

Brexit and the Prorogation of the UK Parliament

Brexit Monitoring Report

4 September 2019



The Assembly and

BREXIT

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

National Assembly for Wales
Senedd Research

Brexit and the Prorogation of the UK Parliament

Brexit Monitoring Report

4 September 2019

Authors:

Sara Moran and Gareth Thomas

An electronic copy of this document can be found on the National Assembly website: www.assembly.wales

Copies of this document can also be obtained in accessible formats including Braille, large print, audio or hard copy from:

National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: **0300 200 6472**

Email: Sara.Moran@Assembly.Wales

Twitter: [@SeneddResearch](https://twitter.com/SeneddResearch)

Blog: SeneddResearch.blog

LinkedIn: [Senedd Research, National Assembly for Wales](https://www.linkedin.com/company/Senedd-Research-National-Assembly-for-Wales)

© National Assembly for Wales Commission Copyright 2019

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.



The Assembly and

BREXIT

Contents

1. Introduction	1
Summary of developments	1
New Prime Minister and the Withdrawal Agreement	3
Prorogation of Parliament.....	5
Response of devolved administrations to prorogation of Parliament	6
Action taken by Opposition Parties	7
General Election	9

1. Introduction

Following a formal request from the First Minister, the National Assembly for Wales has been recalled in order to discuss the latest Brexit developments **on Thursday 5 September**. This briefing has been produced in light of the recall and to aid Members in **its accompanying debate**. It provides:

- a headline summary of the latest developments in relation to the UK's withdrawal from the EU;
- a list of significant dates before the UK's scheduled departure from the EU on 31 October; and

A full Brexit Monitoring Report will be published on 18 September.

Summary of developments

In his first House of Commons speech as Prime Minister on 25 July, Boris Johnson announced his intention to renegotiate the **Withdrawal Agreement** on the terms of the UK's departure from the EU that had previously been negotiated between the EU and former UK Prime Minister, Theresa May. He reiterated his objection to the proposed 'backstop' plan for the island of Ireland which would come into force should the UK and EU fail to reach agreement on their future relationship by December 2020.

The **EU Council has stated** that it is not willing to renegotiate the Withdrawal Agreement, but would be open to alternative proposals for the island of Ireland from the UK Government that are compatible with it, including making changes to the accompanying **Political Declaration**.

On 28 August, the Prime Minister requested that the UK Parliament be prorogued. The request was made to Her Majesty the Queen and **approved at the Privy Council** held at Balmoral on the same day. Prorogation will begin between 9-12 September and last until 14 October.

The previous day on 27 August, Opposition Parties had signed the **Church House Declaration** pledging to work together to do 'whatever is necessary to ensure that the people's voice is able to be heard'. They intend to take measures to ensure the avoidance of a no deal Brexit on 31 October.

On 28 August, the **Prime Minister issued a letter to MPs** setting out a schedule for the time remaining until 31 October when the UK is due to leave the EU. This schedule, as well as other upcoming dates of significance as correct at time of publication, are listed below:

September

Tuesday 3: MPs return to **House of Commons**; Legal challenge to prorogation (Scottish Court of Session hearing)

Wednesday 4: Chancellor Sajid Javid will announce the conclusions of **the Spending Round 2020-21** in a statement to Parliament

Thursday 5: National Assembly for Wales debate on prorogation of UK Parliament; Legal challenge to prorogation (High Court hearing)

Between Monday 9 – Thursday 12 (likely Tuesday 10 September): Parliament to be prorogued until 14 October

Throughout September: UK and EU negotiators have **agreed to meet twice weekly**

October

Monday 14: Potential state Opening of Parliament, including Queen's Speech

Thursday 17: Potential General Election

Thursday 17 - Friday 18: EU Council Summit

Monday 21 - Tuesday 22: Potential series of votes in Parliament on the Queen's Speech; MPs could also vote on a Brexit agreement, if one has been agreed between the UK-EU at the EU Council Summit. If Parliament votes to approve an agreement, the European Union (Withdrawal Agreement) Bill will need to pass between this date and 31 October to bring it into force

Thursday 31 October: UK due to leave the EU

New Prime Minister and the Withdrawal Agreement

In **his first speech as Prime Minister on 25 July**, Boris Johnson stated his intention to re-negotiate the Withdrawal Agreement without the backstop:

If an agreement is to be reached, it must be clearly understood that the way to the deal goes by way of the abolition of the backstop. For our part, we are ready to negotiate, in good faith, an alternative, with provisions to ensure that the Irish border issues are dealt with where they should always have been: in the negotiations on the future agreement between the UK and the EU.

He **later stated** in the House of Commons that:

I want to make one point on which I think we are all agreed: under no circumstances will there be physical infrastructure or checks at the Northern Irish border. That is absolutely unthinkable.

At a joint press conference with German Chancellor Angela Merkel on 21 August, the BBC reported that the **Prime Minister agreed** that the onus is on the UK to provide workable, alternative solutions to the Irish backstop and that he was "more than happy" with the 30-day timetable suggested by the German Chancellor to do so.

