

# Brexit: Sustaining the Future?

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# Jump(er) Right In...

*"The eyes of Caligula and the mouth of Marilyn Monroe!"*

-Francois Mitterrand

- In early October, Boris Johnson's government outlined its proposals for a Brexit deal which rests on Northern Ireland leaving the EU customs union on 31 October, but remaining in the single market for goods, and the Northern Ireland assembly being given the right to veto the arrangements every four years.
- *"We are a single market. That's a complete ecosystem, with common rights, common norms, common standards, common rules, a common legal system. It requires checks at its borders."* Michel Barnier, 5 October 2019.
- *Common vs. Single Market?*

*To every subject of this land, however powerful, I would use Thomas Fuller's words over three hundred years ago, 'Be ye never so high, the law is above you.'*

---

Lord Denning, January 1977



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CAN NEVER LEAVE.**



## Was it always this dramatic, or did we just not know?

- Might it be argued that this shift in how politics is conducted was heralded by the landmark decision to televise parliament.
- In 1964, after Labour had returned to power, a select committee was established to test the case for televising the House of Commons.
- The House of Lords had already agreed to undergo a trial of their own, which commenced in 1968.
- The Commons however vetoed participating in their own trial for fear that it would damage *'the character of the Commons'*.\*
- The idea was floated again in 1972 and 1975, on the basis that it would *'make parliament more relevant to ordinary voters.'*\* However the argument was defeated both times.
- The House of Lords led the way, broadcasting for the first time on 23 January 1985. The Commons soon followed suit in 1989.
- The spectacle was born!

\* *'Televising Parliament'*, [www.parliament.uk](http://www.parliament.uk)

# How did we get here?



# And Now? (Dis)ORDER!

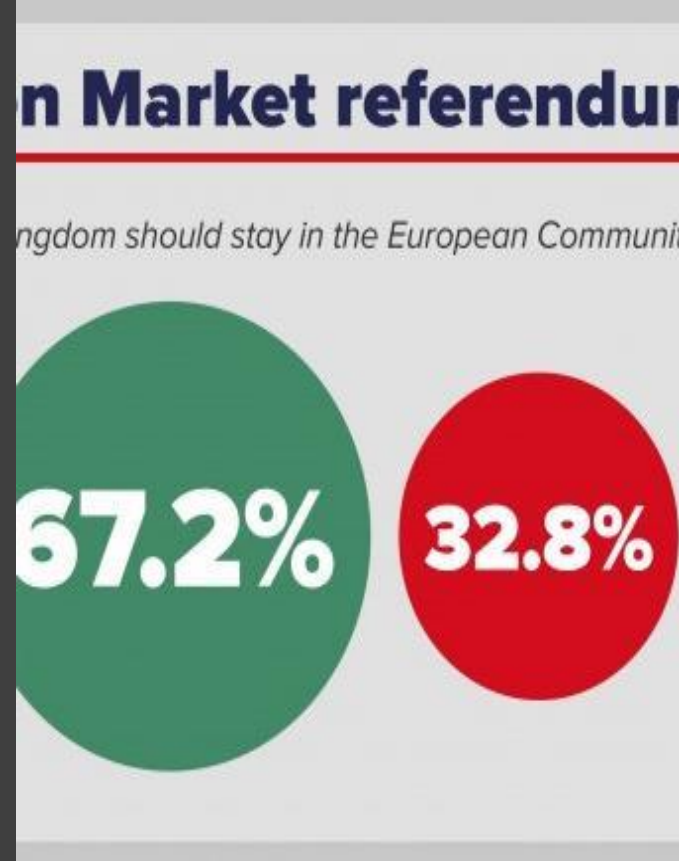
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# A Blast from the Past

- Britain's first nationwide referendum was on whether we should remain in the European Economic Community, in 1975.
- The question was asked by Harold Wilson's Labour government.
- It was 'Yes' or 'No' as opposed to 'Remain' or 'Leave'.
- *"Everyone should turn out in this referendum and vote yes, so that the question is over once and for all, we are really in Europe, and ready to go ahead."* (Margaret Thatcher).
- Labour were split on the issue – not much has changed there then!  
A resounding 'Yes'!
- Key swing issues were economic considerations, defence, the future of Britain's voice in international affairs, and peace.





