

Brexit and beyond

Background on Brexit and what happens next

Brexit overview

This June, when asked “Should the United Kingdom remain a member of the European Union or leave the European Union?”, 52 per cent of those who voted said they wanted to leave: for “Brexit”. Although, technically, the referendum was only advisory, the British Parliament appears committed to acting on the “will of the British people”. It is poised to walk away from a 43-year-long relationship with the politico-economic bloc and no one is clear what will replace it. How did the UK arrive at this unprecedented juncture? And what does the future hold?

The UK’s membership of the EU has been a historically divisive issue within both mainstream political parties. During the 1975 EEC referendum campaign, both parties were split, leading to the situation where the individual members of the Labour Cabinet were allowed campaign on each side of the question. Throughout the long Conservative hegemony of the 1980s and 90s, Europe continued to prove a simmering point of contention for both Prime Ministers Thatcher and Major. Conscious of a growing tide of Conservative Euroscepticism and the rising popularity and influence of the pro-leave UK Independence Party (UKIP), during his first term as prime minister, David Cameron pledged an in-out referendum. His bid to unite his party (and ward off UKIP) exceeded expectations, winning him a small Conservative majority in the 2015 election. However, this meant that Mr Cameron could not renege on his earlier promises for a referendum. Internal political manoeuvring culminated in the biggest political

gamble of Mr Cameron’s career. It was not a gamble that paid off.

Net migration from the EU to the UK has spiked over the past two decades, which can be attributed in large part to the accession of several new members to the EU and the deepening Eurozone crisis. In the lead-up to the June referendum, fears of mass immigration and of an apparent erosion of national sovereignty converged with general anti-establishment feeling and a sense amongst some that they had missed out on the prosperity that a global, financially integrated Britain has enjoyed. Brexit became a broad-brush solution to a disparate group of the disaffected, all of whom had a different vision for a post-EU Britain. Reports of terrorism, the refugee crisis and economic malaise on the continent drove national feeling even further from identifying Britons as “European”. Vote Leave’s catch-all slogan – “take back control” – tapped into this frustration and, by a narrow margin, the UK as a

whole voted to divorce from the EU, although when the results were broken down, Scotland and Northern Ireland voted overwhelmingly to remain. It is now widely accepted, and confirmed most recently by the Electoral Reform Society in its report, that the referendum was a study in how not to run referenda. In an accompanying statement, they noted “glaring democratic deficiencies in the lead up to the vote” with a largely negative campaign by parties that generally were not trusted leaving “far too many people [feeling] they were ill-informed about the issues”.

