The Day Before Brexit?

➢ All Party Group for Social Science and Policy
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- Sir Peter Bottomley MP
- Chair
- All Party Group for Social Science and Policy
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➢ Professor Catherine Barnard
➢ Trinity College, Cambridge and
➢ Senior Fellow, UK in a Changing Europe
Brexit and the future

Catherine Barnard
Trinity College, Cambridge,
Senior fellow in UK in a Changing Europe
The Timetable and the Phases

Withdrawal agreement concluded
- No 2018/Oct 2019
- Political declaration on framework of future relationship

Leave EU

Transition starts (IP)
- assuming ‘deal’ Brexit based on WA
- Start of negs for future deal

Transition ends

Future trade deal starts
- 1 Jan 2021?
- But what if not agreed?
- NI Protocol

Need for WAB, EP approval and Council approval by qmv
DOMESTIC REALISATION OF BREXIT
Domestic implementation

**EU (Withdrawal) Act 2018**
- Repeal – ECA 1972
- Convert – EU law into retained EU law
- Correct – Henry VIII powers

**EU (Withdrawal Agreement) Bill (WAB) 2019/2020**
- Overlaid on 2018 Act
- Drafting with ERG in mind
WAB overview

Part I: Implementation period

- Effectively turns back on ECA for the duration

Part 2: Remaining implementation of WA

- Direct effect and supremacy of WA (not in those terms)

Part 3: citizens’ rights

- NB scope of Henry VIII powers here
WAB overview (cont’d)

Part 4: Other subject areas

• Powers in respect of other separation issues
• Main financial provision
• Ireland/NI Protocol
• Relationship to EU(W)A
• Parliamentary oversight including oversight of negs for future relationship and repeal of s.13
• Protection for workers’ rights
• Ministerial co-chairs of the joint committee

Part 5: General and Final Provision

Schedules including on setting up IMA
FUTURE ECONOMIC PARTNERSHIP
Future relationship

UK red lines:
- No ECJ jurisdiction
- No free movement
- No substantial financial contribution
- Regulatory autonomy

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- No ECJ jurisdiction
- No substantial financial contribution
- Regulatory autonomy

UK red lines:
- No ECJ jurisdiction
- Regulatory autonomy

UK red lines:
- Independent trade policy

No deal
Negotiating new deal

Practical points

• No new deal without agreeing 3 big ticket items
• No transition without WA

goods

• Start negs largely from where we are
• EU has trade surplus in goods
• Inevitable regulatory alignment but no say

services

• Start negs on disadvantageous WTO terms; hurt services industry a lot
• UK has trade surplus

Workers’ rights

• any free trade deal with the UK must ‘encompass safeguards against unfair competitive advantages through, inter alia, tax, social, environmental and regulatory measures and practices’
And don’t forget the process

Art. 50: divorce
- Super qmv
- EP’s agreement basically sorted
- UK can go to the wire

Art. 207 or 217 (+ Art. 218 TFEU): future deal
- May require unanimity
- Talk of agreements
- If mixed agreement
  - 32 national and regional parliaments have to agree
  - Time consuming
  - UK can’t go to the wire
  - But provisional application
WORKERS’ RIGHTS
The range and scope of existing EU Employment Rights
Priti Patel MP (Leave campaign): ‘If we could just halve the burdens of the EU social and employment legislation we could deliver a £4.3 billion boost to our economy and 60,000 new jobs’

Francis O’Grady, General Secretary of the TUC (Remain): ‘Leave the EU and lose your rights at work – that’s the message that even Leave campaigners like Priti Patel are now giving. But which rights would go – your right to paid holidays, your right to parental leave, maybe protections for pregnant workers? The EU guarantees all these rights and more, and it’s why Brexit is such a big risk for working people.’
As we repeal the European Communities Act, we will convert the ‘acquis’ ... into British law. When the Great Repeal Bill is given Royal Assent, Parliament will be free – subject to international agreements and treaties with other countries and the EU on matters such as trade – to amend, repeal and improve any law it chooses. But by converting the acquis into British law, we will give businesses and workers maximum certainty as we leave the European Union. The same rules and laws will apply to them after Brexit as they did before. Any changes in the law will have to be subject to full scrutiny and proper Parliamentary debate. **And let me be absolutely clear: existing workers’ legal rights will continue to be guaranteed in law – and they will be guaranteed as long as I am Prime Minister.**
A Downing Street spokesperson said: “The UK has a long and proud tradition of leading the way in workers’ rights and environmental protections where we have always set a high standard. “We recognise that MPs want to see these hard-won rights protected, not weakened by our departure from the EU and we are happy to ensure this is the case. “Both the public and parliamentarians should be in no doubt that as we leave the EU we will maintain and increase these protections both via the Withdrawal Agreement and future legislation.”
CCHQ Press Office @CCHQPress · 2h
This simply isn't the case as @BorisJohnson has made clear

Greg Clarke: Will my RHF give a commitment in law if necessary that workers rights in this country will never be inferior to those in the European Union?

PM: Mr Speaker, Yes I certainly can

Laura Pidcock MP @Laura... · 2h
We simply can’t gift @BorisJohnson & his Thatcherite colleagues the power to rip up the basic protections that people have. I understand the wearin...
The government has already committed to enshrining all existing workers’ rights into domestic law.

