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Preparing Brexit: No Deal

Joe Owen
Maddy Thimont Jack
Jill Rutter

Summary

"We are going to fulfil the repeated promises of Parliament to the people and come out of the EU on October 31, no ifs or buts." – Boris Johnson

Delivering Brexit is the number one priority for the new prime minister. Boris Johnson has promised to take the UK out of the EU on 31 October 2019.

With huge barriers to agreeing and ratifying a deal by the end of October, the prospect of a no-deal exit is rising. But no deal would not be the end of Brexit. The UK will be out of the European Union, but the all-encompassing job of adapting to the new reality and building a new relationship with the EU will still be incomplete. The biggest questions Brexit will still need to be settled. The difficult choices that have been unresolved for the last three years will not evaporate overnight on the 31 October. And Brexit will remain the key dividing line in a Parliament in which Johnson's government has a wafer-thin majority, and one that is constantly under threat.

This report looks at what the new prime minister will need to do in his first 100 days to prepare for no deal, and what he will have to do after October 31 if the UK has left the EU without a deal.

Before a no-deal exit

- **The whole of government must shift onto a no-deal footing:** if the new prime minister believes there is a serious prospect that the UK will leave the EU on 31 October, he will need to kick-start the government's no-deal preparations immediately – moving thousands of civil servants into operational centres and starting extensive communications to business. In some areas the civil service has used the extension for further preparations, but in other areas preparations must be reinstated. Ministers, new in post, must resist the temptation to rip up existing no deal plans and policies unless vital to improve readiness.

- **Peak readiness may have been and gone:** the PM cannot assume the UK – and UK business – is ready for no deal. Indeed, it may be less ready for no deal in October than it was in March. Many businesses may find it harder to prepare again (such as building up stocks), particularly in the run up to Christmas. Other businesses, who saw their competitors waste money in March, may decide it is not worth incurring further costs, for a prospect the new PM himself has described as "a million-to-one against".

- **Key Brexit bills are not needed for October 31:** the prime minister does not need to complete the passage of the Brexit bills currently stuck in Parliament in order to leave without a deal. These can be brought back after 31 October. The previous prime minister has spent months trying to avoid Parliament, given its attempts to intervene and the government's tiny majority. The new prime minister, facing more activists on the backbenchers, can do the same with this legislation. But it means key policy areas will have EU law frozen into UK law and the government will have very limited powers to make changes.

- **New legislation will be needed to introduce direct rule in Northern Ireland:** Johnson cannot avoid legislating entirely. Given the scale and the speed of the interventions likely to be necessary, the government should bring in legislation to introduce direct rule in Northern Ireland with immediate effect from 31 October if the Executive has not been restored. This will be extremely contentious, but without it Northern Ireland will be left even more exposed to the economic shocks of a no-deal Brexit than it is currently. That would itself raise the risk of all political backlash.

- **An emergency Budget may be needed:** the prime minister may also wish to hold an emergency Budget. If this is done in September it will need to be voted on before the UK leaves. The earlier it is held, the more potential there is for supporting and incentivising business to prepare, but any action before 31 October leaves the PM open to more parliamentary pressure.

Immediately following a no-deal exit

- **No deal is a step into the unknown:** the prime minister's second 100 days will even more unpredictable than his first. There can be little certainty about exactly how no deal will play out.

- **There is no such thing as 'managed no deal'**: it is unlikely that the EU will agree to negotiate a 'managed no deal', or any 'side deals', to soften the impact. It has continually ruled this out. The EU will take unilateral measures. But those will be aimed at cushioning the impact on EU, not UK, citizens and will last for as long as the EU decides they are necessary.

- **It will be much harder and more complex to strike a deal with the EU:** a quick deal with the EU, even one identical to the current deal, will not be possible once the UK has left. This is because the EU will no longer be negotiating under Article 50. Negotiations with 'third countries' take place on a different legal basis with a more complicated process and ratification requirements – which is likely to involve ratification in all 27 member state parliaments.

- **No deal means losing deals with many other non-EU countries**: the UK will immediately lose access to a large number of important trade and co-operation agreements with other non-EU countries. It will take time to reinstate these, and in some cases countries may have little incentive to conclude a deal. Most recently, Canada has said that the UK's approach to cutting tariffs if there is no deal means it sees little benefit in a UK–Canada deal.

- **A showdown in Parliament cannot be avoided:** the PM will not be able to avoid testing his majority in Parliament for long, as he will have to bring forward a Queens Speech, a Budget and, in time, new bills.

In the months following a no-deal exit

- **Brexit will dominate Whitehall:** Brexit is likely to preoccupy the work of the civil service for years to come. There will be at least 16,000 officials working on it by the autumn, and that number could still increase.

- **The government will have to support struggling and failing businesses**: rather than 'turbo-charging' the economy, as Johnson has suggested, the government is more likely to be occupied with providing money and support to businesses and industries that have not prepared or are worst affected by a no-deal Brexit – as well as dealing with UK citizens in the EU, and EU citizens here, who have been similarly caught out.

- **The Union will come under unprecedented pressure:** Johnson may well find that having left one political union, he spends an increasing proportion of his time trying to keep another together. All nations will look to Westminster to help cushion them against any economic fallout from no deal. Northern Ireland, in particular, will face significant and lasting disruption to its economy and there is a potential for that to translate into increased political tension, particularly if direct rule has been reimposed. In Scotland, a no-deal exit will increase pressure to grant a second independence referendum as relations between Westminster and Holyrood deteriorate. Although the political fallout in Wales will be less acute, farming and manufacturing are both at risk.

Introduction

> "There is a different approach to the negotiations, a new optimism about what we can do, a new spirit of determination to come properly out of the EU and to get a fantastic deal" – Boris Johnson

The new prime minister spent much of June and July going up and down the country talking about what he will do in his first three months. He has said he wants to renegotiate aspects of the Withdrawal Agreement with the EU and leave it with a deal on 31 October. But achieving that preferred approach looks very unlikely, for two principal reasons.

First, the EU has consistently said it would be unwilling to renegotiate the Withdrawal Agreement. While it is likely to engage in discussion, and may be open to smaller technical changes, it looks extremely unlikely to accept Johnson's key request of removing the Northern Irish 'backstop' from the deal.

