The UK political system has been stirred by the Brexit process

Through its insistence on leaving the EU, the May government has created an immense, administrative and technical challenge for itself. Moreover, it must be completed within a perilously short timeframe. **Andrew Blick (King's College London)** *investigates the complications ahead of the Withdrawal Bill accounting for all the players involved.*

The European Union (Withdrawal) Bill currently passing through the House of Lords is an important (though not the sole) manifestation of the difficulties faced. Through this legislation, the government seeks to repeal the *European Communities Act 1972*, guarantee legal continuity at the point of exit from the EU, and facilitate, in legal terms, a smooth departure from the EU.

These objectives may prove not to be practically attainable. Moreover, the effort to achieve them has already generated an exceptional degree of controversy. Areas of concern raised from various sources regarding the Bill include that it would be detrimental to general principles of rule of law and individual rights, would vest excessive delegated law-making authority in ministers, and would concentrate powers repatriated from the EU at UK level, to the cost of the devolved institutions.

To complicate matters further, in pursuit of its goals and amidst this criticism, the government must contend with a number of other players with roles of their own in the legal or political process. Motivated in part by some of the complaints about the Bill described above, each of these actors feels entitled to slow down, modify or even reverse the process of Brexit. They will use particular procedures at their disposal; with implications that extend beyond the immediate issues that they address.

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The first of these players is the House of Lords. The European Union (Withdrawal) Bill is currently in Committee stage in the second chamber of the UK Parliament, involving line-by line scrutiny of the legislation. At present, the last of the committee days is scheduled for 28 March. Then comes Report stage, followed by Third Reading, both of which will provide further opportunities for the Lords to discuss and perhaps vote on alterations to the Bill. Current thinking seems to be that the Lords will have dealt with the bill by the beginning of May, potentially enabling it to have received Royal Assent and become a full Act of Parliament before the summer recess. However, since the Lords, not the government, is in control of its own timetable, this timescale cannot be taken for granted.

Whenever the Lords does finish with the Bill, it seems it will return to the Commons in a different form to the one it left the lower Chamber on 18 January 2018. Changes may come about on the initiative of the government in response to pressure, or because they are forced upon the government in the Lords, where the Conservatives are in a numerically even more precarious position than in the Commons.

While a majority of Peers supported 'remain' at the referendum, they feel constrained in the extent to which they can resist the Bill. As an unelected chamber, constitutional and political limitations create a reticence about being seen to oppose the perceived democratic mandates associated with both the referendum and the House of Commons. Consequently, many proposed amendments accept the Bill on its own terms, and are ostensibly intended to make the legislation perform its stated task more effectively and in more constitutionally acceptable ways.

However, some of the changes envisaged for the Bill go beyond its immediate terms of reference and would involve either a significant modification of the present way in which the government seeks to leave (for instance through committing it to maintaining participation in the Customs Union and Single Market), or the possibility of rejecting the terms of exit agreed between the EU and UK through an obligatory parliamentary vote or even a second referendum.

The next player under consideration, the House of Commons, will need to respond to any amendments the Lords may make, either accepting or rejecting them. Because it is elected, the Commons is established as the prime chamber within the UK Parliament. In this case, for procedural reasons, it will not be possible for the Commons to utilise its statutory power to override the Lords soon enough to be ready for exit from the EU. Nonetheless, the Lords is likely ultimately to give way if the Commons is insistent on removing amendments. The Commons, in turn, is restrained by party loyalties and a sense that it must be seen to abide by the referendum result.

Yet the Commons has already shown itself willing during the passage of the Bill to defeat the government on one occasion. An amendment of 13 December tabled by Dominic Grieve, the senior Conservative backbencher, requiring an exit arrangement to be authorised in a separate statute before the delegated powers envisaged under the EU Withdrawal Bill can be deployed to implement that agreement. The Commons might repeat this type of performance and uphold a Lords amendment regardless of whether the government wants to accept it. Indeed, the Lords may have voted for a particular amendment precisely because there was a sense in the Upper House that the Lower House was likely to find favour with it. In other words, the two chambers could prove mutually reinforcing in their growing willingness to resist the government and any supposed referendum mandate.