# The Rise (and Fall) of UKIP





- Founded on 3 September 1993 at the London School of Economics by members of the Anti-Federalist League, UKIP's aim was to run candidates opposed to the Maastricht Treaty in the 1992 general election.
- Won their first three seats in the European Parliament in 1999 with 7% of the vote.
- Won 12 seats in 2004.
- Won 16 seats in 2009, with 16% of the vote.
- In 2014, the party topped the European Parliament vote, with 27.5% of the vote.
- It's been a different story regarding their General Election successes.
- In 2010, it only received 3% of the vote.
- Over the years, there have been a few characters in the head role. Robert Kilroy-Silk and Nigel Farage to name but two.
- In 2002, UKIP had 9,000 members.
- In 2013, UKIP had 32,447.
- It is thought by some that David Cameron's election pledge to hold the EU referendum was a bid to halt the rise of UKIP.
- Farage quit as leader in 2016 and has now taken stewardship of the Brexit Party. With the emergence of the Brexit Party, has UKIP had its day in the sun?

# The Beginning of the End?

## Key Factors:

- Misjudgment of the public resentment surrounding the influx of European migrants in the early 2000's, compounded by the economic downturn in 08.
- 2012 – Farage and UKIP become more prominent, boasting support from 15% of the electorate.
- Tory MP's facing re-election were worried this could impinge on their campaigns.
- January 2013, The Bloomberg Speech.
- Cameron pledges an in/out referendum if the Conservatives won the 2015 election.
- *"Over the coming weeks, months and years, I will not rest until this debate is won. For the future of my country. For the success of the European Union. And for the prosperity of our peoples for generations to come."*







Out of the single market, in control of our borders and free from European laws: the PM finally sets out her strategy for leaving the EU

# May's bold terms for Brexit

**Single market**  
"What I am proposing cannot mean membership of the single market."

**Payments to the EU**  
"The days of Britain making vast contributions to the European Union every year will end."

**Immigration**  
"Brexit must mean control of the number of people who come to Britain from Europe."

**Customs union**  
"I do want us to have a customs agreement with the EU. Whether that means a completely new customs agreement... or retaining a signature to some elements of it, I hold no preconceived position."

**Parliament's role**  
"The Government will put the final deal that is agreed between the UK and the EU to a vote in both Houses of Parliament before it comes into force."

**'No deal is better than a bad deal'**

## DAILY EXPRESS

WE'RE BACKING BRITAIN

FRIDAY, 12 SEPTEMBER 6, 2017 65p

**HER ROYAL SHYNESS**  
Caring George soothes Charlotte's fears on first day at school

PICTURE SPECIAL SEE PAGES 2&3

# I'D RATHER BE DEAD IN A DITCH THAN DELAY BREXIT

**By Michael Hall**

BORIS Johnson last night declared that he would rather "be dead in a ditch" than keep the EU for another Brexit delay.

In a debate last night, the Prime Minister insisted that he would have a new 50% of the voters have to go to 50% to support the UK's departure from the EU in order to avoid a Brexit delay.

He say, She say: All the Brexit Clichés

# Turn back Time?



- Our current PM seems to have an aversion to asking for things. His pride might be saved by not technically having to seek an ‘*extension*’, but revoking Article 50 instead, effectively stopping the clock, and not merely adding an hour of daylight-saving time.
- What if - and Brexiteers please bear with me and think through the concept carefully – our PM sends a two line letter to Donald Tusk et al at 22:59 (i.e. 23:59 CET) on Thursday 31 October, in the following terms:

*“Dear Mr President, please accept this letter as formal notice on behalf of Her Majesty’s Government (“HMG”) that, without prejudice to HMG’s right to give notice under Article 50 of the Treaty on European Union, as and when appropriate circumstances exist (such circumstances to be determined according to English law), the UK hereby revokes the Article 50 Notice served on 29 March 2017”.*





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# Attacking Supreme Court justices for doing their job has nothing to do with your rights

Have we learned nothing from 'enemies of the people' and the murder of Jo Cox?