Second, there is very little time left. Even if the EU was willing to negotiate the changes requested by Prime Minister Johnson, the time required for ratification and the passage of the necessary legislation through Parliament makes the 31 October deadline look very difficult to achieve. If Parliament rises for the anticipated three-week recess around the party conference season (late September—early October), there will be only be little over 20 parliamentary sitting days between MPs returning after the summer recess and the Brexit deadline.

> "We are getting ready to come out on 31 October. Come what may… Do or die."
> – Boris Johnson

Boris Johnson has repeatedly pledged that there will be no more extensions and that no deal would be preferable to any further extension – and appears to have taken some of the possible compromises on the issue of the backstop off the table with his rejection of a proposed time limit or unilateral exit clause.

This combination of controversial negotiating objectives and an extremely tight timeline means the UK is facing the very real possibility of leaving the EU without a deal.

Despite this, there has been little talk of what would come after no deal. Looking at the pledges made during the leadership contest, it is easy to think that once Brexit has been 'dealt with' by the end of October, the government will spend its time tackling all the big issues that have been neglected in recent years – building houses, rolling out broadband, overhauling taxes and so on.

However, the future certainly will not play out like that for a prime minister who has just taken the UK out of the EU without a deal. With MPs' attempts to stop no deal being so far unsuccessful, the EU maintaining its firm line against reopening the Withdrawal Agreement and the deadline inching closer, the new PM needs to start thinking about his second 100 days – and what governing after a no-deal Brexit would actually look like.

This paper discusses what it would take for the prime minister to prepare for and deliver a no-deal Brexit. It looks at the priorities for his first 100 days in the run up to 31 October and what is likely to dominate his time in his second 100 days, if the UK has left the EU without a deal.

Before 31 October

There are different routes to no deal – and different timeframes

It is difficult to predict when no deal would become the most likely scenario for October.

No-deal planning will ramp up soon – according to comments made by Boris Johnson during his leadership campaign – but the context is now different from March, when the UK last faced the prospect of no deal. Under Theresa May's leadership, no-deal planning was a contingency measure in case the UK couldn't reach an agreement with the EU; Johnson, however, appears to view no deal as something he is prepared to contemplate, or even embrace.

It is not clear at what point no deal could become his *preferred* way forward. He could try to talk to Brussels over the summer to renegotiate the deal, get rebuffed, call off the talks and choose to step up no-deal planning in September. Or talks could continue until the European Council meeting in October, with no deal only becoming inevitable after that point (assuming parliamentary manoeuvres to block that outcome are unsuccessful).

It is also possible that, following a failure to renegotiate the deal, Johnson asks the EU for an extension to the Article 50 negotiating period, whether at his own initiative or because he is forced into that position by Parliament. But an extension can only be granted if all EU27 countries agree. It is possible that one or more member states would – having reflected on the previous six months – oppose giving the UK more time. Or the EU could offer an extension with certain conditions that the new PM felt unable to accept. In either scenario, the government would only know that the UK was heading for no deal right at the end of October.

Yet another possibility is that the UK and the EU agree a 'technical extension' to allow both sides to finalise their no-deal planning, rather than to find a way forward.

That means the 31 October deadline could be moved by a few weeks or even months – and such a change also might not emerge in the talks until the last minute.

There will be no 'managed no deal'

If the UK leaves the EU without a deal, arrangements for co-operation will fall away. The EU has made it clear that without a formal withdrawal agreement there will be no 'side deals' that might enable the 'managed no deal' many Brexiteers want. The previous Article 50 extension has given authorities a bit more time to prepare, and has meant that some anticipated pinch points – such as infrastructure in Calais – have been eased, but that is principally a result of more construction time, rather than a decision to make life after no deal any easier for the UK.

Johnson may try again to persuade the EU to move on this point in the run up to October. He may try to negotiate side deals in areas that will have a significant impact on both sides of the Channel. But the message from Brussels is unlikely to change. The EU's approach to no deal in the run up to March was to take time-limited, unilateral action in areas it anticipated the biggest impact – for example on some aspects of financial services (where the EU will not yet have built up sufficient capacity to take on functions of the City of London) and on aviation to ensure flights between the UK and EU member states continue.[1]

If the UK accepts that such side deals are unlikely then it could try to influence the number and coverage of these unilateral measures – in effect pushing the EU to extend them to areas where the UK would benefit. But that also looks unlikely: there would be acrimony if talks break down, and this is not a tactic the UK attempted in March.

Then, there was no co-ordination between the EU and the UK on their approach, and the EU saw its preparations as an internal decision to ease its own biggest pinch points. The EU Commission has confirmed that these unilateral measures to soften no deal impact will remain in place for October[2] – although they are currently due to end in January or March 2020 (nine months or a year after the original Article 50 deadline). In some cases, this is because the six months from March 2019 have been available for governments, citizens and businesses to prepare for no deal, meaning that, in theory, they should not need any more time. However, some of the measures will be needed in October just as much as they were back in March, and for as long.

No deal will have a huge impact on UK relationships beyond the EU

Preparations for leaving the EU are not only focused on plugging the gaps that will emerge should the economic and security relationship with the EU fall away.

Civil servants have been working to 'roll over' – replicate in a new agreement – the 36 free-trade agreements (FTAs) that the UK is party to as an EU member state. The government had hoped to have all of these ready to go on exit day but has made far less progress than it wanted. It has managed to roll over 13,* but many of those are

* One of these is an agreement with South Korea that is, at the time of writing, only agreed in principal rather than signed; the government is including this in its list of rolled-over FTAs.

