

APPG on the Rule of Law

Date: 6 June 2019

Time: 10:00-12:00

Location: Jubilee Room,
House of Commons

Can Parliament stop a no deal Brexit?

Meeting Aim

To discuss whether Parliament could stop a no deal Brexit.

Proposed Schedule

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|---------------|---|
| 10:00 – 10:05 | The Rt Hon Dominic Grieve QC MP (Chair)
Introduction |
| 10:05 – 10:30 | <ul style="list-style-type: none">• Dr Hannah White - Deputy Director, Institute for Government• Martyn Atkins - Senior Clerk, Journal Office, House of Commons• Professor Gavin Phillipson, Professor of Law, the University of Bristol |
| 10:30 – 12:00 | Roundtable discussion (see questions below) |

Background

Since the Prime Minister announced that she would be resigning as leader of the Conservative Party, there has been uncertainty and speculation over how her successor would approach Brexit.

On 22 May 2019, the Institute for Government published a comment piece by Maddy Thimont Jack titled: [A new prime minister intent on no deal Brexit can't be stopped by MPs.](#)

The piece drew attention to the fact that MPs had been able to take steps to stop no deal as result of Theresa May's repeated attempts to get the deal through the House of Commons. If her successor took a different approach, then MPs might not have the opportunities to take the steps that culminated in the passage of the Cooper Bill in April 2019.

The comment piece has made a significant political impact. Dominic Raab has cited the piece as justification for the argument that Parliament would not necessarily be able to stop the UK leaving without a deal on 31 October 2019. Raab has provoked debate by refusing to rule out proroguing Parliament as a means of ensuring that the UK leaves the EU on 31 October 2019.



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A number of other candidates have ruled out proroguing Parliament as a means of delivering no deal. Matt Hancock's letter to all MPs noted (citing the IfG) that Parliament would need to enact the Trade Bill in order to prepare for no deal.

In response to the issue of prorogation as a means of delivering a no deal Brexit, the Speaker of the House of Commons said "That is simply not going to happen". In a further comment for the IFG ([The Speaker can't guarantee that MPs can stop a no deal Brexit](#)), Maddy Thimont Jack has outlined how the Speaker could create opportunities for MPs to express opposition to no deal. Thimont Jack argues that these opportunities, whilst significant, do not offer a guarantee that MPs could stop a no deal Brexit.

From a constitutional perspective, Parliament does not have the power to either request an extension to Article 50, or to change the date on which the UK will leave the EU. The Cooper Bill showed that Parliament could create a legal obligation on the Government to request an extension if certain conditions were met. However, those provisions were not put to the test as the Government requested an extension.

Arguably the most likely route to no deal would be if either the next Prime Minister made a request for an extension which was not accepted by the EU, or if the next Prime Minister refused the terms of an extension offered to the UK by the EU. It is not clear how Parliament could legislate, or take any other steps, to deal with either scenario. Perhaps the lesson of the Cooper Bill is that while Parliament cannot legislate to remove the risk of no deal entirely (other than by legislating to revoke Article 50), Parliament can take steps to create conditions which mean that there is a strong political incentive for the Government to shift its position.

The aim of this roundtable is to consider the arguments and analysis in the Institute for Government piece and the constitutional debate it has provoked. This briefing sets out some basic constitutional facts, details some potential questions for discussion and includes the text of section 2 of the Fixed-term Parliaments Act 2011.

Core constitutional facts

1. The UK Parliament (or House of Commons) cannot unilaterally alter the date on which the UK will leave the EU (currently set for 31 October 2019).
2. The UK Government has the power, through the prerogative, to ask the European Council for an extension to Article 50 without consulting the House of Commons.
3. Parliament can enact legislation to place the UK Government under a legal obligation to request an extension (see the EU (Withdrawal) Act 2019 "the Cooper Bill").