Sean O'Grady @seanogryd 1 day ago

64 comments

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## NEWS

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### Supreme Court: Suspending Parliament was unlawful, judges rule

24 September 2019 19:35

Unlawful Parliament suspension

Top Stories: Johnson urged to apologise over Jo Cox comments, MPs condemn the PM's language, but the Tory party chairman says critics of him are 'deeply unfair', 35 minutes ago; MPs vote not to hold recess for Tory conference, 7 hours ago; White House 'tried to cover up Trump call details', 16 minutes ago

Features

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WEDNESDAY 25 SEPTEMBER 2019

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CULTURE Bard on the Loose Shakespeare Liverpool 77

LABOUR PARTY CONFERENCE Corbyn promises cheap drugs for NHS patients

Party pledges to make UK carbon neutral by 2030

UN CLIMATE DENYER World's major economies 'fall to meet warnings' Trump hits out at Tharberg

# Humiliated PM refuses to resign

In a crushing blow for Johnson, the Supreme Court rules his decision to prorogue Parliament was unlawful and that the Queen had been misled

Prime Minister says he 'strongly disagrees' with the unanimous verdict and will not apologise as he is forced to cut short US visit and fly back to London

MPs will return to Commons today after court said they had been prevented from carrying out their duties without reasonable justification

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### Boris Johnson to prorogue parliament on Monday night

Prorogation and then will be moved after bill blocking medical travel becomes law

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Rowena Mason Deputy political editor

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Opinion Boris Johnson

### Johnson has run out of road. Other people's outrage is all he's got now

Tom Kibasi

The prime minister must make a deal with the EU, request an extension, or resign. The rest is bluster

631 897





# A Rogue Proroguing?

- On 24<sup>th</sup> September 2019, a unanimous ruling from all 11 Supreme Court Justices found that Boris Johnson had acted unlawfully in advising the Queen *‘that parliament should be prorogued for five weeks at the height of the Brexit crisis.’*
- *“This is not, however, a normal Prorogation. It is not typical. It is not standard. It is one of the longest for decades, and it represents, not just in the minds of many colleagues but for huge numbers of people outside an act of Executive fiat.”* John Bercow, 9<sup>th</sup> September 2019
- Subsequent legal challenges were launched, which culminated in the Supreme Court being asked to decide on two questions.
- The first question before the courts concerned the justiciability of the prerogative power to prorogue Parliament. That is, could the decision to prorogue be subjected to judicial scrutiny?
- If found to be justiciable, the second question concerned the legality of the prorogation.
- Finally, if the advice upon which the decision was based was deemed to be unlawful, what would that mean for the order to prorogue itself, and for the execution of that order?



- The Supreme Court ended up hearing the case in an emergency three-day hearing in the wake of two appeals.
- On 11 September the High Court of England and Wales ruled that the prorogation was not a justiciable issue for the courts. However, on the same day, the Court of Session in Scotland, found in the opposite. Both appeals were then heard simultaneously by the Supreme Court who ultimately ruled the following:
  1. The Court held that the power to prorogue Parliament is a prerogative power: *‘a power recognised by the common law and exercised by the Crown... on advice’* of the Prime Minister.
  2. The Court then asserted a right to exercise supervisory jurisdiction over decisions of the executive, which was said to have ample judicial precedent. They cited the [Case of Proclamations](#) (1611) and [Entick v Carrington](#) (1765). Based on these and other precedents, the Court concluded that it is possible to determine the lawful limits of the exercise of a prerogative power to prorogue Parliament.
  3. *‘The sovereignty of Parliament would, however, be undermined as the foundational principle of our constitution if the executive could, through the use of the prerogative, prevent Parliament from exercising its legislative authority for as long as it pleased.’* [para 42]
  4. The Court concluded that Parliament has not been prorogued. However, the Court did not set out the implications of the Order. Rather the Court stated: *‘as Parliament is not prorogued, it is for Parliament to decide what to do next.’* [para. 70]
  5. Both houses were then recalled and sat on Wednesday 25 September.





was **unlawful.**

*'It is impossible for us to conclude, on the evidence which has been put before us, that there was any reason – let alone a good reason – to advise Her Majesty to prorogue Parliament for five weeks, from 9th or 12th September until 14th October. We cannot speculate, in the absence of further evidence, upon what such reasons might have been. It follows that the decision was unlawful.'*

-Baroness Hale

ould be **quashed.**



# The Lay of the Land



*“Parliament wasn’t always this dysfunctional – but in just five years, it’s been completely broken by Brexit.”*