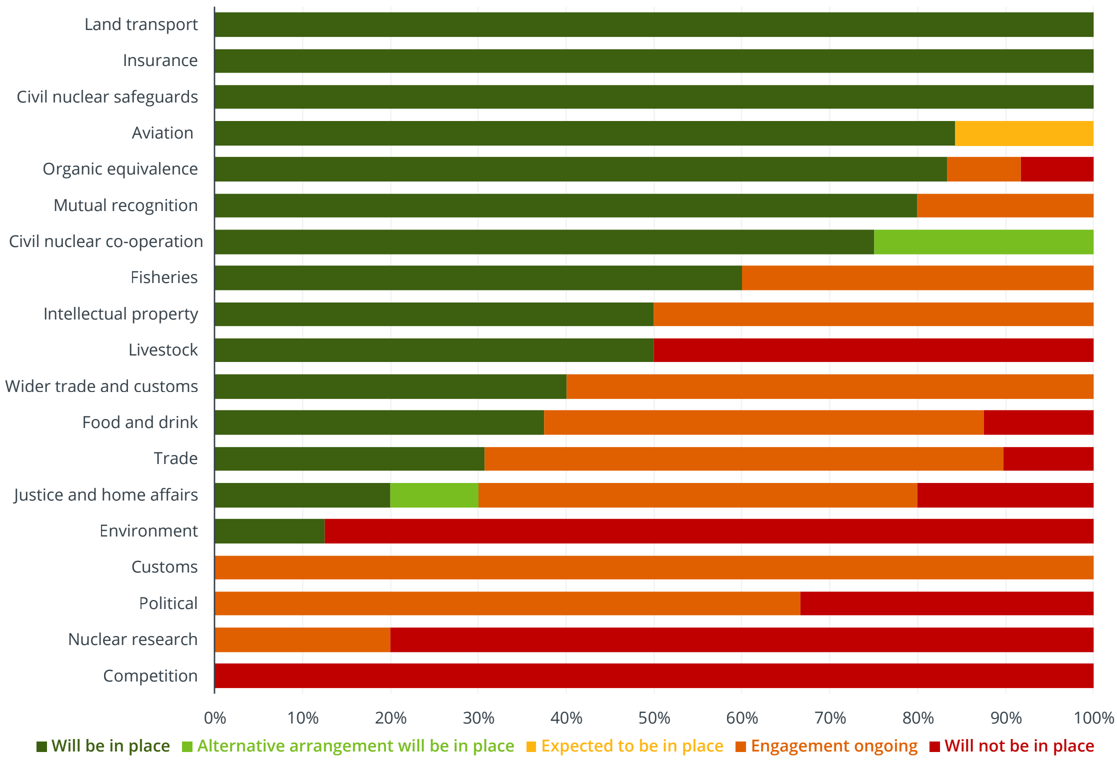
considered to be incomplete – they do not offer full continuity.[3] The government has said that engagement is ongoing on all the remaining 23, but it seems highly unlikely it will get close to the total number by 31 October.[4]

Indeed, some countries have already made clear that they will not be prepared to roll over the terms the UK has access to as an EU member state. These include the trade agreement with Japan and the customs union with Turkey. More recently, the Canadian government has refused to roll over the trade agreement it recently signed with the EU. In large part this is because the UK's proposed no-deal tariff schedule, announced in late March, means the benefits of doing a deal have been eroded, leaving many governments asking why it would be worth investing time in negotiating with the UK when it has just given them most of what they wanted, for free.[5]

The UK is party to more than FTAs through its EU membership. There are also agreements covering other areas of co-operation. It has made better progress on these. It has for example signed air-services continuity and nuclear co-operation agreements with key countries, including the US and Canada. Although government analysis shows there are still a large number of agreements outstanding, the final few months will be an opportunity to try and fill those gaps.[6]

But again there are areas where the other country does not want to simply roll over the existing deal. The US, for example, though rolling over nearly all of its existing agreements with the EU, has not agreed to do the same for some of the most controversial ones – such as on data sharing.

Progress on 'rollover' of EU international agreements, as of 18 July 2019



Source: Institute for Government analysis of GOV.UK data on the 'rollover' of international agreements, last updated 18 July 2019

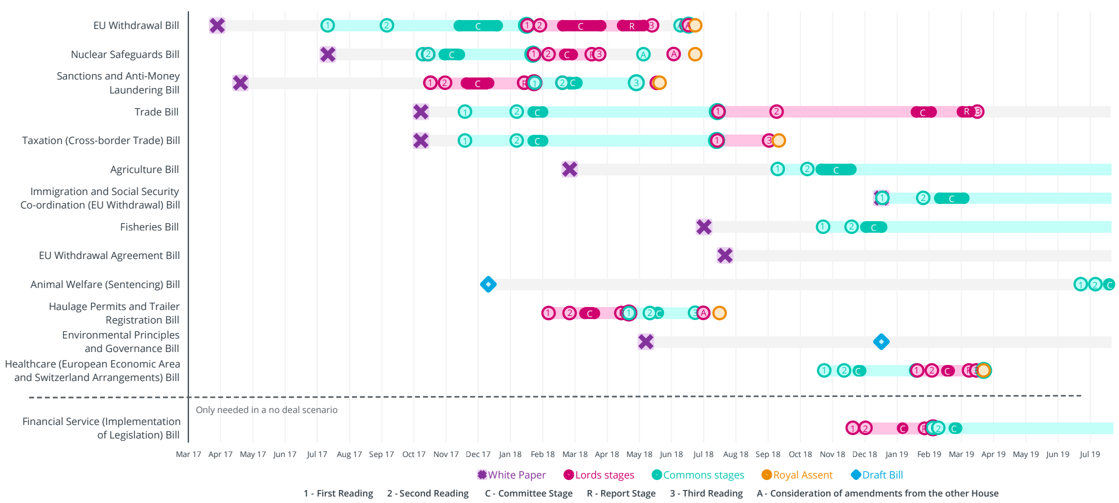
The government will not pass all its Brexit bills before 31 October

No further legislation is needed for the UK to leave the EU without a deal. When Parliament passed the EU (Notification of Withdrawal) Act in 2017, it gave the prime minister the legal authority to trigger Article 50, which, under EU law, started a two-year negotiating period with a deadline of 29 March 2019 (subsequently extended to 31 October). If the deadline is not extended again, then under international law the UK will leave the EU on 31 October.

Parliament has also already passed the main bill needed to manage the UK's withdrawal from the EU on the domestic side. The EU Withdrawal Act 2018 repeals the European Community Act 1972, 'copy and pastes' EU law into UK law – creating a new category of 'retained EU law' – and gives ministers powers to amend that law to make sure it will continue to be functional after the UK has left the EU.

