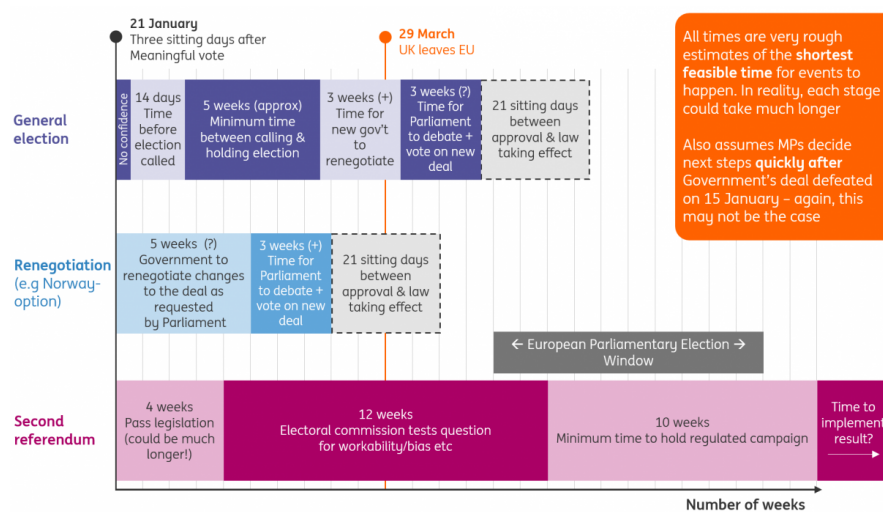


# Why a Brexit delay is becoming more likely

As Parliament looks set to vote down Theresa May's Brexit deal, time is fast running out to find and implement an option that lawmakers can rally around. One way or another, it's looking more likely that the UK will be left with no choice but to apply for an extension to the Article 50 period

## What happens next? Alternatives to May's deal would likely take us beyond 29 March

(We emphasise these are only rough estimates of the **minimum** timings - in reality some stages could take much longer)



Source: ING

Second referendum timeline based on research from London School of Economics

On Tuesday 15 January, Theresa May's Brexit deal will finally be put to members of Parliament (MPs) to vote upon, and as things stand it looks set to be defeated by a fairly heavy margin. If that happens, the Prime Minister will have three days to bring forward a new plan, and at this point, MPs will get a say on what direction to take. The Labour Party has also suggested it will put forward a vote of no confidence in the government, in the hope of triggering an election.

Nobody really knows exactly where the next couple of weeks will take us, but time is running out – not only for MPs to find an option that commands a majority in Parliament, but also to pass a raft of legislation in time for Brexit day.

While the UK government has so far ruled it out, it looks increasingly likely that the 29 March Brexit date will need to be pushed back. The most likely way of doing this would be for the UK to apply for an extension to the two-year Article 50 negotiating period. This would require all EU member states to unanimously agree, which isn't necessarily a given, although assuming there is a legitimate reason for doing so, we suspect they would cautiously back an extension.

In this article, we take a closer look at why most Brexit scenarios now point to a delay of some kind.

## The legal stuff

Even before thinking about how different scenarios might impact the Brexit timeline, it's worth noting that there are at least two ways the law-making process alone could force a Brexit delay.

Firstly, the government will have to get its skates on to pass all the necessary legislation ahead of leaving the EU in March – even if Theresa May defies the odds and gets her deal approved on 15 January. According to the [Institute for Government](#), there are seven different bills that need to be approved in order to implement Brexit.

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*A Brexit deal needs to have been approved by lawmakers on-or-before 26 February*

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Secondly, the process for approving treaties in the UK means that the government is obliged to give MPs and Lords 21 sitting days to raise any objections before being able to formally ratify them. This 21-day process cannot begin until MPs have approved the deal.

Working backwards from 29 March, this means that a Brexit deal needs to have been approved by lawmakers on-or-before 26 February, if the UK is to formally ratify the withdrawal agreement in time for Brexit.

That's not to say the government can't go right up to 29 March to get a deal through Parliament if it has to, but going past this February cut-off point would automatically require a longer Article 50 period for formal ratification. Don't forget too that in any scenario, the European Parliament also needs to ratify the deal - the current plan is reportedly for this to take place in March (assuming the British Parliament has approved it by then).

## How a general election could force a Brexit delay

If May's deal is defeated, then the opposition Labour Party has indicated it might table a motion of no confidence in the government – potentially within hours of the Brexit vote. Note this is a

different process to the vote of no confidence [held back in December](#), which related to Theresa May's position as the leader of the Conservative Party. As [we've said before](#), there's no guarantee a no confidence vote in the government would pass, given that some Conservative or DUP MPs would have to back it.