4. Parliament could unilaterally prevent no deal by legislating to direct the Prime Minister or other person recognised under the Vienna Convention as able to represent the UK to revoke Article 50.
5. To leave with a deal before 31 October 2019 Parliament must, per s 13(1) EU Withdrawal Act 2018, approve the Withdrawal Agreement, Political Declaration and legislate to implement the Withdrawal Agreement (through the EU (Withdrawal Agreement) Bill).
6. The Crown holds the prerogative power to prorogue Parliament.
7. For there to be early general election before 2022, one of two things must occur: a majority of MPs must pass a motion of no confidence and then 14 days elapse without a motion of confidence being approved; or two-thirds of MPs pass a motion for there to be an early general election.
8. For there to be another referendum, Parliament must pass primary legislation to provide the requisite legal basis.
9. If the UK were to leave the EU without an agreement, Parliament would need to approve further primary and secondary legislation to ensure that the statute book functioned effectively.
10. Article 50 does not prescribe a limit on the number of extensions, or the duration of any given extension, that can be granted to a Member State that has given notice of its intention to leave the European Union.

Questions for discussion

1. What are the potential opportunities for MPs to express opposition to the UK leaving the EU without a deal on 31 October 2019?
2. Will Parliament be able to pass the primary and secondary legislation required to prepare for a no deal Brexit by 31 October 2019?
3. Of the bills currently before Parliament, which if any, have to be enacted before 31 October in order to leave the EU without a deal?
4. Is the new Prime Minister likely to make an attempt to satisfy the statutory requirement in section 13 (1)(b) of the European Union (Withdrawal) Act 2018 before 31 October 2018?
5. Is it possible for the European Union (Withdrawal Agreement) Bill to be enacted before 31 October 2019?

6. Could the steps that led to the enactment of the European Union (Withdrawal Agreement) Act 2019 (the Cooper Bill) be repeated before 31 October 2019?
7. Could an unwilling Prime Minister frustrate a legislative provision that required an extension be sought?
8. Could Parliament legislate to require the Government to accept any extension offered by the European Council?
9. In what circumstances can the Crown refuse a Government request to prorogue Parliament?
10. Could the courts rule on the legality of the decision to prorogue Parliament?
11. How could the provisions of the Fixed-term Parliament Act 2011 affect Parliament's ability to prevent a no deal Brexit?

The Bingham Rule of Law Principles

The Rule of Law questions above are based on eight core principles that were identified by Lord Bingham, which can be summarised as:

1. The law must be accessible and so far as possible, intelligible, clear and predictable;
2. Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion;
3. The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation;
4. Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably;
5. The law must afford adequate protection of fundamental human rights;
6. Means must be provided for resolving without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve;
7. Adjudicative procedures provided by the state should be fair; and
8. The rule of law requires compliance by the state with its obligations in international law as in national law.

Section 2 of the Fixed-term Parliaments Act 2011

2 Early parliamentary general elections

(1) An early parliamentary general election is to take place if—

(a) the House of Commons passes a motion in the form set out in subsection (2), and

(b) if the motion is passed on a division, the number of members who vote in favour of the motion is a number equal to or greater than two thirds of the number of seats in the House (including vacant seats).

(2) The form of motion for the purposes of subsection (1)(a) is—
“That there shall be an early parliamentary general election.”

(3) An early parliamentary general election is also to take place if—

(a) the House of Commons passes a motion in the form set out in subsection (4), and

(b) the period of 14 days after the day on which that motion is passed ends without the House passing a motion in the form set out in subsection (5).

(4) The form of motion for the purposes of subsection (3)(a) is—
“That this House has no confidence in Her Majesty’s Government.”

(5) The form of motion for the purposes of subsection (3)(b) is—
“That this House has confidence in Her Majesty’s Government.”

(6) Subsection (7) applies for the purposes of the Timetable in rule 1 in Schedule 1 to the Representation of the People Act 1983.

(7) If a parliamentary general election is to take place as provided for by subsection (1) or (3), the polling day for the election is to be the day appointed by Her Majesty by proclamation on the recommendation of the Prime Minister (and, accordingly, the appointed day replaces the day which would otherwise have been the polling day for the next election determined under section 1).