



## A no-deal Brexit is not inevitable

by Charles Grant

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**It has never looked more likely that the UK will leave the EU without a deal. But there are still ways for Britain to avoid a no-deal Brexit.**

Boris Johnson says he will not talk to the EU unless it agrees to scrap the Irish backstop. The EU says that any deal with Britain must be based on the current withdrawal agreement, including the backstop. With neither side willing to blink, Britain seems set to leave the EU on October 31st.

That is the default option, required by British and European law. In order to prevent Brexit on that date, the UK Parliament must either revoke Article 50, for which there is at present almost certainly no majority; or pass a deal, which looks unlikely in the time available; or compel the government to seek an extension of Article 50, to which the EU must agree. MPs intent on stopping a no-deal Brexit will find that none of the routes to that objective is easy to follow.

At the moment Johnson seems highly unlikely to soften his stance vis-à-vis the EU. But could he in the last resort do so? Some of those close to Johnson – ill-informed about the thinking of European leaders – seem to believe sincerely that the EU is scared of no deal and that it will therefore cave in at the last minute.

But that will not happen. The EU is resigned to no deal and is united in its support for the Irish and maintaining the backstop. Abandoning the backstop would mean accepting a hard border in Ireland for the long term and thus – in the view of most EU governments – endangering peace on the island. The EU thinks that no deal would not last for very long, because the UK – suffering more than the EU – would come back and swallow a deal that resembled the withdrawal agreement.

As the end of October approaches, Johnson will realise that the EU is not going to budge. He will watch financial markets falling, shoppers buying in panic, foreign investors squealing, farmers threatening to slaughter livestock, tensions rising in Northern Ireland and nationalism surging in Scotland. He may ask himself whether he really wants to fight an election with the economy in turmoil, borders congested and

civil unrest on the rise. One idea recently floated by Johnson's officials is to hold an election on November 1st – right after Brexit but before the border chaos becomes too serious. But Johnson should not count on the country functioning in a smooth and orderly way on the day after Brexit.

It has become a cliché to say that if Johnson goes into the next election without having delivered Brexit, the Tories are finished. But come October, the pros and cons of the choices available to him could look different from how they look today.

If Johnson did ask the EU for a compromise, it would be willing to oblige – for example by amending the withdrawal agreement to provide a longer transition period or a Northern Ireland-only backstop, by producing clarifications or interpretations, or by changing the political declaration on the future relationship. But if the EU and Johnson dressed up May's package to make it look prettier, it would still struggle to pass the Commons. Some ministers might resign and a number of Tory MPs in the hard-line European Research Group would vote against it. Some Labour MPs who want Brexit to happen would vote in favour, but perhaps not enough to push the deal over the line.

If Johnson himself will not stop no deal, MPs will have to take it upon themselves to do so. Though the anti-no-dealers have a clear majority in the Commons, they disagree on tactics. Many of them want to focus on amending legislation so that they can take control of the parliamentary agenda. That would allow backbenchers to propose a bill requiring the government to seek an extension of Article 50. Two prominent backbenchers – Labour's Yvette Cooper and the Conservatives' Oliver Letwin – narrowly succeeded with a similar exercise in April, with a majority of one vote. The ranks of those willing to act against no deal have swelled since April, thanks to the resignation of moderate Tory ministers like Philip Hammond, David Gauke, Rory Stewart and Greg Clark.

However, this method requires a bill that is amendable. It is a moot point whether the government can avoid legislating until the country has left the EU. It can perhaps get by with passing very few laws, and might be able to postpone those designed to mitigate the worst effects of a no deal Brexit – including bills on immigration, farming, fisheries, financial services, animal welfare and trade. But the civil service apparently thinks that some laws cannot be postponed. For example, the government would almost certainly need to restore direct rule in Northern Ireland and that would require legislation.

If MPs cannot find a suitable opportunity to amend legislation, they will look to Standing Order 24. This procedure allows the opposition to hold an emergency debate on a motion which may be amendable, if the Speaker agrees. An amendment can then enable MPs to take over Parliament's agenda on a specified date, leading to legislation on an extension. Some MPs are discussing whether the procedures of Standing Order 24 can be strengthened.

These MPs think they have a good chance of being able to take over Parliament's agenda, but they are far from confident. John Bercow, the Speaker, will probably try to help them. Many MPs prefer this route to motions of no confidence, since persuading Conservatives to vote down their own government would be difficult.

But if agenda-seizing methods fail, more MPs will focus on motions of no confidence. Given that the government currently only has a majority of one, that Tory MP Philip Lee is close to joining the Liberal Democrats, and that several pro-EU Tory MPs like Dominic Grieve and Ken Clarke either face de-selection or plan to retire, the government could easily be defeated.

But the timing of the motion matters: if passed in early September, Johnson could find it difficult to postpone an election until after the UK had left the EU. But in early September Labour leader Jeremy Corbyn could not be sure of winning a vote against Johnson. Some opposition MPs would not back a motion of no confidence: many Lib Dems and independent MPs detest Corbyn (and a lot of the latter will lose their seats in an election). More pro-EU Tories would be willing to vote for a motion of no confidence in October, once other options for preventing no deal had been exhausted.

Defeat for the government would not in itself prevent no deal. The Fixed Term Parliaments Act (FTPA) specifies a two-week period before an election has to be called. If another government emerges in those two weeks, with the confidence of house, an election need not happen.

In Westminster there is much talk of a government of national unity taking office, with two express purposes: to ask the EU for an extension of Article 50, and to organise a general election (some talk of it organising a referendum, but fewer MPs support that option than an election). Such a government would need a figurehead who appealed to MPs from across the political spectrum – for example Ken Clarke or Margaret Beckett, the former Labour foreign secretary. (An interesting blog post by David Howarth, a law professor at Cambridge University, discusses how a government of national unity might emerge).

