

What does a Johnson Premiership mean for Brexit?

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Mr Johnson takes charge of Brexit at a fractious time for his party and the country, with the Conservative Party's working majority in the House of Commons (with the support from the Democratic Unionist Party) now just two and a number of pre-emptive ministerial resignations before he took office setting a defiant tone among rebellious MPs within the party itself.

Despite this, Mr Johnson looks set to avoid an immediate challenge to his authority in Parliament and to be given a chance to pursue his Brexit strategy. However, beyond his objective to achieve Brexit on 31 October 2019 "do or die", there has been much speculation during the Conservative leadership campaign about what that strategy would be once he took office.

The first strand of Mr Johnson's strategy appears to be to seek to renegotiate the Withdrawal Agreement negotiated by the Government led by his predecessor, Theresa May, before the current Brexit deadline of 31 October 2019. The focus will be the infamous backstop arrangements, which Mr Johnson declared on 16 July 2019 cannot form any part of a negotiated Brexit deal. However, the EU has repeatedly rebuffed such a proposal, stating that negotiations on the Withdrawal Agreement have concluded and cannot be reopened.

This leads to the second strand of Johnson's Brexit strategy, which appears to be to threaten the EU with a no-deal Brexit. All sides of the Brexit debate, including Johnson himself, recognise this would be an uncertain and potentially disruptive outcome for both the UK and the EU. However, Johnson, and those who supported his leadership bid, claim that the threat of no-deal is necessary to force the EU back to the negotiating table and that, in order to be successful, the threat must be credible. Supporters of this strategy also point out that, for this reason, it is unlikely to have the desired result until close to the deadline.

How likely is a no-deal Brexit and can it be prevented?

Although not Johnson's preferred outcome, some are concerned that, if the attempts to renegotiate the deal are unsuccessful, Johnson might feel duty-bound to follow through with his promise to pursue a no-deal Brexit on 31 October.

Some politicians in the UK remain steadfastly against a no-deal Brexit, and have talked about taking whatever steps necessary to prevent it. This has stoked fears among some that a Johnson

Administration could seek to frustrate any efforts to prevent a no-deal Brexit by "proroguing" (or suspending) Parliament shortly before the UK is due to leave the EU on 31 October and thus precluding MPs from acting to prevent a no-deal Brexit.

On 18 July 2019, a majority of MPs voted to introduce measures into law that will make proroguing Parliament more difficult. However, with or without the prorogation of Parliament, this does not change the fact that MPs alone cannot prevent a no-deal Brexit. The legal default position, as a matter of both EU and UK law, is that the UK will leave the EU with or without a deal at 11pm on 31 October 2019. Therefore, the only available means of avoiding no-deal are for:

1. the UK and the EU to agree a deal that is subsequently ratified and implemented in UK law by Parliament before 31 October 2019;
2. the UK and the EU to agree an extension to the Article 50 period beyond 31 October 2019; or
3. the UK to revoke its notification of its intention to withdraw from the EU under Article 50 of the Treaty on European Union.

The only means of preventing a no-deal Brexit that is entirely in the UK's control is to revoke its Article 50 notification. All other means require the cooperation of the EU.

If a Johnson Government wishes to pursue a no-deal Brexit, can it be stopped? The only guaranteed means of doing so would be for MPs to vote down the Johnson Government in a no confidence vote. Notwithstanding the latest vote in Parliament, which could be interpreted as a signal of intent by some MPs, it is still unknown whether (and when) a sufficient number of Conservative MPs would be willing to bring down their own government, risking a General Election and a possible Labour Government, to prevent no deal. However, if they did, a new administration would need to be established either to revoke Article 50 or to request an extension to the Article 50 period before 31 October 2019, otherwise the UK could still leave the EU with no deal, and perhaps no government, on 31 October 2019. The incoming EU Commission President, Ursula von der Leyen, has stated that she would be open to a further extension of the Brexit deadline "for a good reason", which almost certainly includes in order to hold a "democratic event" such as a General Election or Referendum.

What should businesses be doing to prepare for no-deal?

The above analysis suggests that the threat of a no-deal Brexit is real and will persist, in all likelihood, until the last days and hours before 31 October 2019.

Many companies developed no-deal contingency plans in advance of the original 29 March 2019 Brexit deadline, including securing alternative transport routes, stockpiling products and moving licences to holders in the EU27. Those plans should be revisited and updated, or, if not already in place, developed. Many companies ran out of time to implement all the actions identified in advance of the March deadline, so now is the time to prioritise what still needs to

be done before the end of October to safeguard business operations as far as possible in the event of a "no-deal" exit.

Businesses also need urgently to re-engage with a new team in Government – one cannot assume that prior engagement will carry through. The tone of such engagement may also need to change to reflect the new administration's Brexit priorities. As the clock ticks towards exit day, engagement by businesses with key Member State capitals could also be influential.

Our advice remains: prepare for the worst, hope for the best.

How can we help?

We are working with companies across all industry sectors on developing no-deal contingency plans, analysing areas of potential regulatory and structural change for their business, implementing structural changes to supply chains, engaging with industry and government to influence the future policy landscape and providing political, legal and regulatory risk analysis for decision-making around transactions, investment cycles and strategic decisions.

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