- Chuka Umunna, September 2019

- The prorogation debacle has not been the only controversy to hit the headlines in these final weeks in the run up to exit day.
- Since seizing power, Boris Johnson’s mantra has rarely strayed from his ‘*let’s get Brexit done with or without a deal*’ ethos.
- Naturally, since the ‘*no-deal scenario*’ has been played out in the leaked Operation Yellowhammer documents, MPs from across the board have been keen to avoid such a situation.
- The documents indicate that an additional £2.1bn has been spent on ‘*no-deal*’ planning. If no deal were to proceed, this would likely negatively impact key infrastructure areas such as trade, food and medicine.
- For example, ‘*supply chains for medicines and medical products are “particularly vulnerable” to disruption at the Channel ports. While some products can be stockpiled, others cannot because they have a short shelf life. It will not be practical to stockpile products to cover expected delays of up to six months. An increase in inflation would “significantly impact” adult social care providers and may lead to some failing, with smaller providers impacted within two-three months.*’ (Brexit: What does Yellowhammer say about no-deal impact?, BBC News, September 2019)

# Benn there done that: The Benn Act

- To mitigate the potentially devastating consequences of a no-deal exit, MP's banded together to pass the EU Withdrawal (No.2) Act, known as '*The Benn Act*', which came into force on 9 September 2019.
- The Act requires the Prime Minister to seek an extension from the EU to the Article 50 negotiating period, so that a no-deal Brexit does not occur on 31 October.
- Under the Act's provisions, this will occur if MP's have been unable to approve a deal in a meaningful vote, or alternatively approved leaving the EU without a deal by 19 October.
- At that point, Boris Johnson had to send a letter as per the words stipulated in the Act to the President of the European Council to seek an extension until 31 January 2020.







# Schedule, Section 1 The Benn Act

*“Dear Mr President,*

*The UK Parliament has passed the European Union (Withdrawal) (No. 2) Act 2019. Its provisions now require Her Majesty’s Government to seek an extension of the period provided under Article 50(3) of the Treaty on European Union, including as applied by Article 106a of the Euratom Treaty, currently due to expire at 11.00pm GMT on 31 October 2019, until 11.00pm GMT on 31 January 2020.*

*I am writing therefore to inform the European Council that the United Kingdom is seeking a further extension to the period provided under Article 50(3) of the Treaty on European Union, including as applied by Article 106a of the Euratom Treaty. The United Kingdom proposes that this period should end at 11.00pm GMT on 31 January 2020. If the parties are able to ratify before this date, the Government proposes that the period should be terminated early.*

*Yours sincerely,*

*Prime Minister of the United Kingdom of Great Britain and Northern Ireland”*

# Moves and Counter Moves?

However, the Prime Minister has in no way toned down the rhetoric alluding to a no-deal Brexit. In fact, there is now speculation as to how he will be able to by-pass the Act.

1. **Writing a political explainer**
2. **Making an order in council**
3. **Mounting a legal challenge to the Benn Act**
4. **Using powers under other Brexit legislation**
5. **Refusing to introduce new legislation**
6. **Putting it on the EU???**





# Reason sleeps, anger stalks the land ... but Brussels can end this purgatory?

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*“The EU needs to state unequivocally that any deal they reach[ed] with Mr Johnson at the summit on October 17 is it. The end. La fin. Das Ende. There will be no further extension. If they did that then the Opposition would have a stark choice: back the new agreement or we leave on October 31 without a deal. And if we did, it would be their fault, not Boris’s.”*

- Philip Johnston, *The Daily Telegraph*, September 2019



LEAD STORY

# Boris to seek Supreme Court ruling on no-deal Brexit

Prime Minister ready to appeal to judges not to force him to postpone leaving EU



- The PM is said to be gearing up to launch legal action to ensure that the UK can leave without a deal.
- He has repeatedly said that the UK will leave the EU on Oct 31, while at the same time accepting that the Government will abide by the Benn legislation.
- He recently told Emmanuel Macron that the EU should “*not be lured into the mistaken belief that the UK will stay in the EU*” and that it should take his offer (which in essence involves keeping Northern Ireland in the single market but outside the customs union) seriously.



