

Brexit: the legal, constitutional and political battles ahead...



Hasn't the UK voted to leave the EU?

Legally - nothing has changed. Yet.

The referendum is not legally binding. It doesn't automatically trigger Brexit under EU law.

The UK is still in the EU until the completion of the "Article 50" process.

The next prime minister will decide when or even whether to trigger Article 50, which begins the two-year countdown to withdrawal.

Is parliamentary approval needed?

Some experts believe an act of parliament is required to authorise Article 50. But the consensus among constitutional experts is that parliamentary approval isn't in fact needed.

Parliament may well be involved at various stages of the process, for instance the repealing of the European Communities Act. But legally, parliament has no role in the formal mechanism.

That said, a new government may seek a vote in parliament for political reasons, either to assert the principle of parliamentary sovereignty or to bind parliament to the 'Leave' process.

Who holds the upper hand: the UK or the rest of the EU?

Once triggered, the two-year countdown begins. At the end of that time, if there's no agreement, the treaties are void and the UK falls out of the EU.

So, as soon as the Article 50 process begins, the remaining EU countries are in a much stronger position. They only have to wind the two-year clock down and get the deal they want (assuming they are in vague agreement about what that is).

It's in the UK's interest to delay pulling the legal trigger until the government is confident of getting a decent Brexit deal.

Can negotiations begin before the legal process starts?

That's hard because Jean-Claude Juncker at the European Commission says no negotiations will be permitted before the Article 50 process begins.

At least one EU country (Poland) has, though, indicated a willingness to hold informal talks before the formal legal process starts.

Once Article 50 starts, can it be paused or stopped?

The two-year period can be extended, but only with unanimous approval by all other EU states.

It can also be shortened, but again only with the agreement of the other countries on a Brexit deal. The remaining 27 EU members may, though, feel that they can secure a more favourable deal by allowing talks to drag on right up to the two-year cut-off point. The UK will then face a choice of the deal on the table or no deal at all.

This whole process is, therefore, biased massively against the leaving country.



Could Scotland veto the deal?

The devolved governments may try to exert influence, but have no legal powers to affect the triggering of article 50.

But if and when the UK parliament begins to pass legislation over Brexit, devolved institutions could try to stop that legislation being enacted.

What chance of a second referendum?

The referendum demonstrated a clear majority against EU membership in its current form.

But that doesn't automatically translate to a clear majority in favour of whatever deal is actually agreed on the future relationship with the EU.

A pro-Brexit government with a slim majority may feel compelled to put that deal to a referendum. But another referendum will, again, have no legal force.

If the clock is running on Article 50, it's hard to see how that process could be stopped. That's one reason why some experts think Article 50 will never in fact be triggered.

What about an early general election?

Again this is a possibility. Some suggest a "single issue election" would be a better alternative to another referendum on the deal that emerges – aligning parliament and public opinion.

It would make sense for the new Prime Minister to delay calling an election until the parameters of the deal are clear.

But what if a pro-EU government is then elected under a new Labour leader? Or a pro-EU coalition is formed?

If Article 50 has been triggered before the election, then a new EU treaty might be needed to stop the process.

Constitutional lawyers – this is your moment!