But if it did succeed, then it would get the wheels in motion for an election, unless Parliament decides to change its mind within 14 days. After that, the current Parliament would be dissolved and an election would happen as soon as 25 working days later.

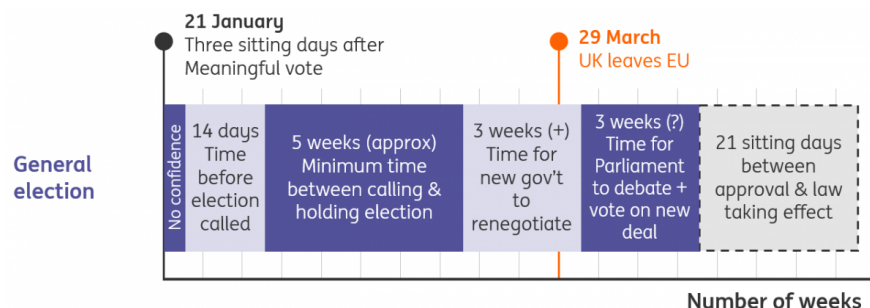
If our maths is correct, that takes us at least until early March, which automatically goes beyond that 26 February deadline we mentioned above, requiring some form of Brexit extension.

The aftermath of an election could also prompt further delays. If the Conservatives managed to cling onto power with a similar working majority, then presumably the government would still face the same old challenge of getting a deal through Parliament.

If Labour were to win the election (perhaps more likely leading a coalition of some form), then it's likely the leadership would want to return to Brussels to renegotiate. This would take time, and once a revised deal is reached, it would still need to be approved by Parliament.

Altogether, our (very) rough estimate suggests this latter scenario could require at least an eight to nine week extension to the Brexit process. In reality, this could be longer if the election date is set further out than five weeks, the new government took longer to form, or if it takes longer to renegotiate the deal and seek approval in Parliament.

The most recent YouGov poll gave the Conservatives a six-point lead over Labour



Source: ING

## How a renegotiation could force a Brexit delay

If the Brexit deal is rejected, the government would be forced to return within three sitting days to inform MPs about its planned next steps. This will be done in the form of an amendable motion - which in simple terms means that MPs will get a say on what happens next (albeit, this won't be legally binding).

Many things are possible - but there is likely to be a vote on whether to pursue a softer Brexit stance, perhaps something along the lines of the so-called 'Norway Plus' model. This term is used to describe access to the European Economic Area (single market), alongside a customs union.

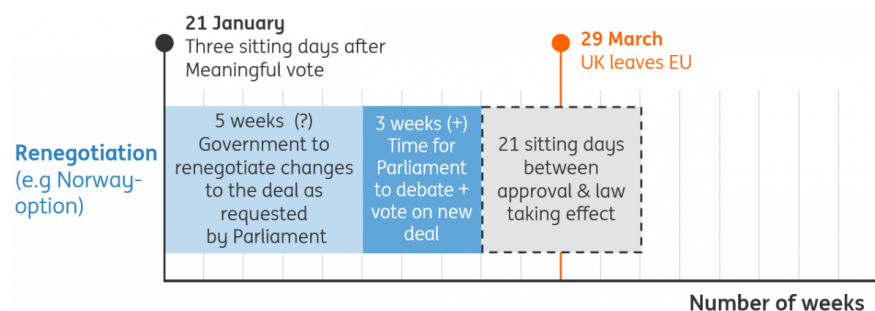
There's plenty to debate here - not least that going down the Norway-route is [unlikely to see the contentious Irish backstop abolished](#). But sticking with the topic of time, if MPs demand some kind of renegotiation to the Brexit deal, then this would likely demand a Brexit extension. How long really depends on exactly what MPs ask for.

The easiest solution to any renegotiation would be to simply adapt the small chunk of the deal that details future trade aspirations - the non-legally binding political declaration - to reflect Parliament's wishes. That could be done quickly, although MPs have made it pretty clear that tweaked political wording alone probably won't cut it.

All of this also assumes the EU would be willing to accept revised terms - Brussels is reportedly sceptical 'Norway Plus' could work in reality.

But even assuming the Prime Minister could somehow engineer meaningful changes to her deal, there's no guarantee it would pass through the House of Commons second-time around, particularly given that the Irish backstop is unlikely to go.

Bottom line: one way or another, more time is likely to be needed in any renegotiation scenario - particularly as in reality, the chances of the government putting forward a very similar deal for a repeat vote in a few weeks' time seems fairly high.