A further source of complication for the government involves the devolved institutions in Wales and Scotland, both of which have objected strongly to the European Union Withdrawal Bill as a centralising measure. Contention between them and the UK government has an ironic aspect, since the UK government, even as it insists on a withdrawal from the European Single Market, holds that the need to preserve the *United Kingdom* single market is a concern of overriding importance. Ministers at UK level have stressed the importance of retaining unified standards within the UK in arguing that a range of powers due to be repatriated from the EU should be held at the centre, rather than transferred to the devolved territories, even if they fall within areas that are defined as devolved.

Negotiations between the UK and the devolved governments are ongoing. The interests of Wales and Scotland are not identical in this matter. The former produced a 'leave' majority at the referendum, the latter a firm 'remain' vote; and their respective governments have differing attitudes regarding the desirability of remaining within the UK. But, significantly, Wales and Scotland have closely cooperated in the dispute over the European Union (Withdrawal) Bill, and are ready to bring forward continuity legislation of their own, adding to the sense of a principled constitutional argument, rather than simply a bilateral disagreement. It remains possible that one or more devolved legislatures will withhold the 'legislative consent' that has been deemed necessary for this Bill, and pass its own rival law. If legislative consent is denied, the UK government and Parliament will face a difficult choice about whether to proceed regardless and impose their law. To do so is the legal right of the UK Parliament, but would be politically controversial and divisive from the point of view of the Union.

A further dimension that cannot be overlooked and will impact upon the efforts of the UK government to facilitate Brexit is that of Ireland. An uncomfortable political reality is that a majority in Northern Ireland supported 'remain' on 23 June 2016; while within that vote there was a clear sectarian cleavage, with Catholics being overwhelmingly 'remain' supporters, and a smaller majority of Protestants voting 'leave'. At present, devolution is not functional in Northern Ireland, meaning that issues involving the position taken by the Welsh and Scottish legislatures and executives do not arise in the same way. However, the potential of Ireland – encompassing Northern Ireland, the Republic, and the various groups within it – to alter the final outcome should not be overlooked.

Domestically, following the General Election of June 2017, the minority Conservative UK government is dependent for its continued existence upon the support of the Democratic Unionist Party (DUP) in the Commons. This internal position of reliance has external consequences. The need to placate the DUP has already created difficulties for Theresa May, during the first phase of negotiations with the EU, and connected problems could well return. Competing demands: to avoid a hard border and honour the agreement made with the EU on 8 December, to withdraw from the Customs Union and Single Market, and to sustain the parliamentary support of the DUP, may ultimately prove impossible for the May government to reconcile.

Any discussion of what might take place in Parliament, at devolved level, or elsewhere, is necessarily also intertwined with a consideration of the stances and condition of the political parties, especially the Conservatives and Labour. Conservative parliamentarians, especially in the Commons, who are concerned about the likely outcome of current government policy are constrained by party ties and a reluctance to undermine their own government and perhaps help bring about a Jeremy Corbyn premiership. However, as it becomes increasingly apparent that the UK faces the prospects of either a deal seriously inferior to EU membership or no agreement at all with the EU, their party loyalty will be seriously tested. But for a Conservative backbench uprising in the Commons to mean defeat for the government, the rebels will need others to vote with. The most plausible scenario in which the government suffers a meaningful loss over its EU policy is one in which the official Labour position has shifted at least to the point that it allows for the *possibility* of ending the process of departure, perhaps to be decided by another referendum.

What would follow such a defeat is unclear. But the possibilities include one or more of: Theresa May attempting to stay on with a different policy and perhaps restructured Cabinet; the formation of another minority Conservative government under a different premier; a coalition government; a further General Election; another European referendum; and at least the potential for a reversal of the decision to leave the EU. Whether any of theses scenarios transpire, and what they lead to ultimately, will have been the product of a combination of different interlinked processes and institutions. The true significance of the European Union (Withdrawal) Bill is as a part of that continuum.The UK political system contains within it many variable elements, all of which have been stirred by the Brexit process. The combination is volatile. Whatever plans the May government has, it faces not only the question of whether they are realisable in theory (a debatable proposition in itself), but whether competing pressures will enable them to be delivered in practice.

This post represents the views of the author and not those of the Brexit blog, nor the LSE. It is a shorter version of an article that first appeared on the [Federal Trust](#).

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