In a **letter to MPs** on 28 August, the Prime Minister announced his intention to prorogue Parliament in order to bring forward a 'new, bold and ambitious legislative agenda for the renewal of our country after Brexit':

A central feature of the legislative programme will be the Government's number one legislative priority, if a new deal is forthcoming at EU Council, to introduce a Withdrawal Agreement Bill and move at pace to secure its passage before 31 October.

He also explained in the letter that:

Parliament will have the opportunity to debate the Government's overall programme, and approach to Brexit in the run up to EU Council, and then vote on this on 21 and 22 October, once we know the outcome of the Council.

EU response

On 25 July **Politico** reported that Chief Brexit Negotiator, Michel Barnier, in a note to EU leaders, urged for them 'to remain calm' and called for a united response to what he described as a 'rather combative' first Commons speech as Prime Minister. He maintained that the backstop is a non-negotiable part of any Withdrawal Agreement and stated that the Prime Minister's position to eliminate it is 'unacceptable'.

The UK Prime Minister and EU Commission President, Jean-Claude Juncker, spoke over the phone on 27 August. A **spokesperson for the Commission President** summarised the exchange:

President Juncker repeated his willingness to work constructively with Prime Minister Johnson and to look at any concrete proposals he may have, as long as they are compatible with the Withdrawal Agreement. President Juncker underlined that the EU27's support for Ireland is steadfast and that the EU will continue to be very attentive to Ireland's interests.

Finally, he recalled that while the EU is fully prepared for a 'no-deal' scenario, it will do everything it can to avoid such a situation. A 'no-deal' scenario will only ever be the UK's decision, not the EU's.

The **UK Government press release** issued following the conversation stated:

The Prime Minister set out that the UK will be leaving the EU on October 31, whatever the circumstances, and that we absolutely want to do so with a deal. The PM was also clear however that unless the Withdrawal Agreement is reopened and the backstop abolished there is no prospect of that deal.

The Prime Minister reiterated his commitment to Belfast/Good Friday Agreement in all its parts. He underlined the importance of ensuring the peace, prosperity and security of Northern Ireland and said that we will never place infrastructure, checks, or controls at the border.

President Jean-Claude Juncker **had previously advised** the Prime Minister that the EU is prepared to 'add language to the Political Declaration' and 'analyse any ideas put forward by the United Kingdom, providing they are compatible with the Withdrawal Agreement' during their first telephone call on 25 July.

On 1 September, **Micheel Barnier stated that** that he was 'not optimistic' about avoiding a no deal and that the UK and EU would still need to solve the same issues after 31 October regardless. In an article in the Sunday Telegraph, he advised that:

On the EU side, we had intense discussions with EU member states on the need to guarantee the integrity of the EU's single market, while keeping that border fully open.

In this sense, the backstop is the maximum amount of flexibility that the EU can offer to a non-member state.

The EU is ready to explore all avenues that the UK government may

present and that are compatible with the withdrawal agreement.

Wales/Scotland response

On 25 July, in a **joint letter** that also called for a second referendum, the Welsh and Scottish Governments called for the new Prime Minister to rule out a no-deal Brexit, stating that:

It would be unconscionable for a UK government to contemplate a chaotic no deal exit and we urge you to reject this possibility clearly and unambiguously as soon as possible.

On 1 September, **Counsel General and Brexit Minister, Jeremy Miles, announced his support** for Gina Miller's legal challenge to the prorogation of the UK Parliament (see section 1.3 below), stating that:

Members of the Assembly here in Wales also have a vital role to advise Parliament on how critical areas of Wales's economy and communities will be affected by a no deal Brexit. This cannot be done if the Prime Minister has cut the lines of communication.

He also said that he is intervening in the legal proceedings in the High Court and has filed submissions that are 'necessary, appropriate and proportionate to defend Wales interests in Parliament being allowed to sit'.

Prorogation of Parliament

On 28 August, the Prime Minister announced that Parliament would be prorogued following a request made to her Majesty the Queen. In a **letter to MPs**, the Prime Minister explained that prorogation would be from the second sitting week in Parliament (week commencing 9 September) until the 14 October.

Three legal challenges have been initiated against the Prime Minister's decision:

1. A hearing in Scotland's **Court of Session** has been brought forward to 3 September **following a ruling** on 30 August. The case, led by a group of 75 parliamentarians and supported by the **Good Law Project**, challenges the legality and constitutionality of the Prime Minister's request to prorogue

Parliament. On 4 September, **the Court rejected** the legal challenge. This decision will be appealed by the group.

2. The **second case** will be heard in the **High Court of England and Wales** on 5 September. It has been brought forward by campaigner Gina Miller. The **Welsh Government**, former **Prime Minister, Sir John Major**, and Deputy Labour Party Leader, Tom Watson, have all sought permission to intervene in the legal proceedings. At the time of publishing, Sir John Major **has been granted permission** to intervene. The case challenges the advice given by the Prime Minister to the Queen during his request to prorogue Parliament via judicial review.
3. The third case involves an application to the **High Court in Belfast** to rule on whether prorogation breaches the Good Friday/Belfast Agreement.