The government originally said that 10 further bills in addition to the Withdrawal Act were required to manage the domestic impact of no deal (though nine of these are also needed in a scenario in which a deal *is* reached). Half have been passed, but some of the main bills setting out new policy frameworks post-Brexit – including on agriculture, fisheries and immigration – have been waiting to return to the Commons for several months. The government has also delayed the Trade Bill's return to the Commons due to tricky amendments passed in the House of Lords.[7] The Financial Services Bill, which allows the UK to stay aligned to EU legislation after Brexit, in part to ease the path to an 'equivalence decision', has been delayed because it was at risk of being amended in the Commons in ways unrelated to Brexit.

Parliamentary progress of legislation introduced to implement Brexit



Source: Institute for Government analysis of parliament.uk.

Although ministers' powers under the Withdrawal Act should ensure there are no significant gaps in domestic law even under a no-deal situation, failure to pass the legislation setting out new policy frameworks after Brexit means UK law is essentially 'frozen' and ministers have limited ability to either update laws in line with EU developments or to implement policy changes. So while the government has been able to put off passing these bills as tensions in Parliament have increased, all of this legislation will have to return to the Commons at some point.

The government has made much better progress in passing the hundreds of statutory instruments (SIs) needed to correct errors in retained EU law. With 29 March as the initial deadline, departments scrambled to get the necessary SIs in place, in some instances increasing the length of them quite significantly to reduce the total number they needed to pass. Here the government largely achieved its goal.

With the bulk of these now in place, departments are focusing on passing any SIs needed to update EU law that has come into force since March, which will also be copied over by the EU Withdrawal Act. Departments have used the time to tidy up any mistakes that they made the first-time round. Over 10,000 new pages of legislation have been created as a result of Brexit and the speed with which this was done meant errors were almost inevitable. The sheer scale of this process shows that the real impact of Brexit on the UK's laws may not be fully known for some time.

Parliamentary arithmetic has been the government's biggest obstacle

The government has been forced to delay the passage of Brexit legislation because of its ever-shrinking majority in the Commons. There has been no guarantee that it is able to see off amendments that seek to tie its hands in trade deals or influence the nature of the UK's future relationship with the EU. Parliamentary arithmetic will be one of the greatest problems for Johnson should he decide to pursue a no-deal Brexit, with previous votes indicating a clear majority in the Commons against such a move.

But MPs who remain opposed to this outcome will need to find a way to turn that political opposition into measures that could stop a government determined on no deal. Primary legislation that needs to be passed before Brexit potentially provides the best route for doing this, which is why the government has avoided scheduling legislative business that might offer MPs such an opportunity. Indeed, the government's concerns were confirmed when MPs recently took advantage of the Northern Ireland (Executive Formation) Bill to limit a prime minister's ability to prorogue Parliament in the autumn.[8]

Of the Brexit bills, the Trade Bill has been the most notable victim. A wish to avoid legislating has forced the government to rely on 'workarounds' in areas where there are still gaps. For example, the secretary of state for international trade, Liam Fox, told the International Trade Select Committee that the government has the legal powers to carry out the three main functions of the Trade Bill *without* it being on the statute book.[9] And the government has prerogative powers that will allow it to set fish quotas in the event of no deal[10] – although use of these powers will cause friction with the devolved administrations.

The government may not be able to avoid primary legislation entirely

One of the key questions that will face the new prime minister should he plan for no deal is whether to try and pass any more primary legislation ahead of 31 October, and risk MPs commandeering it for their own ends.

There are two reasons that Johnson might be forced to seek parliamentary endorsement of his proposals in the run up to a no-deal Brexit. The first would be to anticipate any possible economic shock, and the second to manage the fallout in Northern Ireland.

Economic shock

There is a risk that a disorderly Brexit could cause an economic shock as soon as it becomes the lead option. During the Conservative leadership hustings, Jeremy Hunt spoke about planning an "advance fiscal stimulus" in a September emergency Budget to counter the economic impact of such a shock.[11] That would mean a statement to Parliament: to provisionally bring any immediate changes into force, the government would need to pass a motion giving it the interim authority to do so – and then pass resolutions to give provisional effect to any changes due to come into force before a Finance Bill was passed.

Parliament is limited in its ability to attach substantive riders to these resolutions; it can only amend the first resolution, and the scope of possible amendment is quite limited.[12] If the resolution gets defeated, the government would have to drop the measure and reconsider its Budget package. But even if it passes, the government would still need the Finance Bill – required to implement any resolutions – to pass a second reading within 30 days of the statement. If the emergency Budget was in September, as Jeremy Hunt suggested, that would mean second reading before 31 October – and MPs could use that as possible leverage.

Defeat on the second reading would be enormously damaging and would mean that the government would have to unwind any measures that had already been implemented as it would have no legislative cover for them – assuming it couldn't pass another Finance Bill within the 30-day period. If the Treasury sticks to its now established autumn timetable, a normal Budget would take place in November/December, probably after a no-deal Brexit. (It could, however, revert to previous practice and delay that until spring 2020.)

Northern Ireland

The other issue that might force the government back to Parliament is the need to cope with the consequences of a no-deal Brexit in Northern Ireland. If the power-sharing Executive is not back in Stormont by the end of September, ministers would need to start their plans for introducing direct rule in order to have a say over Northern Ireland's departments on the response to Brexit.

A no-deal Brexit would be felt much more acutely in Northern Ireland than anywhere else in the UK. Government ministers have already acknowledged that the sorts of decisions needed in those circumstances cannot be left to the Northern Ireland's civil servants[13] – who have already been keeping government ticking over in the 900+ days since the Executive fell. That means primary legislation will be required to give ministers the necessary powers, though an initial bill could provide for subsequent legislation on devolved matters to be made through Orders in Council. Introducing direct rule could have immediate and long-lasting political repercussions. It would see the UK government rolling back devolution – and a key part of the Good Friday Agreement – as part of its decision to leave the EU without a deal.

Nonetheless, a responsible government would have a bill providing for direct rule in the event of a no-deal exit on the statute book before 31 October – but as the passage of the Executive Formation Bill this month has shown, such legislation offers a tempting prospect for parliamentary opponents of no deal. So the government might decide to leave the bill until 1 November and rush it through all stages as a response to the 'emergency' in Northern Ireland. That would further undermine confidence and add to uncertainty at what will already be a tense time.