# Section 39, Senior Courts Act 1981

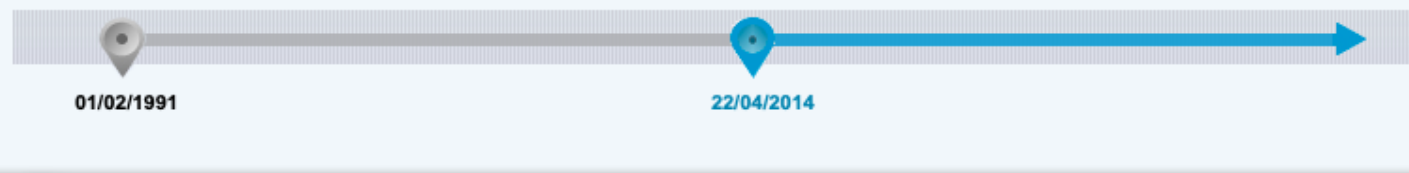
**Advanced Features** ?

Show Geographical Extent  
(e.g. England, Wales, Scotland and Northern Ireland)

**Show Timeline of Changes**

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**More Resources** ?



**Changes to legislation:** Senior Courts Act 1981, Section 39 is up to date with all changes known to be in force on or before 07 October 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. ?

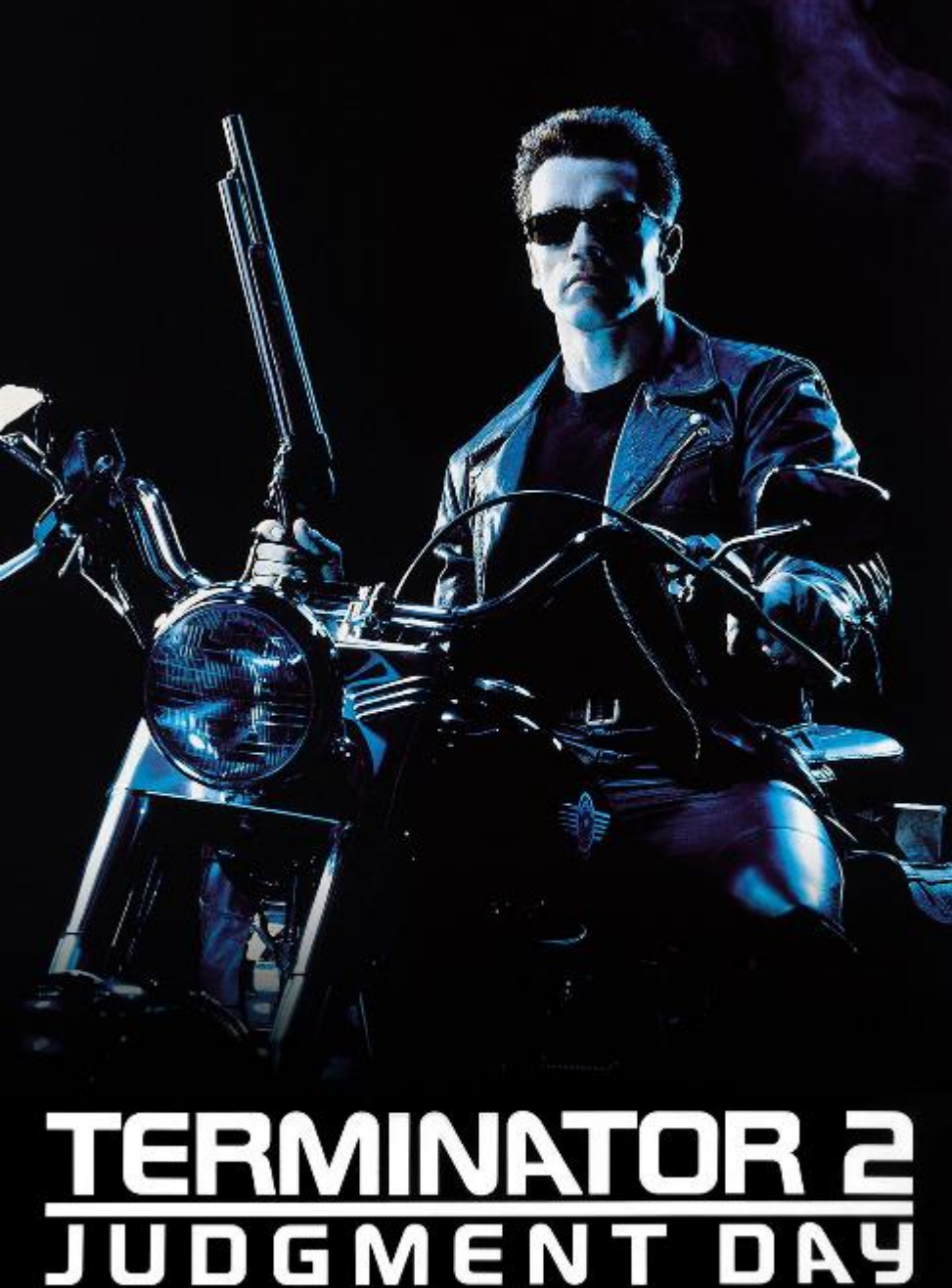
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**39 Execution of instrument by person nominated by High Court.**