Following speculation in July that the Prime Minister could prorogue Parliament to force through a no-deal Brexit, **cross-party amendments** were tabled to the Northern Ireland (Executive Formation etc) Act 2019. The Act, which received **Royal Assent on 24 July**, places a duty on the UK Government to report to Parliament on progress towards the formation of an Executive in Northern Ireland. The cross-party amendments, which were accepted, were designed to ensure that Parliament continued to periodically debate UK Government reports on the legislation. Section (3)(1) of the Act states that the Secretary of State:

- Must report on or before the 4 September 2019 a report setting out what progress has been made towards the formation of an Executive in Northern Ireland and;
- Make a further report on or before the 9 October 2019 and at least every fourteen calendar days thereafter.

On 30 August, the **Prime Minister told the BBC**:

The weird thing is, the more the parliamentarians try to block the no deal Brexit, the more likely it is that we'll end up in that situation so the best thing now is for us to get on and make our points to our European friends with clarity and with vigour, and that's what we're doing.

This position was repeated in an interview with the **Sunday Times** on 1 September.

For more information, see the House of Commons Library briefing on the **Prorogation of Parliament**.

Response of devolved administrations to prorogation of Parliament

On 28 August, responding to the announcement of prorogation, the **First Minister**

tweeted:

Boris Johnson fought a referendum campaign to put power back in the hands of Parliament and now he wants the Queen to close the doors on our democracy. The Leave campaign claims are unravelling. It's time to put this to the people.

The Counsel General and Brexit Minister **stated on 28 August** that the suspension of the UK Parliament is 'a completely cynical and fundamentally undemocratic step, an attempt to prevent from debating and deciding on the most politically important question of our lifetime'.

Also on 28 August the **First Minister requested** that the Llywydd recall the Assembly to allow it to 'discuss the constitutional crisis which now faces Wales and the United Kingdom'. The Llywydd accepted this request, **stating that**:

We are in uncharted constitutional territory, and it is a matter of parliamentary principle that as the UK Parliament reconvenes next week, Assembly Members should also be afforded the opportunity to speak for their constituents on this issue of great significance.

The Scottish First Minister, Nicola Sturgeon, also expressed criticism of the decision to prorogue Parliament, saying **on 28 August** that it is not democratic, and that 'it is about restricting any ability Parliament has to stop a no deal Brexit in its tracks'.

The Scottish Parliament's **recess timings** are different to the Assembly, with summer recess running from 30 June to 1 September in Scotland compared to 22 July to 15 September in Wales. The Scottish Parliament started its autumn term on 2 September.

Action taken by Opposition Parties

Church House Declaration

On 27 August, the leaders of the Opposition Parties met to discuss action with the aim of preventing a no deal Brexit, following a **letter from Jeremy Corbyn** on 21 August. After the meeting, **a joint statement** was issued by the leaders of the Opposition Parties. This outlined that they would work together to seek practical ways to prevent a no deal Brexit through passing legislation or by a vote of no

confidence.

Also on 27 August, over 200 MPs signed [the Church House Declaration](#) opposing a no deal Brexit. Church House was the declaration states that:

Shutting down Parliament would be an undemocratic outrage at such a crucial moment for our country, and a historic constitutional crisis.

Any attempt to prevent Parliament sitting, to force through a no deal Brexit, will be met by strong and widespread democratic resistance.

We pledge to work together across parties and across our nations to do whatever is necessary to ensure that the people's voice is able to be heard.

In Parliament

MPs voted to take control of the parliamentary agenda on Tuesday 3 September **by 328 to 301** using a [motion submitted under Standing Order 24](#). The vote enables legislation to be introduced that could require the UK Government to avoid a no deal. All stages of the cross-party legislation are due to be heard on Wednesday 4 September.

The bill, the [European Union \(Withdrawal\)\(No.6\) Bill 2019](#) provides an opportunity:

- For the UK Government to reach an agreement with the EU at the EU Council meeting on 17-18 October, or;
- To obtain the consent of the UK Parliament if it does not reach agreement.
- If neither condition is met, the Bill requires the Prime Minister to send a letter on 19 October to the EU Council requesting a further extension of the Article 50 period to 31 January 2020.
- The Bill places a duty on the Prime Minister to 'immediately accept' the offer of an extension from the EU Council, including accepting an alternative date suggested by the EU. The acceptance of an alternative date must be within two

days unless this is rejected by the House of Commons.

For more information, see the House of Commons Library [article on the Bill](#).

General Election

Following the results of the vote on Tuesday 3 September, [the Prime Minister stated](#) that the 'people of this country will have to choose' who travels to the next EU Council meeting on 17 October to represent the UK:

If MPs vote tomorrow to stop negotiations and to compel another pointless delay to Brexit, potentially for years, then that would be the only way to resolve this and I can confirm that we are tonight tabling a motion under the Fixed Term Parliaments Act.

The [motion](#) tabled by the Prime Minister reads:

That there shall be an early parliamentary general election.

The [Fixed-term Parliaments Act 2011](#) requires that the Prime Minister has the support of two-thirds of MPs for the motion to pass..