

“I’d Rather Be Dead in a Ditch”

By Professor Alex de Ruyter, Director, Centre for Brexit Studies

Amidst extraordinary scenes yesterday, as John Bercow announced the date for his resignation as Speaker of the House of Commons, Boris Johnson suffered his sixth parliamentary defeat in six days.

Two “humble addresses” were approved by Bercow last night requiring the Government to publish full details for MPs of Operation Yellowhammer – the Government’s “No Deal” preparations; and b) publish all correspondences relating to the suspending (“proroguing”) of Parliament.

Dominic Grieve, as the originator of the second humble address had sought to expose the Government’s reasons for proroguing Parliament and the role of “Special Advisors” – namely Boris Johnson’s Chief adviser, Dominic Cummings, in this process.

The accusation on the Government here of course is that in contrast to Johnson’s stated purpose of wanting to introduce a new legislative programme, proroguing has solely been done to stifle Parliamentary opposition to a No Deal Brexit.

In all this drama, John Bercow as Speaker, has had a key role in interpreting parliamentary “conventions”, which are a key feature of our so-called “unwritten constitution”.

Simply put our “constitution” grants that they who command a majority in the House of Commons gain the Monarch’s assent. It is this maxim that made it perfectly (legally) possible for Johnson as PM to gain the Queen’s assent to prorogue Parliament.

Moreover, the Government proposes laws and Parliament votes on them, and Government generally determine the order of legislation to be put to Parliament (the so-called “Parliamentary Timetable”).

However, in certain circumstances, Parliament can take control of the order of proceedings via a process called a Standing Order. The role of the Speaker here is crucial, as under our unwritten constitution

(with its emphasis on Parliamentary “conventions”) it is they who determine which proposals (motions) by MPs can be put up for debate and voting on.

In this context, Standing Order 24 (SO24) has been used by MPs to gain control of the Parliamentary order of business so as to allow time in parliament to time for an emergency debate on a particular item. Brexit has certainly been a key item here.

This is what happened last Tuesday, when MPs voted to gain time to debate and vote on an amendment put up by Hilary Benn, committing the Prime Minister to ask the EU for another extension to our membership of it.

The motion specifically sought to extend the Article 50 period to the 31st January next year and take No Deal “off the table” as a Government fall back, should the Prime Minister fail to gain a revised withdrawal agreement by October 19th, or that Parliament would support leaving the EU with no deal.

The Bill was then debated on Wednesday via two Parliamentary “readings” and approved by the House of Lords late on Thursday (after a Government attempt at filibustering was defeated), it became law yesterday with Royal Assent.

For Johnson, the passing of the above, and the defeat last night in the Commons of a second Government attempt to force an October election, has severely narrowed the range of options open to him to try and force an early election.

In this context, his own proroguing of Parliament last night has come back to hoist him on his own petard, as MPs will not return to the House until October 14th, so that is the earliest point at which they will be able to vote for an election (with the requisite two-thirds of MPs having to vote in favour as required under the Fixed-Term Parliament Act).

From Johnson’s perspective, the fact that there is to be a Queen’s Speech immediately after this (which typically takes several days to complete its passage through Parliament) is even more problematic.

Given that it takes about six weeks for an election to take place after the decision has been made by Parliament and the necessary writs issued, the earliest we could now expect an election is late November.

In the meantime, Johnson is now legally required to ask the EU for an extension to the UK's membership, or face breaking the law. In such circumstances, he could even be jailed if he were to carry out such contempt of Parliament.

Whilst it has been suggested that Johnson could seek to append any letter to the EU to annul any desire to extend membership, this would not be a serious option as it would be blatantly contradictory to the intent of the Bill.

The only other serious option left on the table for the Prime Minister to try and bring about an October election would be to resign and approach the Queen to ask Jeremy Corbyn to form a caretaker government.

Assumedly Johnson would then be Leader of the Opposition and could then table a motion of No Confidence in a Corbyn "Government" to try and bring about an election after having two weeks to try and form a government (again).

However, given Johnson's own severe lack of a working majority, it is hard to see how he could muster one from the Opposition benches, and any prospect of a Corbyn-led government being seen to be even vaguely competent would undermine the Conservative's own chances in any subsequent election.

For the same reason, given Johnson's lack of a working majority, other schemes, such as proposing amendments to the Fixed Term Parliament Act, or trying to get another EU state to block an extension request, look equally fanciful.

Given that Parliament has been prorogued, it is hard to see how any of this could take place until the last two weeks of October. Any way you look at it, we appear to be heading for an election after November 28th (approximately the six-week writ period referred to above).

Johnson could yet try to rescue Theresa May's failed withdrawal agreement under some token rewording, but as Nigel Farage is claiming now that Johnson risks "selling the country down the river", he appears to be running out of wriggle room with Brexiteers.

Hence, any perceived softening on his Brexit "do or die by October 31st" stance would in all likelihood mean Tories competing with Brexit Party candidates in a subsequent election – and the prospect of splitting the Leave vote and thereby ushering in a Corbyn Government through the middle, as it were.

The odds of remaining in the EU beyond October 31st then now have increased strongly. Little wonder the Prime Minister then is given to fulminating statements about rather lying "dead in a ditch". He really does have his work cut out for him.