Johnson only has a few days before he must start preparing for no deal

Civil servants in every department will have prepared briefings for their inbound new ministers that set out their state of no-deal readiness.[14] They will be expecting an early Cabinet decision to press the big red button – probably within a week of taking office – to start gearing up for no deal. Operational plans that were in place for March, then stood down in April, will need to be in place again by the end of October.

There were 16,000 civil servants working on Brexit in the run up to a potential no deal exit in March. Over 1,500 were moved within or between departments, and from their day-to-day jobs to contingency planning. This contingency planning – known as Operation Yellowhammer – is the government's response to the most severe anticipated short-term disruption of a no-deal Brexit. It covers 12 key areas of risk, including food and water supplies, healthcare services, trade in goods and transport systems. The effort involves almost all Whitehall departments, with work required by a total of 30 central government bodies, 42 local 'resilience forums', the Scottish and Welsh governments and the Northern Ireland Civil Service.[15] At the heart of Operation Yellowhammer is the Civil Contingencies Secretariat, with its own communications hub to support ministers on emergency responses. Over 2,500 civil servants had been given training by the secretariat by March this year.[16]

A key part of departmental contingency plans are operational centres, which have been set up to co-ordinate responses to issues as they arise. Almost every department has an operational centre, which needs to be ready to run around the clock in the event of no deal, working three eight-hour shifts. Some parts of Whitehall had their centres functioning for the full 24 hours in the run up to the end of March/12 April deadline, but others were only running two shifts. This huge feat of organisation will need to be repeated over the summer to have everything in place for the end of September and early October.

The Cabinet, and new ministers in post, will need to be briefed on the plans that have been pulled together and decisions that have been made. The temptation will be to challenge and change key planning assumptions or policy decisions, but time does not give them that luxury. Tearing up plans and starting from scratch is simply not possible with less than 100 days to go. Big questions like the UK's no-deal tariff schedule may be debated again, but the government cannot afford to keep reopening past decisions.

The UK may be less ready for no deal in October than it was in March

While these operational centres have been stood down (they will be stood back up again in the coming weeks) there have been other parts of the government's no-deal plans that have not had a break. The new systems and processes that are needed for no deal continue to be developed and implemented.

In some cases, the six-month extension has helped to improve readiness. For instance, the government's key customs system, Customs Declarations Services (CDS), was not ready for March or April, as delivery was delayed,[17] but is expected to be partially in place by October (although it is unlikely to be fully working until at least December). The extra six months also gave departments time to improve other replacements for EU systems that may have been 'workable' in March, but which will be able to function better in October.

In other cases, though, the extension has just meant departments need to redo work. For example, the ferry contracts tendered by the Department for Transport, which were the government's plan for protecting the supply of critical goods like medicines, need to go through the procurement process again. The March deadline fiasco surrounding the ferry company that had no ferries, which led to a large out of court settlement with Eurotunnel, was partly blamed on the tight timescales to which the department was working.[18] Although again, the extra time – and the prospect of a Cabinet fully behind no-deal preparations – may make this process easier.

The task of preparing the UK for an October deadline is being complicated by personnel changes among the key officials involved in the March preparations, as people move on to new roles or leave government altogether. The top teams working on Brexit in the Department for Environment, Food and Rural Affairs (Defra), the Department for Exiting the European Union (DExEU), Border Delivery Group and the Cabinet Office have all already changed in the past few months; there will also be new ministers in posts who were not part of the no-deal efforts in March. These new faces will have just weeks to settle in.

Perhaps the hardest thing will be improving business readiness. The communications effort to prepare business for no deal in March was far from successful. HMRC estimated that only one in five of the most at-risk businesses had done the minimum to signal they were actively preparing for no deal.[19] While the government published hundreds of pieces of advice or statements, the reaction of industry – largely small or medium sized businesses – was to wait and see.

Many of those who did prepare spent money in the run up to March and have since found themselves at a competitive disadvantage to those who did not. Persuading those businesses to invest again – on repeat stockpiling, for example – will not be easy. In some cases, the new timeframe will make it even harder to prepare as the summer holiday period means capacity will be reduced, and when things gear up again in the autumn the focus will be on Christmas. Many businesses, whether they have plans in place or not, will just want to wait and see what is going to happen before they make their next move.

The way Johnson communicates about no deal will be more important than any technical notice or advice published on a government webpage. Many businesses will give weight to claims that "no deal is a million-to-one against"[20] or that "Parliament will not allow no deal"[21] and simply decide that preparations are not worth it. If the UK's new prime minister is serious about no deal, he will need to think about whether he is prepared to go further than exhorting businesses to get ready and provide cash support.

He could, for example, provide vouchers for small businesses to mitigate some of the costs of no deal-related legal or professional advice, or be prepared to refund the cost of applying for Economic Operator Registration and Identification (EORI) status if it is subsequently not needed. Based on the evidence to date, businesses have perfectly good reasons to think that the government may threaten no deal but not be ready to deliver it.

The same is true for the preparations of general citizens. Whether it is driving licenses, health insurance or passports (for people or their pets), the government needs to ensure that anyone who needs to be is ready by 31 October – though again some people may wait for absolute certainty before acting.

In short, government contingency plans and operational centres in Whitehall are only part of the readiness picture.

The other big unanswered question is what will happen to the border on the island of Ireland. The government had previously delayed publishing its plans until just two weeks ahead of the March deadline – and no more information has been shared since.[22] This is a major weakness in the government's no-deal plans. The information associated with the risks is complex, the measures are suggested as temporary (with no suggestions of what may follow or when) and, by the government's own admission, it would cause significant problems for businesses in Northern Ireland.

To start, there are likely to be immediate consequences for trade flows between Northern Ireland and the Republic. The vast majority of Northern Irish traders who want to comply with rules are likely to find it difficult to continue to trade with the Republic, given the uncertainty over how it would respond. But the UK's approach means trade from the Republic will be free to enter Northern Ireland. The prime minister will be receiving serious warnings about what this asymmetry could mean for tensions along the border.

Johnson will also have to come up with a new plan for managing that border in very little time. He is likely to be told there would be less than 12 months to find an alternative to the temporary arrangements, which would require establishing agreements with both the EU and Ireland – something that will not be easy amidst the potential acrimony of a no-deal exit.

The reality is that the government does not have a comprehensive or credible plan for how to manage the impact of a no-deal Brexit in Northern Ireland.

