

The British parliament can stop prime minister Boris Johnson achieving a no-deal Brexit

Blog post by Senior Associate Joe Armitage, 29 July 2019

The attorney general, Geoffrey Cox, has reportedly advised prime minister Boris Johnson's new government that a no-deal Brexit cannot be prevented from occurring on October 31st by the British parliament, even if it loses a vote of no confidence. He has advised that parliament's passing of the Article 50 act - which authorised the triggering of Article 50 - and the withdrawal act - which abolishes the European Communities Act on October 31st - legally locks-in the UK's departure, including one without a deal.

The new leader of the House of Commons, Jacob Rees-Mogg, an expert on parliamentary procedure, corroborated the attorney general's view in his first Commons outing in his new position. He added that motions in the Commons that might potentially be passed by MPs to indicate their opposition to no-deal Brexit would not supersede the legislation underpinning the UK's departure from the EU on October 31st.

In a strictly de jure sense, both the attorney general and the leader of the House of Commons are correct. To stop a government intent on exiting the EU without a deal on October 31st would require either legislation or a powerful instrument of extortion to force the government's hand. A thorough analysis of the mechanisms at MPs' disposal in the Commons suggests that they likely have the scope to use both methods.

The genesis of the European Union (withdrawal) act - dubbed the Cooper-Letwin bill - that mandated former prime minister, Theresa May, to seek an extension to Article 50 in April was a motion. MPs in the Commons amended a motion to disapply the existing rules of the chamber to give opposition MPs and government rebels control of business on a named day. They then used this time to progress the Cooper-Letwin bill through the Commons in a single day. The largely pro-EU House of Lords then quickly passed the bill through its stages too so that it could become law rapidly.

Whilst the new government is unlikely to voluntarily provide MPs with an opportunity to vote on a motion, it is highly probable that one will be brought about if the UK is shuttling towards a no-deal Brexit against the wishes of parliament. MPs can, for example, ask speaker John Bercow for an emergency debate at the point at which the country is firmly headed for a no-deal. This emergency debate would involve voting on a motion at the end.

Ordinarily, motions associated with an emergency debate are on neutral terms and therefore unamendable, but the speaker has already indicated that he would be prepared to break precedent to make it a substantive motion, which would then make it amendable. This motion could then be used to legislate, à la the Cooper-Letwin bill.

In addition, MPs - with the support of ministers under May who have since resigned or been fired by Johnson - amended the Northern Ireland (executive formation) act earlier this month to require the Commons to be presented with motions throughout September and October to consider government reports on the progress made to form an executive in Northern Ireland. According to precedent these motions should not be amendable either, but the speaker may have other ideas. MPs will have an

opportunity to vote on four of these motions between September 4th and October 31st, and parliament must be recalled for them to do so if the prime minister has shut it down to achieve a no-deal Brexit through prorogation.

Even if the speaker chooses not to defy convention to make these motions amendable, MPs have the nuclear option of a vote of no confidence under the fixed-term parliaments act. A vote against the government would not make it immediately collapse, but instead set in train a 14-day period in which to form an alternative administration or give confidence back to the government. The absence of either then results in an election.

The attorney general contends that any vote of no confidence aimed at preventing a no-deal Brexit would now result in a general election occurring after October 31st. Given that parliament would be dissolved after the 14-day period, no MPs would exist to step in to stop a no-deal Brexit during the 25 working day election period. However, it is highly improbable that MPs would not be granted with an amendable motion by the speaker within the 14-day period which they could then use to mandate the prime minister to seek an extension to Article 50 to accommodate an election.

Even if the speaker defies expectations and refuses to break precedent, it would be possible for opposition parties in concert with rebel Conservative MPs opposed to no-deal - such as former chancellor, Philip Hammond, and former justice secretary, David Gauke - to use the 14-day period to dispose of Johnson.

They could temporarily give confidence to an alternative prime minister whose sole purpose would be to request an extension to Article 50. This person could be the father of the Commons, Kenneth Clarke, for example. An election could then be triggered after the extension to Article 50 had been granted by the EU. The threat of this alone would likely be enough to convince Johnson to relent and request an Article 50 extension to accommodate an election himself. The risk of being the shortest serving prime minister in history might be a powerful incentive to do so.

This all assumes, of course, that a majority of MPs in the current parliament will always be opposed to allowing a no-deal Brexit outcome to take place. The new Downing Street operation is manned by Vote Leave staff from the 2016 EU referendum and the government has effectively become a campaign machine to sell Brexit to the public. If Johnson continues to make gains in the polls, then some MPs opposed to no deal might not ultimately seek to block it if they sense they will be punished by their electorate for doing so. This is unlikely, given the big majorities in the Commons opposed to no deal in the past, but it is a caveat worth positing.