- (1) Where the High Court **[F1 or family court]** has given or made a judgment or order directing a person to execute any conveyance, contract or other document, or to indorse any negotiable instrument, then, if that person—
- (a) neglects or refuses to comply with the judgment or order; or
  - (b) cannot after reasonable inquiry be found,
- [F2 that court]** may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed, or that the negotiable instrument shall be indorsed, by such person as the court may nominate for that purpose.
- (2) A conveyance, contract, document or instrument executed or indorsed in pursuance of an order under this section shall operate, and be for all purposes available, as if it had been executed or indorsed by the person originally directed to execute or indorse it.

**Textual Amendments**

- F1** Words in s. 39(1) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 59\(a\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F2** Words in s. 39(1)(b) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 59\(b\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)



# Key Dates in the run up to Judgment Day

- 7 October: Two days left to influence the Brexit process. Edinburgh, Court of Session, dismissed legal bid to force PM to send letter to Brussels to delay Brexit. Lord Pentland's judgement said there was "*no doubt*" Mr Johnson "*now accepts that he must comply with the requirements*" of the law and confirmed he had given "*unequivocal assurances*" he would.
- 8 October: Last day of Commons business before parliament prorogued for Queen's speech.
- 11 October: "*Judgement Call*" Day, for the EU on whether the PM's plan is acceptable.
- 14 October: State Opening of Parliament and the Queen's Speech.
- 17 & 18 October: Brussels summit.
- 19 October: D Day re the Benn Act, for extension permission.
- 21 & 22 October: Votes on the Queen's Speech? If the government loses, Corbyn to call a Vote of No Confidence? Queen's speech votes delayed? Votes on a deal?
- 31 October: Brexit?





## Deal or No Deal?

A new deal was reached with the EU during the week of 14 October 2019.

The key points of the deal are:

- The whole of the UK will leave the EU customs union.
- The backstop is ditched.
- There will be a legal customs border between Northern Ireland and the Republic of Ireland (which stays in the EU). But in practice the customs border will be between Great Britain and the island of Ireland, with goods being checked at "points of entry" in Northern Ireland.
- Duty (tax) won't automatically have to be paid on goods coming into Northern Ireland from Great Britain.
- When it comes to the regulation of goods, Northern Ireland would keep to the rules of the EU's single market, rather than UK rules.
- UK citizens in the EU, and EU citizens in the UK, will retain their residency and social security rights after Brexit.
- The UK will have to settle its financial obligations to the EU.
- As Brexit was delayed from 29 March to 31 October 2019, some of that money has been paid as part of the UK's normal membership contributions already. The Office for Budget Responsibility (OBR) estimates that the bill is now around £33bn (down from £39bn).

# Super Saturday?

- Saturday 19 October, was the day scheduled for MPs to vote on the deal.
- Instead, the Letwin Amendment was backed, which delays approval for the deal until the Withdrawal Agreement Bill is passed.
- *"We all know that rushed law is bad law, this is the political rewiring of our country and it has to be done properly."* Independent MP, Justine Greening.
- Therefore, a vote on the deal is still pending... But when will that be?
- Was pencilled in for Monday 21 October, by John Bercow ruled that no meaningful vote should take place as *"it would be repetitive and disorderly to do so."*
- Passing the amendment triggered the Benn Act requirement for the PM to write to Brussels to request an extension.