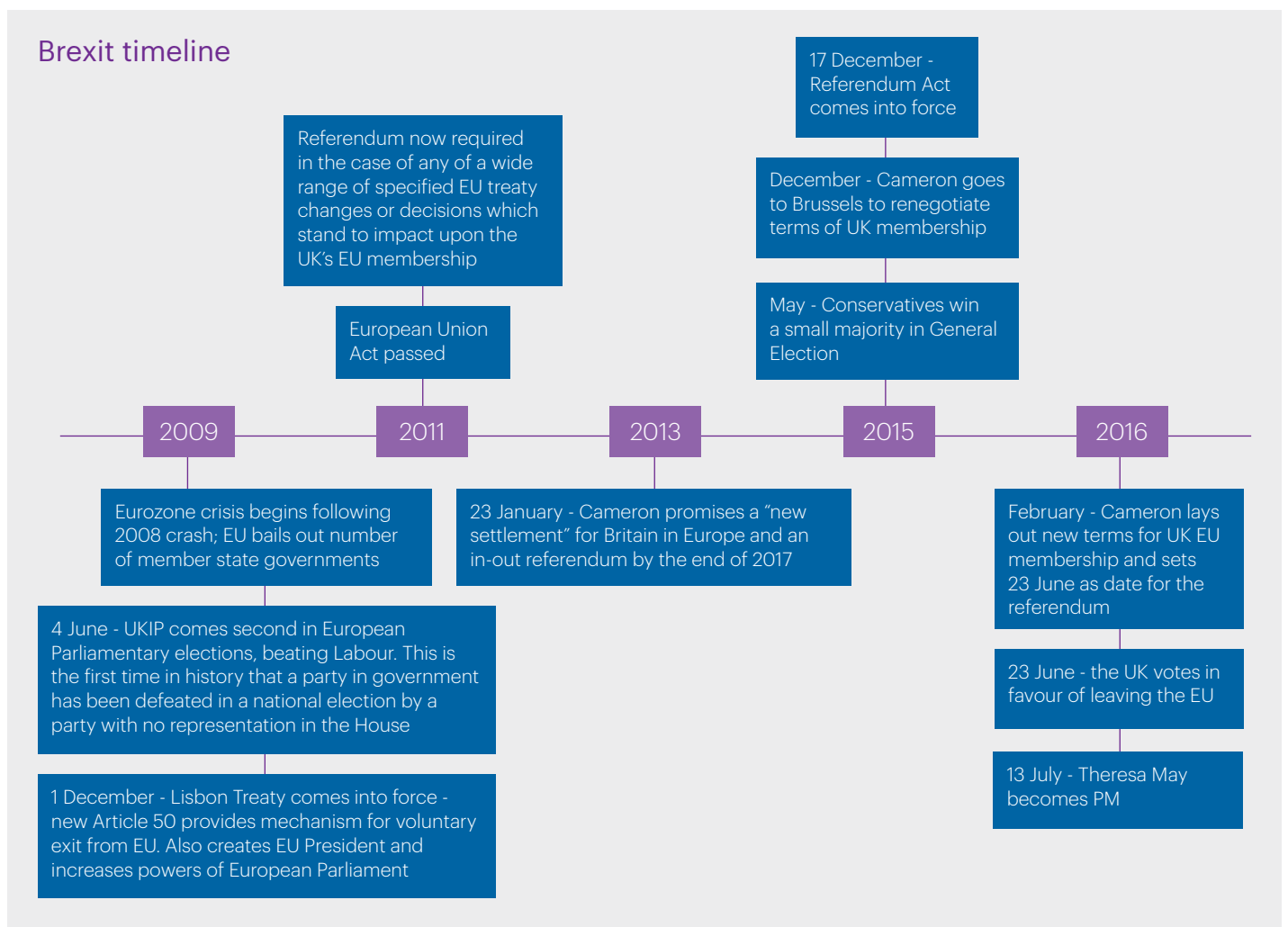
With the sudden resignation of Mr Cameron, volatile markets and fresh calls for a second referendum on Scottish independence, the need for immediate stability stood as paramount in the wake of the vote. A new prime minister, Theresa May, the former Home Secretary (and an actual Remainer) was invited to form a government much earlier than anticipated. This avoided a more protracted leadership debate

through which ideas for the mode of exit and new relationship might have been refined. Instead, it now falls to Mrs May and her Cabinet to identify a Brexit strategy that reconciles the demands of a divided nation – and then sell it to (and buy it from) Europe as well as British industry, international investors and the rest of the world.

The UK Government has undertaken to the UK High Court that it will not invoke the Treaty provision for exit, Article 50 of the Treaty of the

European Union (TEU), before the beginning of 2017. Several challenges to the Government’s power to trigger the two-year formal exit process under the Royal Prerogative have been joined in a judicial review case set down for hearing over two days commencing 15 October. There is little doubt that the case will progress to the Supreme Court. Indeed, emphasising the need for expediency and the fact that the case concerns “issues of constitutional importance”, a High Court judge has suggested that

when handed down, the decision of that Court could be referred directly to the Supreme Court, leapfrogging the Court of Appeal. It is commonly accepted that, as a matter of international law, the UK cannot conclude, or even negotiate, new trade agreements with other countries whilst it retains its status as an EU member. Hence, uncertainty lingers as to precisely when the exit will happen, the parameters of a new relationship with Europe and what a post-Brexit UK will look like.