There will be further commitments in the [WAB] that:

1. A Minister shall make a statement explaining where any new Bill could affect employment rights, and its compatibility with EU standards;

2. HMG, the government of the day is obliged to report regularly on new EU measures and whether the HMG plans to take action to mirror them;

3. This report is subject to a motion and debate in the house giving MPs a vote on how the government of the day plans to respond.
Commitments made by No. 10 on 18 Oct 2019

• The government will bring forward a draft Employment Reform Bill (as set out on Monday in the Queen’s speech) to ensure our employment practices keep pace with modern ways of working and give workers access to the rights and protections they deserve.

• In addition, we will also consult on improving unfair dismissal protections including:
  – Reducing the qualifying period from two years to one year and addressing any anomalies in the employee terms and conditions following a business takeover, known as TUPE Regulations, in this area to ensure they are working in the interests of workers.
European Union (Withdrawal) Act 2018

s 2(1) EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day.

• s 2(2) gives details including s.2(2) ECA legislation eg Working Time Regulations 1998

S 8(1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate—

(a) any failure of retained EU law to operate effectively, or
(b) any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the EU.

• Or ordinary legislative process
WAB: Schedule 4

Pt 1: Workers’ retained EU rights
- Minister’s statement of non-regression on BILL or statement of no statement
- Consultation obligations

Pt 2: new EU workers’ rights
- Statement of non-divergence or no such statement and whether minister plans to take action
- 6 monthly reporting
There can be no regression. The UK will maintain the highest possible standards. Let me make the point more clearly. If the EU decides that it wishes to introduce new legislation on social protection, it will be automatic that the House will consider that. As I say, there will be an amendable motion by which the Government will give parliamentary time for the implementation of that measure. That is the opportunity that the Bill gives us. In essence, it takes back to the House the powers to decide such matters. I do not believe that we should shy away from those responsibilities or lack confidence in our collective ability to use those powers for the public good.
The future: Withdrawal Agreement I

Article 4(1) of Annex 4: ‘With the aim of ensuring the proper functioning of the single customs territory, the Union and the United Kingdom shall ensure that the level of protection provided for by law, regulations and practices is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the transition period in the area of UK is committed to maintain its obligations to comply with in the area of labour and social protection and as regards fundamental rights at work, occupational health and safety, fair working conditions and employment standards, information and consultation rights at company level, and restructuring.’

Article 6 the UK shall ensure effective enforcement of Article 4 and of its laws, regulations and practices reflecting those common standards in its whole territory and to maintaining ‘an effective system of labour inspections’, ensuring that ‘administrative and judicial proceedings are available in order to permit effective action against violations of its laws, regulations and practices, and provide for effective remedies, ensuring that any sanctions are effective, proportionate and dissuasive and have a real and deterrent effect.’
LEVEL PLAYING FIELD FOR OPEN AND FAIR COMPETITION

• 77. Given the Union and the United Kingdom's geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field. The precise nature of commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties. These commitments should prevent distortions of trade and unfair competitive advantages. To that end, the Parties should uphold the common high standards applicable in the Union and the United Kingdom at the end of the transition period in the areas of state aid, competition, social and employment standards.
Political declaration (cont’d)

.... and maintain environmental, social and employment standards at the current high levels provided by the existing common standards. In so doing, they should rely on appropriate and relevant Union and international standards, and include appropriate [cf appropriate] mechanisms to ensure effective implementation domestically, enforcement and dispute settlement. The future relationship should also promote adherence to and effective implementation of relevant internationally agreed principles and rules in these domains, including the Paris Agreement.

- Not subject to binding arbitration?
The Day Before Brexit?

➢ Professor Anand Menon
➢ Director
➢ UK in a Changing Europe
Politics and Brexit
How MPs voted on different Brexit options in indicative votes

Source: Institute for Government analysis of Commons Divisions from Parliament Data (explore.data.parliament.uk/).

© BY-NC #MakingSenseOfBrexit
Four unpalatable choices

How people ranked each Brexit outcome (1st=favourite, 4th = least favourite)

- Remain: 45.0% (1st), 13.5% (3rd), 6.5% (4th)
- Softer Brexit: 30.2% (2nd), 51.5% (1st), 5.8% (3rd)
- WA + May's Deal: 45.7% (2nd), 14.1% (4th), 17.6% (3rd)
- No deal: 40.2% (4th), 14.9% (3rd), 27.4% (2nd)

Sources: UCL/YouGov 22-26 March 2019

#MakingSenseOfBrexit
A volatile electorate

Percentage of voters choosing a different party from previous election over time.

© British Election Study

#MakingSenseOfBrexit
A new political identity?

• Since the EU referendum last year, some people now think of themselves as 'Leavers' and 'Remainers', do you think of yourself as...

Identify as Leaver, 35%
Identify as Remainer, 38%
Neither/DK, 27%

Source: YouGov 26 April 2017 (Hobolt, Leeper & Tilley)
The polls in 2019: unstable parties, stable blocs

- Brexit Party
- Conservatives
- LibDems
- Labour
- Leave bloc
- Remain bloc

Date
Jan  | Apr  | Jul  | Oct
Low public confidence

How much confidence do you have in the following when handling the issue of Brexit?

- Complete, or fair amount of confidence
- Not very much, or no confidence

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<th>Complete, or fair amount of confidence (%)</th>
<th>Not very much, or no confidence (%)</th>
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<td>Political parties</td>
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A decade of decline

Thinking about the last 10 years, would you say the economy of your local area has got better, got worse, or neither got better nor got worse?

Source: YouGov/UK in a Changing Europe, August 2019
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