Post 31 October

The prime minister faces a cloud of uncertainty

No-one can say with certainty what a no-deal Brexit would mean for the UK. The best guess is locked away on secret computers known as 'Rosa Terminals' across Whitehall, in the classified documents containing the government's planning assumptions.

But these are, as the name suggests, just assumptions. Civil servants and ministers have tried to judge how the EU might respond to no deal, what businesses are likely to do and how citizens could react. It is not possible for the government to make such assumptions with certainty. Officials will be fully aware that there are areas where they will have got it wrong, that others may prove less painful than they expected – and others still that might be much worse.

The risk registers that exist across Whitehall for a no-deal Brexit may have detailed plans for how to manage anticipated risks. But some of the biggest potential headaches will come from those issues that have not been foreseen, or for which the plans can only ever go part of the way. A lot of the government's plans for no deal – Project Yellowhammer, as mentioned above – involve the establishment of operational centres to resolve issues as they arise, rather than to prevent them happening in the first place.

The most the UK can hope for is that the EU takes a lenient approach in the application of the rules, and that its leaders take unilateral steps to ease the impact. It is worth noting that the unilateral measures to which the EU has already committed itself are in areas that disproportionately ease the impact of no deal on EU member states, rather than the UK. But these are not agreements, and the EU could change, revoke or extend them whenever it wanted. In short, it is likely that, for some time at least, no deal really 'means no deal'.

A prime minister overseeing this kind of exit will likely enter their second 100 days in office with even less certainty about what is in store than when they were first handed the keys to 10 Downing Street. But while the practical implications are very difficult to predict, there are some key issues we know Johnson will be grappling with.

A quick and easy deal with the EU is unlikely

Both leadership contenders hoped to get a deal with the EU eventually, even if they were to leave without one in October. This would inevitably involve returning to Brussels, possibly as soon as November, to try and establish a long-term sustainable relationship.

As of 1 November, the Withdrawal Agreement will officially be dead. By the middle of that month, following a no-deal Brexit, the UK will not be able to change its mind and sign up to the deal as it was, and nor could the EU suddenly change tack and offer the UK a decisive concession. The UK will have formally left the EU and will therefore be a 'third country' – and the EU treaties are clear on how deals with third countries are done. In other words, the UK will be out of Article 50 territory and into the treaty base that the EU uses to negotiate with third countries. This is Article 218 territory, which means the EU Commission would need a new mandate from the EU27 that would in turn lead to a new, and more complicated, ratification process.

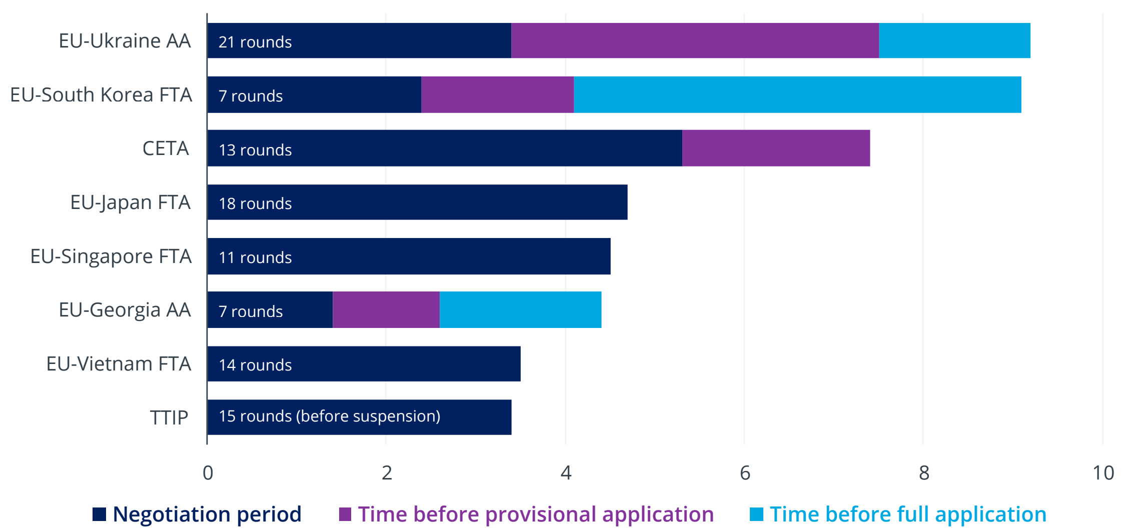
At the same time as the negotiating process gets harder, none of the difficult trade-offs gets any easier. Any new mandate from the EU will almost certainly contain some of the ghosts of the Withdrawal Agreement. If EU leaders stick to their word, there will be demands for the same financial settlement, the requirements on citizens' rights (including a role for the European Court of Justice) and – perhaps most uncomfortably – the need for a Northern Irish backstop.

The UK could also find itself without one of the biggest benefits from the Withdrawal Agreement: the transition period. With the UK already out, the EU may feel a transition period makes little sense – it would, in essence, be inviting a third country to become a quasi-member state for a number of years.

That does not rule out any of the transitional provisions – which could look similar to some of unilateral measures put in place by the EU for no deal in areas like aviation and road haulage – being extended to other areas or for a prolonged time period. As part of offering transitional provisions, the EU may also insist on the swift resolution of issues that were not resolved in the original withdrawal negotiations. This might not be easy for the UK – particularly in areas like fishing rights.

Johnson has said he wants a looser 'Canada-style' free-trade agreement with the EU.[23] That points to a bottom-up, sector-by-sector negotiation rather than a higher-level process of tweaking existing institutional models. In parallel, the UK would also be negotiating a new security partnership with the EU – in what would be the EU's most ambitious agreement with a non-member state to date.

Time taken for EU to conclude recent Free Trade Agreements (years)



Source: Institute for Government analysis of European Commission, Directorate-General Trade data.
Note: AA - Association Agreement; CETA - EU-Canada Comprehensive Economic and Trade Agreement; TTIP - Transatlantic Trade and Investment Partnership

Even if Johnson could persuade the EU negotiators to offer him his perfect deal in the months that follow a no-deal Brexit, he will face an almighty headache with a new ratification procedure. Outside the Article 50 process – which was deliberately designed to facilitate a smooth exit by requiring only a 'qualified majority' of EU member states to agree – a more complex process will be needed. Whether a limited deal on an issue of shared competence like citizens' rights or a more comprehensive deal closer to the level of the UK's ambition, ratification would need the unanimous support of all EU27 leaders. The UK therefore risks being held hostage by the demands of just one state.

