

EU Referendum: What happens next

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ABI Association of British Insurers

Procedure for leaving

Beginning the process

- The Treaty base for EU withdrawal is Article 50 of the Treaty on European Union (TEU). Article 50 has never been exercised before but it is the only legal way to leave the EU. **However, there is no precedent for leaving since the Lisbon Treaty (2009) so there is no clear framework for how it will work.**
- Article 50 can be initiated either by an Act of Parliament or by Royal Prerogative, namely HM Government simply making the decision to withdraw by giving notification.
- The timing of the notification is itself a political decision. David Cameron has announced that a new Prime Minister will be in place in time for the Conservative Party Conference in October – it will be for the new PM to decide how to approach the negotiations.
- Once the decision has been made, the (new) Prime Minister will have to formally notify the European Council of the UK's intention to withdraw.
- The notification triggers a default 2 year period before the UK officially leaves – this can be shortened or lengthened should all EU 27 + UK (unanimously) agree.
- A European Council is scheduled for 28-29 June – where the outcome of the referendum will be discussed
- If there is no alternative agreement on the EU-UK relationship reached after (default) 2 years, then the WTO rules would be the default 'replacement'.

Procedure for leaving

What the Treaty says

What Article 50 of the **Treaty on the Functioning of the European Union** actually stipulates includes:

- *The member state shall notify the European Commission of its intention to leave*
- *The European Council shall negotiate an agreement with the member states, incl. arrangements for withdrawal and the framework of the future relationship*
- *The final agreement needs to be approved by Qualified Majority Voting (QMV) in the European Council, and simple majority in the European Parliament (EP)*
- *The Treaties cease to apply from the date agreed in the exit agreement or (by default) 2 years after notification of intent to leave*
- *The 2 years can be extended if all European Council member states unanimously agree.*

The Article is lacking in detail, meaning that much of what will actually happen will be worked through as it happens. The EU is used to working in this environment, and can be expected to use this to their negotiating advantage.

UK status during negotiation and withdrawal

Status of UK during negotiations	The UK would still be a Member State during the withdrawal negotiations and existing EU law would continue to apply in the UK.
The withdrawal agreement	A withdrawal agreement would be negotiated. It is unclear from Article 50 how far arrangements for the UK's future relationship with the EU would be included in the withdrawal agreement or whether it will be conducted separately through a stand alone FTA. The content would be up to the negotiators.
How would the Government manage negotiations?	Given that EU law applies in a broad range of policy areas, a UK withdrawal would probably involve all Government departments, as well as the UK Representation in Brussels. However, the UK is likely to establish a ministerial working group to lead the negotiations – most likely headed by Treasury. At this stage, there is no agreement on what the UK would want from the negotiations. The negotiations will likely be extremely difficult as other EU member states will be considering their own interests and be looking to ensure the UK is not advantaged by the final settlement.
EU derived UK laws	The UK Government would have to decide whether to retain EU-derived UK laws, amend or repeal them. The starting point would be repeal of the European Communities Act 1972, which is the legislative basis for membership. However, repealing this alone is not sufficient as it will not be clear what rules are effective in its place. There are UK primary and secondary laws which implement EU law (Directives), and EU laws that directly apply (Regulations). A very long and involved process can be expected and careful consideration is needed about what the UK wants to keep, change, repeal or (for Regulations) introduce into UK law.
Devolved legislatures	The devolved legislatures would have to deal with EU legislation they have transposed into Scottish, Welsh or Northern Irish laws. It would also be necessary to amend the relevant parts of the devolution legislation, which might require a Legislative Consent Motion under the Sewel Convention.
How could other EU member states influence the withdrawal agreement?	Procedurally, other EU member states, if they were so minded, could ensure that the UK did not secure the withdrawal agreement (QMV) or post-exit relationship it wanted (QMV or unanimity, depending on the areas covered). Once the notification to leave has taken place, there is a (default) 2 years to reach an agreement. If there is no agreement, the UK membership simply comes to an end after that 2 years, and we default to WTO rules.
Would the withdrawal agreement have to be ratified?	EU member states (excluding the UK) have to adopt the withdrawal agreement, having obtained the consent of the European Parliament by a simple majority. The EP would therefore have a right of veto over the withdrawal agreement, but not over withdrawal itself. The Council (excluding the UK) would act by an enhanced majority under Article 238(3)(b) TFEU. This requires 72% of Council Members (i.e. 20 of the remaining 27 Member States) representing at least 65% of the total population of these States. There is no mention in Article 50 TEU of the need for ratification of the withdrawal agreement within Member States, but this might be necessary under some legal norms. If the UK wanted to re-join the EU in the future, it would have to re-apply under Article 49 TEU.

