

How the EU works: leaving the EU

The government has accepted that it is under a “democratic duty to give effect to the electorate’s decision” in the EU referendum on 23 June.

The prime minister told parliament in February that “if the British people vote to leave there is only one way to bring that about—namely to trigger Article 50 of the treaties and begin the process of exit—and the British people would rightly expect that to start straight away.”

How exactly would that work?

Constitutional requirements

Article 50(1) of the Treaty on the European Union says that any member country may decide to withdraw from the EU “in accordance with its own constitutional requirements”. In the UK, those requirements would include the approval of parliament.

As a matter of law, the result of the referendum is not binding. As a matter of politics, though, it would be difficult to disregard the referendum result.

David Cameron told parliament: “for a prime minister to ignore the express will of the British people to leave the EU would be not just wrong, but undemocratic.”

Some Leave campaigners have said a Leave vote might instead trigger a further renegotiation of the UK’s EU membership terms, followed by a second referendum on those terms. However, other EU countries would have to be willing to discuss this.

Also, such a further renegotiation (to curtail the free

movement of EU citizens to the UK, for instance) would likely need amendments to the EU treaties, which could prove difficult to negotiate and ratify.

Notification and negotiation

Article 50(2) says that a member state that decides to withdraw from the EU must “notify the European Council of its intention”. The European Council includes the 28 EU heads of state or government together with the European Council’s president (Donald Tusk) and the president of the European Commission (Jean-Claude Juncker).

Article 50(2) continues: “in the light of the guidelines provided by the European Council, the [EU] shall negotiate and conclude an agreement with that state, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the union.”

The process has several stages.

First, the European Council—without the UK—would agree guidelines for negotiations.

The agreement would need to be approved by the UK and 20 of the 27 remaining member states, representing 65% of those states’ population.

The European Parliament would also need to approve the deal by a simple majority. British Members of the European Parliament could vote.

Timing

Article 50(3) says that the leaving state ceases to be an EU member two years after a notification unless an extension of negotiations has been agreed unanimously by the European Council and by the leaving state, or the withdrawal agreement sets an earlier or later date.

Return

Article 50(5) says a state that has left the EU can ask to rejoin. This would be on the same basis as a country joining for the first time.

Is there any other way of leaving?

As a matter of national law, it would be possible for the UK to ignore the Article 50 process. Parliament could simply repeal the European Communities Act 1972.

However, this would be a breach of the UK's treaty obligations under international law. And it would presumably make it more difficult for the UK to strike a preferential trade agreement with the EU after withdrawal.

How long would this take in practice?

The clock would not begin to run until the UK had notified the European Council of its intention to withdraw from the EU. That could be at any time after a "leave" vote.

The UK would then cease to be a member of the EU two years after that notification unless an earlier or later date was agreed.

The government says it would probably take "up to a decade or more" to negotiate the UK's exit from the EU, its future arrangements with the EU and its trade deals with countries outside the EU. However, those on the Leave side argue that this process could be quicker.

It's not clear whether a country could stop the process by withdrawing its notification. As the Treaty doesn't discuss this, the point is arguable either way.

What would the deal cover?

Article 50 does not say that the withdrawal treaty will also

regulate the UK's *future* relationship with the EU. In fact, it seems to suggest that there would have to be separate treaties: one on the details of withdrawal, and one on the future relationship.

The wording of Article 50(2) refers only to '*taking account of*' that 'future relationship' in the withdrawal deal.

In practice, the withdrawal deal and the treaty on that future relationship would be closely linked. Probably the withdrawal treaty would, among other things, aim to regulate a transition period before the treaty on the future relationship entered into force.

Article 50 does not legally oblige the remaining EU to sign a free trade agreement with the UK. The words 'future relationship' assume that there would be some treaties between the UK and the EU post-Brexit, but do not specify what their content would be.

Equally, while Article 8 of the same Treaty requires the EU to have good relations with neighbouring countries, it does not require it to sign a free trade deal with them, or go into other specific details on what the relationship should be.

Most of the EU's free trade agreements require a unanimous vote of all EU governments and ratification by all member countries. The practical implication of this is that if the UK's future relationship with the EU takes the form of a free trade agreement, it may be harder to negotiate.

(This helpful summary was written by Steve Peers, Professor of EU Law and Human Rights Law, University of Essex and first appeared on the fullfact website. One inaccuracy, which claimed that the Council will appoint the European Commission to handle the negotiations, has been removed from the text)