Article 50 and the process for withdrawal from the EU

What is Article 50?

Article 50 is the mechanism by which a member state may leave the EU. It was incorporated into the terms of EU membership in 2009 by the Lisbon Treaty, prior to which there was no exit provision.

What happens after Article 50 is triggered?

After this notification, the clock starts running on the two-year window for exit terms to be agreed. The representatives of the remaining member states, convene to authorise the opening of negotiations and nominate a chief negotiator, having received a recommendation from the Commission.

The exit-negotiation window can be extended by unanimous agreement of the 28 member states. Absent of this, at the end of the two-year period the UK will be out of the EU automatically. Until then, the UK retains its EU member status.

When the negotiators from either side have struck a draft deal, the EU Council (excluding the UK) must adopt the withdrawal agreement acting by an enhanced majority, having obtained the consent of the European Parliament. Further, if the final agreement requires Treaty amendment, it will be deemed a 'mixed agreement' and will require ratification by Member States in line with their own constitutional requirements.

What's the process of triggering Article 50?

Article 50 sets out that a member state may "decide to withdraw from the Union in accordance with its own constitutional requirements". Seeing as the UK's "constitution" is by and large unwritten, there is ambiguity as to precisely what this means in the context of a Brexit. Indeed, the question of how, legally, Article 50 could be invoked is currently the subject of a court challenge. (see above)

The Government argues that the exit process can be triggered through use of the Royal Prerogative, whilst critics contend that a parliamentary vote is needed as the process stands to cause a loss of the rights under the 1972 legislation that incorporated EU law in the first place.

By whichever route she is empowered, the Prime Minister may invoke Article 50 by formally notifying her European peers of the UK's intention to withdraw.

What does a post-Brexit EU-UK relationship look like?

With over 40 years of economic, legislative and (increasingly) political collaboration to disentangle, the challenge ahead of the UK and the EU is unique. It is also a task of herculean proportions. Because no member state has faced a set of circumstances equivalent to those that have now materialised before the UK, a new UK-EU relationship will likely be an entirely bespoke one. However, throughout the debate, commentators have looked to countries such as Norway, Switzerland and Canada to try to predict what the UK-EU relationship might look like after Brexit and, although it is unlikely any such model can be neatly replicated for the UK, existing alternatives to membership will undoubtedly inform the expectations of negotiators on both sides.

Could a post-Brexit EU-UK relationship be based on an existing model?

EU partners do exist outside of the EU and an examination of a range of these alternatives to membership may offer some insight as to which characteristics could be viable for a post-Brexit UK, when and if a government chooses to invoke Article 50.

	Norway	Switzerland	Turkey	Canada	WTO	
Overview	Non-EU member of European Economic Area (EEA) and the European Free Trade Area (EFTA) along with Liechtenstein and Iceland. An off-the-shelf model for a quasi-membership of the EU with watered-down obligations and influence. May be suitable as a transitional model for the UK.	Non-EEA member of EFTA. An à la carte approach. Relationship governed by over 120 bilateral agreements negotiated over the last 30 years, intended originally as a precursor to EU membership. Model currently under considerable political strain.	Associate member status. Member of EU customs union. Operates under a common trade policy, common rules of origin and a common external tariff. Relationship originally established as step toward membership.	Relationship negotiated from scratch over the course of seven years: the Comprehensive Economic and Trade Agreement (CETA). Phases out tariffs on industrial and most agricultural goods, with some liberalisation of access to services. Anticipated to come into force in 2017.	Strongest break from EU. Relationship based on principle of non-discrimination: no member may give preferential treatment to another in the absence of a separate Free Trade Agreement between them. Goods and services would become subject to EU and UK tariffs. UK would fall back on WTO membership if no alternative agreement were agreed in the two-year window for negotiations.	
Brexit concern	Retain Single Market access	Yes, slightly reduced access for financial services but retain financial passport.	Partial, limited in services, no financial passport.	No, except limited access to EU internal market for goods.	No, except limited access to EU internal market for goods and some services.	No preferential access.
	Stop free movement of people	No	No	Yes	Yes, although some free movement for professionals.	Yes
	Stop contributions to EU budget	No, but contributions are reduced.	Yes, but makes lesser contributions into schemes directly.	Yes	Yes	Yes
	Reduce burden of EU law	Opt-outs in certain policy areas e.g. agricultural and fisheries policies, but, overall, reduction is minimal.	Partially. Although no automatic obligation to transpose EU law, must still follow considerable body of EU rules, covered by bilateral agreements, in order to retain market access.	Yes	Yes	Yes
	Retain influence over EU law	Yes, consulted although no formal vote.	No	No	No	No
	Conclude own Free Trade Agreements	Yes	Yes	Yes, but subject to EU external tariff rates.	Yes	Yes
	Minimise economic disruption	Potentially	No	No	No	No