The process of parliamentary ratification becomes more complicated in this scenario, too. Any agreement would need a majority in the European Parliament (i.e. over 350 MEPs) and then ratification by national and, in some cases, regional parliaments in the EU. Where ratification on the UK side was what sunk Theresa May's deal, it would be EU leaders and their parliaments standing in the way of a new deal for Johnson.

There will be no 'quick wins' from non-EU countries

The prime minister will want to look beyond the EU for deals; after all, a no-deal Brexit means the UK is 'unshackled' from EU trade policy. The immediate impact of this, though, will be the loss of a large number of trade agreements – those that the Department for International Trade has so far failed to roll over. Johnson will have his trade secretary on the hunt for some 'quick wins' from countries outside the EU, but finding those will be easier said than done, as Canada's response to the UK's announced no-deal tariff schedules outlined above has demonstrated.

Many countries will want to see what the UK does next before they invest time and effort into a trade agreement, particularly given that the unstable position of the UK Parliament provides no guarantee that any deal initiated by the government would be endorsed by enough MPs. Many countries might prefer to see how UK politics, and policy, responds to a no-deal Brexit before they embark on trade negotiations.

Put simply, other countries could decide they have bigger fish to fry. And that bigger fish may well be the EU. New Zealand and Australia, key target countries for UK trade policy, are working hard to get a deal with the EU (as the EU is with them). They might well prefer to focus their energy in Brussels rather than in London.

One possible exception to this could be the US, which may look to move fast and attempt to get the UK, on the rebound from the EU, to sign up to a host of demands. US officials know that if the UK's new prime minister manages to negotiate a close relationship with the EU then a possible US–UK trade deal will become more complicated. However, the US' key interests are likely be just as controversial in the UK as the Brexit deal was. Indeed, there are already numerous amendments being tabled to the Agriculture Bill that seem to be directly targeted at preventing a UK government acceding to likely US demands on animal welfare and environmental standards.[24]

The prime minister will not be able to avoid a parliamentary showdown

While a prime minister intent on no deal could simply try and ignore or avoid Parliament in the run up to 31 October, that approach would quickly need to change after a no-deal exit.

While the primary legislation currently 'stuck' in Parliament is not needed to get over the line in October, outstanding Brexit legislation[25] would be needed relatively soon after the UK's departure. The Financial Services Bill would probably be needed by the end of 2019 to ensure that the UK keeps pace with changes in EU rules; the Immigration Bill would be required to set the UK on the path to ending free movement; and other outstanding bills (Fish, Agriculture and Trade) would also soon need to come back to the Commons. All would be targets for MPs looking to express their dissatisfaction and to open to uncomfortable amendments – making them vehicles for embarrassing government defeats.

Additional pieces of primary legislation may also be needed shortly after a no-deal exist. The bulk of no-deal legislation is designed, as far as possible, to provide legal continuity in the event of no deal. However, this approach will leave large areas of law effectively frozen on exit day.

In some policy areas, particularly those with rapidly changing regulatory regimes, the government may want new powers to update regulation relatively quickly, for example to keep pace with EU standards. This could be important, both for practical purposes (such as reducing the impact on business of having to comply with different regulatory regimes) and to ensure, for future trade negotiations, that UK law remains in a favourable position relative to EU standards. Alternatively, the government may want greater powers in order to deregulate or diverge from EU law in the event of no deal.

Given the scale and speed of the legislative challenge posed by a no-deal Brexit, it is also likely that some aspects of no-deal legislation will not work as intended, or that regulatory gaps will be spotted when the legislation is tested in practice. No-deal secondary legislation may also be judicially reviewed, and potentially struck down by the courts. In these circumstances, remedial legislation may be needed to quickly address any legal deficiencies.[26]

An even bigger risk for Johnson would be the Budget. It is difficult to be confident that he would have the numbers to pass one – especially if he has managed to take the UK out of the EU against Parliament's wishes. A Finance Bill would need to be passed within seven months of a Budget, and before the end of the financial year, or the government's powers to collect income and corporation tax would disappear. Failing to pass a Budget would almost certainly leave the prime minister with few options but to call a general election.

Johnson will also likely want to start a new parliamentary session at some point – not least as the current session has already long passed its intended end date. Although for this there is not the same hard deadline as the Budget, it would involve setting out a domestic legislative programme and passing a new Queen's Speech. Any hostile MPs could amend the Queen's Speech to make governing more challenging for the prime minister. They could even go further and vote it down, which would also almost inevitably lead to a general election, as is difficult to see how a prime minister could continue to govern without passing a Queen's Speech.

The government will have little capacity for delivering anything other than no deal

In the days and weeks after a no-deal exit, the number of civil servants working on its delivery will almost certainly grow. The civil service did not complete the full ramp up for no deal in March, and not everyone who was tapped on the shoulder and told they would be switching jobs ended up making the move. Nor did all the operational centres start their planned 24-hour shifts. But the disruption in March was still noticeable.

In March, more than 200 people from that Department for Education (DfE) were sent to help on emergency no-deal work. Likewise, the Department for Business, Energy and Industrial Strategy had to move almost 15% of its staff in the central department to help preparations for no deal, with around 500 people shuffled around in the build-up to March.[27] So while schools might have been a priority for Johnson on the campaign trail, he may find that DfE officials are too busy helping out elsewhere in Whitehall to implement any planned changes.

No deal is not the finish line for preparations. Many of the UK's plans for 'day one' are just temporary stop-gaps. There will be work going on across Whitehall for years to adjust to life outside the EU – whether it is developing new systems for the UK's borders or building capacity in new public bodies.

On immigration, for example, the plan for day one is to simply try and keep free movement working in much the same way while EU citizens are encouraged to apply for settled status. The government has confirmed that any big changes (and with them, potential issues) will not happen until 2021 or later as it will need time to prepare and implement a new system. Likewise, while border procedures will remain intact as far as possible on 1 November, the UK cannot continue to wave EU products through in the long term – new infrastructure and systems will eventually be needed.

