Article 50 negotiations to continue negotiations with the EU, or decide to proceed with no deal in place. Meanwhile the government continues to make preparations for "no deal." Of course, in those circumstances anything is possible, and the chance of a second referendum may become much more likely.

## **Will Theresa May be forced to resign if she loses the vote?**

It is possible that Theresa May will resign or face a leadership challenge in the event of the government losing the vote. However for the Prime Minister to face such a challenge, 15% of the Conservative Party MPs (48 MPs) would have had to have written to an internal Tory party committee known as the 1922 Committee expressing no confidence in the Prime Minister. There has been speculation that they are close to the necessary 48 MPs letters, but even if this was the case, Theresa May could stand in the ensuing ballot of all Conservative MPs. This process selects two candidates to be voted on by the national members of the party. If a large majority of MPs beyond the original 48 "rebels" support the Prime Minister in this process, it would be likely that potential challengers would drop away. Many MPs, whilst not necessarily wholly supportive of the Prime Minister, recognise that a leadership race at such a critical time would be extremely disruptive and that there is no obvious successor to take up the reins. Therefore the likelihood of there being a change in leadership in the midst of the political uncertainty that would be created were parliament to vote down the government's motion Remains small.

## **Could there be a general election?**

Under the Fixed Term Parliaments Act 2011, the Prime Minister would have to lose an explicit vote of confidence by a two-thirds majority in the Commons. It is hard to envisage a sufficient number of Tory rebels, who may have voted against the Brexit agreement, would also vote against the Prime Minister to bring forward an early general election. Similarly the DUP is unlikely to bring the Conservative government down with the potential for Labour winning the keys to Number 10 given concerns relating to Jeremy Corbyn's past relationship with Sinn Feinn. Nevertheless, it remains a remote possibility that we could find ourselves facing another general election in 2019 if the Prime Minister and the Conservative Party felt it was the best way of resolving any political crisis arising from "no deal".