This government could only function if backed by most Labour MPs, plus a substantial minority of the Tories. At the moment this seems unlikely, since John McDonnell and others close to Corbyn have insisted that the Labour leader himself must become prime minister if Johnson is voted out. Pro-EU Tories would never vote for a Corbyn-led government. Nor would the Lib Dems, though they would back a government led by a more moderate Labour figure.

As October 31st approaches, Remainers may start to work together more coherently than they are currently doing. Some Labour front-benchers think Corbyn's position may evolve. After all, he appears to want both an election and to prevent a no-deal Brexit, so it may be hard for him to resist a short-lived government of national unity that would deliver both objectives.

But even if there was a Commons majority for such a government, what if Johnson just refused to resign and set a date for an election after October 31st? His advisers have indicated that he could do just that. The FTPA does not spell out that a prime minister who loses a vote of confidence has to resign, because of the unwritten convention that he or she should do so. Johnson could argue that he was legally entitled to hang on. His advisers seem relaxed about breaching conventions. Thus Dominic Cummings, one of the most senior, is reported to have said that the government's mission is to take Britain out of the EU on October 31st "by any means necessary".

Conventions could be broken in several ways, in addition to Johnson refusing to hand over to a government of national unity after losing a vote of confidence. Even if no government of national unity emerged, Johnson could set a date for an election with a longer-than-normal delay, to ensure that it happened post-Brexit. Or he could attempt to prorogue Parliament, so that MPs could not seize the parliamentary agenda. However, in July MPs passed an amendment to a Northern Ireland bill, requiring the government to report to Parliament every two weeks on progress towards the restoration of the Northern Irish executive; this makes prorogation difficult. Andrew Roberts, the anti-EU campaigner and historian has [urged Johnson to breach another convention](#): he should tell the Queen not to sign any bill passed by Parliament that seeks to stop a no-deal Brexit.

There is also a convention on ‘purdah’ during general election campaigns: governments should not take controversial decisions or new policy initiatives. Arguably, a refusal to extend Article 50 in the period before an election, so that Britain left the EU in mid-campaign, would breach this convention. Some senior civil servants are reported to take this line. But Brexiteers will of course argue the opposite – that an extension of Article 50 would overturn the legal status quo and thus be controversial.

Some of these issues will end up in the courts. But in general Britain’s judges will be reluctant to rule on constitutional conventions, as opposed to matters of law. Nevertheless if Johnson breached conventions he would risk drawing in Buckingham Palace. Sir Malcom Rifkind, the former Conservative Foreign Secretary, wrote in a letter to *The Times* on August 7th: “If the prime minister refused to respect the normal consequence of losing a confidence vote and if he sought to prevent both Parliament and the electorate having a final say on no deal, he would create the gravest constitutional crisis since the actions of Charles I led to the Civil War.”

That is hyperbolic, but Sir Malcolm is right that there would be a serious constitutional crisis. One official who has worked with the Palace says that he thinks its top priority would be not to become involved. The Queen sees her role as unifying the country; taking sides on Brexit would mean splitting it and potentially harming the monarchy. She would not want to go against the advice of her prime minister. However, her officials would do their best to avoid a difficult situation by gently nudging the prime minister away from steps that would breach constitutional conventions.

Some officials think it most unfortunate that Britain would have to navigate such a crisis without the steadying hand of either Sir Christopher Geidt, the Queen’s highly experienced private secretary, who resigned in 2017, or Sir Jeremy Heywood, the cabinet secretary who stood at the heart of government for over 20 years and died last year. Nobody doubts the intelligence or gravitas of Sir Mark Sedwill, the new cabinet secretary, but his difficulty is that he is a *bête noire* for many eurosceptics. Not only was he close to Theresa May, but he also led the investigation into a leak of National Security Council minutes that concluded with the firing of Defence Secretary Gavin Williamson in May. Williamson subsequently played a key role in Johnson’s leadership campaign.

Many of the above scenarios lead towards a general election. But are the signals coming out of 10 Downing Street – that the election should not be held until after Brexit on October 31st – entirely sincere? Would Johnson really want to have to manage the consequences of no deal, with for example chaos at ports, during an election campaign?

Would it not suit Johnson if Parliament forced him to extend Article 50, so that the election took place with Britain still inside the EU? Then he could blame MPs for delaying Brexit; a campaign focused on ‘The People versus Parliament’ would help him to see off the Brexit Party’s threat. Such a scenario would enable Johnson to avoid a constitutional crisis and the Queen’s possible involvement. If he secured a majority he would then be in a strong position to preside over a hard Brexit (or indeed to repackage the withdrawal agreement and push it through Parliament).

But Johnson cannot be sure of electoral victory. In the end, the people may stop a no-deal Brexit by voting him out of office. True, there has been a ‘Boris bounce’ in the opinion polls, as some Brexit Party voters return to the Conservatives. Even so, and even with Labour’s policy on Brexit being as clear as mud, Johnson will have to climb a huge electoral mountain in order to survive. The Brexit Party will still

siphon off votes from Conservative candidates across the country. The Tories will surely lose seats in Scotland (where Johnson is particularly unpopular) to the Scottish National Party, in the South West and parts of Wales to the Lib Dems, and in London and elsewhere in the South to Labour and the Lib Dems. The Conservatives will have to win swathes of Leave-voting Labour seats in the North, the Midlands and South Wales in order to surpass their current tally.

So, nobody can say with much confidence whether a no-deal Brexit can be stopped. The outcome of this saga will not depend on the EU's actions, which are predictable; but on the decisions and views of Johnson and Corbyn, just possibly the Queen's advisors, and quite likely the British people – none of which can be predicted with certainty.

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