# I Did It My Way!

- Although required by law to send the letter, the PM did the following:
  - 1) Sent a letter requesting a delay – but left it unsigned!
  - 2) Sent an accompanying letter urging the EU to ignore the first and stating that a delay would be a mistake!
- Now, Scotland's highest court will sit to consider whether the PM has fully complied with the law, or acted in a way to frustrate the Benn Act.
- If the three judges hearing the case, find Johnson is in contempt, he could theoretically face a fine or even prison.
- A final ruling on whether the PM is in contempt of court has been delayed, to ensure he agrees to an extension to Brexit.
- The EU is still considering whether to grant an extension.



This is a Dead  
Parrot... I  
mean  
Parliament!

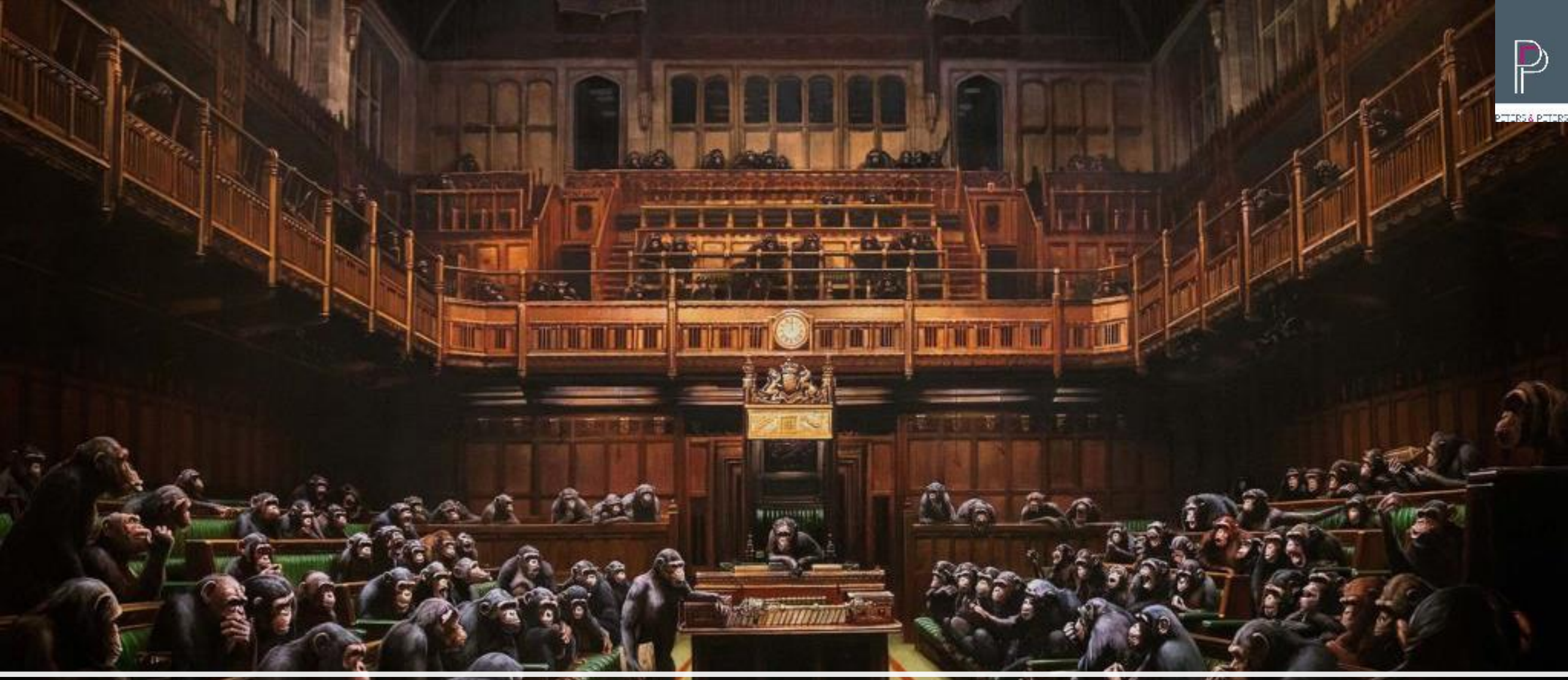






[Insert Next  
Dramatic  
Turn of  
Events Here!]





# Maybe Banksy Was Right?





# A Sign of Things to Come?





# Questions

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