Source: ING

## How a second referendum could force a Brexit delay

Aside from re-negotiating the deal, there's a fair chance some MPs will try to force a vote on a second referendum at some point over the next few weeks. While it isn't clear whether a majority exists for a new referendum at this stage, it could gain traction. If all other options are voted down by MPs, lawmakers may see a fresh vote as the only way to break the deadlock. Equally, if the Labour Party try and fail to trigger an election, the party leadership would be under even greater pressure to back the referendum option.

Whichever way it was to come about, a referendum would take a significant amount of time to implement.

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*It could easily take until July to arrange - or more likely after the summer*

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Firstly, a consensus would need to be reached on what question to ask. Would it be a two-horse

race between 'Remain' and May's deal, or would Brexiteers insist on 'no deal' being on the ballot paper, too? Reaching agreement on this could take some time (we haven't factored this into our illustrative timeline below), although it's possible a draft question might come pre-specified in an amendment before MPs take the decision to approve a second referendum.

Step two - pass the legislation required to hold a referendum, setting out the details (question, legal basis, date etc) of the poll. In theory, this could be completed in as little as three or four weeks given the urgency, but it could easily take much longer. In fact, according to the [LSE](#), the legislative process took almost seven months when preparing for the 2016 EU referendum.

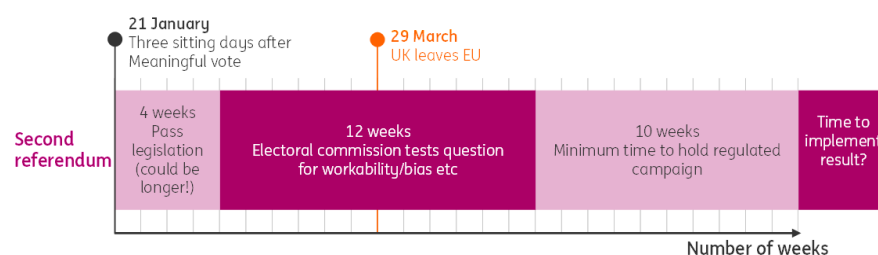
Stage three - test the question. The Electoral Commission is obliged to check the 'intelligibility' of the referendum question, a process which typically takes 12 weeks. Once that's complete, there would then be a regulated campaign period, which is required to be a minimum of 10 weeks.

Add all of that together, and even assuming the swiftest timeline with no gaps, it could easily take until July to arrange - or more likely we suspect, at some point after the summer recess (September onwards).

Then there's the question of 'what next'? The polls suggest that in a three-horse race with 'no deal' and 'May's deal', remain would likely prevail. Assuming the negotiating period had been extended to accommodate the referendum, then presumably it would be a case of simply revoking Article 50. However, if 'May's deal' were to win, this would need to be formally approved by Parliament, which would take further time.

But the big unknown is what would happen if 'no deal' won (don't forget that 43% of Conservative voters would vote this way, according to a [recent YouGov poll](#)). Would the government simply allow an extended Article 50 period to elapse, or would it try to buy more time to limit the potential chaos?

Whatever the answer, a referendum could easily require a six-month extension to the Brexit process.



Source: ING, YouGov, LSE

Referendum timeline based on research by the London School of Economics

## Revoke vs extend – How hard would it be to delay Brexit in reality?

There are two ways that the Brexit date could be changed:

1. **Apply for an extension to the Article 50 period.** This is probably the more likely route, although it would require all other EU member states to unanimously agree to an extension. The generally held belief is that there would need to be a strong reason

for the delay for it to secure the necessary EU support. A general election or second referendum would probably tick that box, as probably would a signal from the UK side that it wants to pursue a different course on Brexit (for example the so-called 'Norway Plus' option). The EU is also unlikely to block an extension that simply gives the UK extra time to get all the necessary laws passed.

The conundrum comes if the UK asks for an extension simply because time has run out and 'no deal' is imminent. Here EU member states would have to weigh the risks of 'no deal' against setting a future precedent for other countries who may consider leaving Europe. It's a tricky one to call, although on balance it's hard to see the latter winning over the former given the high stakes.

There are also big question marks over how long an Article 50 extension could last. The main hurdle is the EU Parliamentary elections, which would need to take place before new MEPs gather for the first time on 6 July, potentially putting a time limit on a possible extension. The implications of not having elected representatives in place by this time aren't totally clear, although *Telegraph* editor Peter Foster suggests they [may be surmountable](#).

2. **Revoke Article 50 altogether.** This is the more extreme option, but a European Court of Justice ruling in December confirmed that the UK has the right to unilaterally revoke Article 50. However, the ruling also suggests some kind of democratic process would be needed to go down this route, which presumably, at the very least, requires MPs' consent via a Parliamentary vote. We suspect lawmakers would be very reluctant to go down this route, although the option may come into sharper focus if the EU decides to block a UK application to extend the Article 50 period.

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