Introducing Dentons

Dentons is the world's first polycentric global law firm. A top 20 firm on the Acritas 2015 Global Elite Brand Index, the Firm is committed to challenging the status quo in delivering consistent and uncompromising quality and value in new and inventive ways. Driven to provide clients a competitive edge, and connected to the communities where its clients want to do business, Dentons knows that

understanding local cultures is crucial to successfully completing a deal, resolving a dispute or solving a business challenge. Now the world's largest law firm, Dentons' global team builds agile, tailored solutions to meet the local, national and global needs of private and public clients of any size in more than 125 locations serving 50-plus countries.



Our expert team is ready to advise clients on what Brexit means for their business. We can help with:

- Meetings to address practical next steps
- Contract audit
- Readiness review
- Access to our global network of lawyers and advisers
- Market knowledge sharing
- Peer forums
- E-Alerts



Dentons' Brexit Toolkit



Dentons has developed an innovative suite of traditional and technology solutions designed to help clients plan around the uncertainty created by this year's Brexit vote, and navigate the legal complexities that the UK's departure from the European Union will entail.

RAVN – Applied Cognitive Engine Robot

Working with Nextlaw Labs, Dentons' venture development company launched in 2015 to develop, deploy and invest in new technologies, we are working with Artificial Intelligence software experts RAVN Systems to develop a cognitive search engine tool that can be used for Brexit-related contract reviews. Using RAVN's Applied Cognitive Engine (ACE) Robot and an algorithm developed by them with input from Dentons' subject matter experts, high volumes of contract documentation can be processed through the tool to identify provisions that could

potentially be impacted by Brexit, creating a report highlighting areas that should be further reviewed and possibly require expert legal advice.

BRIT – Brexit Risk Implementation Tool

Separately, Dentons has developed a software application that automatically creates a "Brexit Action Plan" for clients based on their key areas of risk exposure. Clients will be able to log into a secure website that will ask them to select the key issues their businesses are primarily concerned with, such as data protection, the environment, immigration, and more. Based on this information an action plan will be produced that identifies concrete steps clients need to take in order to understand their exposure and plan an appropriate response. This can be managed and updated by Dentons, giving clients access to industry trends and intelligence. Targeted updates relevant to particular projects will be delivered to those responsible (goodbye general Brexit updates) and an integrated 'ask Dentons' functionality will allow clients working on Brexit issues to access Dentons' experts on those topics quickly and easily.

Brexit Connect

Shortly after the Brexit vote, Dentons launched "Brexit Connect", a secure online portal enabling clients

to access useful Brexit-related information such as: briefing notes on the impact of Brexit across different sectors; materials from the Firm's internal "Brexit Bootcamp" fee-earner training sessions; recordings of webinars that have been delivered to clients across North America, Europe, Asia and the UK; third party source material; an events calendar; and an "Expert Locator" of key partner contacts. Clients can benefit from having a constantly updated source of Brexit advice and thought leadership at their fingertips, from which they can choose what is most directly applicable to their businesses.

Please contact brexit@dentons.com to learn more about any of the Brexit Toolkit suite.

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