Whitehall is essentially working on a series of 'minimum viable products' for October and in some cases the end state may not be in place until the mid-2020s. Many of the 300 or so 'Brexit workstreams' being developed in Whitehall will continue well beyond 31 October, and will also continue to be the immediate priority for departments.

Rather than 'turbo-charging' the economy, the focus is more likely to be on helping businesses adjust to no deal

One of the biggest challenges for Johnson will be helping businesses to adjust to the realities of life outside the EU. It is almost certain that large numbers of businesses will not be adequately prepared, particularly if the example of the March deadline is anything to go by. For some, this could represent an existential threat: small and medium-size businesses, in particular, could find themselves facing major cash-flow problems if licensing and paperwork issues prevent them from trading with the EU, even for a short time. The PM may find he is spending more time thinking about policy addressing company failure than he does on any suggested 'turbo-charging' of the economy.

One of Theresa May's promises to businesses was that they would only need to cope with one set of changes. The transition period was designed to give the government time to negotiate a new deal, but also to give businesses the certainty that they would only need to adapt once to a new relationship with the EU. For some businesses, that is already a broken promise. Preparing for no deal in March meant investing in changes for a new kind of relationship with the EU, but all the businesses that prepare for no deal or adjust to it after the fact will inevitably face further changes once a new relationship with the EU has been agreed. No deal might offer some short-term certainty about the UK's relationship with the EU, but the longer-term questions will remain unresolved.

There is also uncertainty about how the government will try to respond to any economic disruption from no deal. In December 2018, then chancellor Phillip Hammond promised continuity of funding when the UK ceases to be eligible for EU programmes, from science research to structural funds, so that people get the cash they planned for.[28] But the longer-term replacement funding will be left to the Spending Review – for which Hammond will not be chancellor.

While the government has Operation Yellowhammer to deal with some of the operational problems caused by no deal, Operation Kingfisher has been created to try to mitigate any economic challenges.[29] But the details of exactly what this means and how the UK will cope with a supply-side shock, rather than the more usual demand-side issues, is still unclear.

Theresa May came into Downing Street with a long list of non-Brexit priorities, but left being totally swamped by the UK's relationship with the EU. Prime Minister Johnson will struggle to be any different.

Johnson must also face the constitutional consequences of no deal

The Northern Ireland Civil Service estimates that around 40,000 jobs there would be put at risk by a no-deal exit.[30] The border with the Republic of Ireland, whether there is physical infrastructure there or not, will 'harden' overnight with new demands on locals who live and work all along it. And the re-introduction of direct rule would be a significant symbolic and constitutional shift – even if temporary. Given how integrated the all-Ireland economy is, Northern Ireland, which voted to remain in the EU by 56% to 44%, would likely face the worst impacts of no deal. The delicate balance permitted by a combination of the Belfast/Good Friday Agreement and the UK and Republic of Ireland's shared EU membership will be broken.

In Scotland, the consequences of no deal might be less severe for the economy but could well be politically significant. The Scottish National Party will see it as furthering the case for independence, while the secretary of state for Scotland has already said that a no deal would fuel nationalist claims of a Westminster government that is insensitive to Scotland's needs. With 62% of Scotland voting Remain, tensions between the Scottish and UK governments are likely to increase in the weeks and months following a no-deal Brexit.

Although Wales voted Leave, the Welsh government is opposed to no deal, so there will likely be backlash there, too. Wales would also be affected both by economic disruption and has vulnerable sectors: it has high per-capita Common Agricultural Policy receipts, depends on access to EU agriculture markets and is a big recipient of EU structural funds.

There would, however, be an urgent need for the four nations to work together. The UK would need to quickly resolve some of the outstanding questions about the repatriation of powers and the policy frameworks that will be necessary to replace those of the EU, and that are needed to protect the UK's internal market. Theresa May is said to have been most concerned about the consequences of no deal for the Union. Johnson will need to come up with solutions to the problems that led his predecessor to believe no deal was simply not a viable route forward.

No deal is not the finish line

In the weeks leading up to the 31 October deadline, the pressure to settle Brexit – the issue that has dominated UK politics for more than three years – is huge. But it would be wrong to see no deal as the end point or finish line.

Prime Minister Johnson has said he wants move on from Brexit to focus on social care, increasing police numbers, hospital upgrades and education funding – to name a few. But May, when she made her remarks on the steps of Downing Street after being made prime minister, said that her priority would be fighting 'burning injustices'. She wanted to focus on adult social care, mental health and social mobility. But she spent little time doing anything other than Brexit. The same will be true for Johnson – deal or no deal. Prime ministers need time, capacity and political capital to spend on their priorities, and Brexit affords the new PM few of these.

In short, delivering a no-deal Brexit would leave the prime minister with little space for an ambitious domestic agenda. Whitehall would be working flat out on Brexit for months, with many areas of work extending for years. There would still be negotiations with the EU required – no smaller or less complicated than if there was a deal. Parliamentary time would be occupied with Brexit legislation. Political bandwidth would be spent on Brexit issues. The UK would be out of the European Union, but Brexit would not in any sense be complete.

As with a withdrawal agreement, no deal is just the end of the beginning. The biggest questions and issues still need to be settled; they will not just evaporate overnight on 31 October. Without a formal withdrawal agreement, there will no opportunity to catch breath, take stock and plan for the future. The transition period created a departure lounge in which to prepare. Under no deal, the UK leaps straight through the exit door.

About the authors

Joe Owen is a Programme Director at the Institute for Government. He works on the Institute's Brexit programme and leads its research into Whitehall's preparation for exiting the European Union. Joe has also worked on immigration, customs and trade.

Maddy Thimont Jack is a Senior Researcher at the Institute for Government, working on Brexit. She joined the Institute in 2017. Previously she worked as a Research Assistant at BritainThinks on a range of projects for clients across the private and public sectors.

Jill Rutter is a Programme Director at the Institute for Government. She directs the Institute's work on Brexit. Before joining the Institute, Jill was Director of Strategy and Sustainable Development at Defra. Her previous civil service jobs included periods as Communications Director at HM Treasury, in private office and as the policy lead on tax, development and local government finance, and a period in the No. 10 Policy Unit.

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Institute for Government, 2 Carlton Gardens
London SW1Y 5AA, United Kingdom

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