The negotiation

Negotiations will be far more difficult than negotiating the reform package (agreed in February 2016).

Likely EU-27 perspectives:

- Concern at setting a precedent. If conditions are 'too favourable' then others could consider a similar route;
- You can't have the benefits of being in the club, without being in the club, most obviously unfettered access to the single market;
- When negotiating the reform package, other EU member states were looking to help the UK stay in. This would no longer be the case for negotiating a 'leave package';
- An opportunity for individual EU member states to take business from London.

It is still far too early to say which relationship would be the preferred option for the UK Government – Norway, Swiss, WTO, Turkey or a bespoke UK option. Given the extensive trade ties and size of the UK, a bespoke agreement is the most likely UK choice, however, what this looks like will be controversial and EU member states will have their own views.

Likely initial industry representation to HMG and Parliament

The ABI will be pressing the UK Government to take account of the needs of ABI members during these negotiations.

- **Regulatory certainty / deregulation:** As soon as the Government and Parliament has agreed a way forward, there will need to be an urgent consultation on which regimes need to carry on and which need to fall or be amended such as Solvency II and MiFID. Particular consideration is also needed for areas, such as PRIIPs and Data Protection, which will be close to implementation but are likely to be completed just before an exit takes place.
- **Freedom of Establishment and Freedom of Services:** The ability of insurance and long term savings companies to continue to passport to the single market is also a priority for insurers and long-term savings providers. Should this prove politically impossible, establishing a transitional agreement to move to a new relationship between the UK and the EU, involving clarity on the terms for insurers currently trading in the EU-27 from the UK (and vice-versa), and the recognition of equivalence for the new British regulatory regime would be the next best thing.
- **Free-Trade Agreements:** In parallel to negotiations with the EU, there will obviously need to be strong diplomatic resource dedicated to prioritising trade deals with US, India, China, and Turkey with a strong focus on financial services. With the UK's competitiveness built on and driven by services, it must be at the heart of FTA negotiations. There must not be a "quick" deal for goods which could see any negotiation on services postponed. In such a scenario there will be no pressure or urgency (on or from third countries) to pursue future changes to FTAs for services if goods have already been secured.
- **Skills:** Finally, the financial services industry will be keen to retain access to skilled labour in whatever system ministers agree.

UK political uncertainty

The political landscape will certainly be uncertain in the short-term. Without getting into speculation about individuals, there is some parliamentary and political process worth knowing:

How an early General Election could be triggered	<p>Under the Fixed-Term Parliaments Act 2011 early elections may take place in two circumstances:</p> <ul style="list-style-type: none">• If two thirds of the membership of the House of Commons agree that it is right that there should be a general election immediately and pass a motion ‘that there shall be an early parliamentary general election’.• If a government has lost a motion that ‘this House has no confidence in Her Majesty’s Government’ and no government has, within a 14-day period, secured a motion that ‘this House has confidence in Her Majesty’s Government’. <p>In either of these cases, a date is set by the Queen on the advice of the Prime Minister and dissolution of Parliament occurs 17 working days before the date appointed for the election.</p>
The governing party can change its Prime Minister without a general election	<p>Where a Prime Minister chooses to resign from his or her individual position at a time when his or her administration has an overall majority in the House of Commons, it is for the party or parties in government to identify who can be chosen as the successor. This has happened three times in the past 40 years (Wilson-Callaghan, Thatcher-Major, Blair-Brown) and is perfectly constitutional. Further information can be found in the Cabinet Manual (pages 15/16)</p>
Conservative Leadership Election	<p>Under Conservative Party rules, a leadership election is triggered if 15% of Conservative MPs (currently 50 MPs) call for a no confidence vote in the leader. They do this by sending letters to the chairman of the party’s 1922 committee. If 50% of the parliamentary party vote in favour of the no confidence motion a leadership contest is triggered.</p> <p>The process for picking a leader is twofold:</p> <ul style="list-style-type: none">• Conservative MPs narrow the field to two choices• a postal ballot of the wider membership of the party is conducted <p>If only one nomination is received, the new leader is declared elected.</p>
2nd Scottish Referendum	<p>The SNP manifesto in this year’s Scottish election proposed the Scottish Parliament should have the right to hold a second referendum on Scottish independence “if there is clear and sustained evidence that independence has become the preferred option of a majority of the Scottish people”. However, the constitution remains a matter reserved to Westminster so the UK Parliament would have to pass legislation to transfer that power to Holyrood to run a legally-binding referendum (as was the case in 2012).</p>

