

Parliament, Control, and Brexit

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“Taking Back Control”. This is what we were told Brexit was all about, and in particular, the control that would be returned to Parliament. So, what is the current status of this?

Prior to the Article 50 extension in March (and April), the main focus of Parliament was upon the Withdrawal Agreement, and its role in passing this by way of Meaningful Vote, prior to the tabling of legislation that would ratify the agreement that Theresa May’s Government had negotiated with the EU. Even is recently as a few weeks ago, the intention was still to table the legislation required, even though there have been several failed attempts to pass the Meaningful Vote.

However, since the resignation of Theresa May and the leadership contest that will result in a new leader of the Conservative Party, all discussion of the Withdrawal Agreement’s passage through Parliament has ceased. The Withdrawal Agreement Bill has not been introduced to Parliament as indicated. The EU have confirmed that if the UK wishes to leave with a deal, then this is the deal, even going as far as disbanding the negotiating team.

Yesterday saw maybe a new purpose for Parliament: stopping the No Deal exit. The signs were, from the Letwin indicative votes in April, that the only decision that Parliament was able to make was that it was against a No Deal exit from the EU, even going as far as an Act of Parliament to require the Prime Minister to request an extension to the Article 50 negotiating period if it looked like No Deal was about to happen.[\[1\]](#)

The intention of the Labour Party in using yesterday’s Opposition Day Motion was to take control of parliamentary business later this month in order to allow time for legislation to prevent No Deal from happening.

This is the focus of Parliament at the moment because of several factors. Firstly, as experts on Article 50 tell us, No Deal is the default position by virtue of the time-limited nature of the Article 50 procedure. If nothing is done, then the UK leaves the EU by default, and all EU Law ceases to be applicable.[\[2\]](#)

Secondly, several of the candidates in the Conservative Party Leadership contest have indicated intention to leave the EU with No Deal, ranging from actively seeking it, to reluctantly using it if they had no other option.

The question of what is happening at the moment in Parliament is a political one, and therefore not for this particular discussion. However, there is a legal question regarding whether it is legally possible for Parliament to prevent No Deal, even in contravention of the intention of a new Prime Minister.

The most obvious mechanism for achieving this is in the same way as the European Union (Withdrawal) Act 2019. This gave Parliament the power to pass a motion to instruct the Prime Minister to seek an extension to the Article 50 period lasting until at least the 22nd of May this year.

A similar Act could be passed in relation to the 31st October deadline, but by no means certain, based on the closeness of the vote in the Commons last time. Opposition to a further extension of time is also hardening, both domestically (it is increasingly being seen as politically damaging to the Conservative Party in the light of the popularity of The Brexit Party at the European elections) and also in the EU itself (Emmanuel Macron has been reported to have objections to a further extension beyond October). However, legally it is still possible, but requires, as all legislation does, Parliamentary time.

Secondly, there have been statements by various of the Conservative Leadership candidates about the intention to prorogue Parliament in order to facilitate No Deal. This is because if Parliament is not able to sit, vote, and pass laws, then it cannot prevent No Deal from happening. There are conflicting opinions as to whether this is possible, but in theory it too could be prevented by Act of Parliament.

The Royal Prerogative only operates in the absence of legislation, for example The Fixed Term Parliament Act removed part of the Royal Prerogative regarding dissolution of Parliament in order to hold a General Election. Theoretically legislation could restrict or prevent the prorogation of Parliament, or place conditions on its use. There is a problem with this being as damaging as the Fixed Term Parliament Act has been in constitutional terms. This therefore means that it would be a highly undesirable for legislation of this type to be passed, purely for the purpose of preventing No Deal in the event of it becoming official Government policy. In legal terms, it is theoretically possible.

A third, and maybe more unlikely way of legislating to prevent No Deal is to prevent it being the default position. Legislation could be passed to instruct the PM to notify revocation of Article 50 notification just before the point of exit by default. However, this is the least likely option, and only at home in the most fanciful dreams of remainers.

Yesterday's Opposition Day Motion was therefore a missed opportunity for Parliament to exert control over the situation in the face of a potential change in Government policy towards No Deal. The fact that the vote was lost has been reported as everything from a disaster for the Remain cause through to a boost for the Conservative Leadership candidates advocating No Deal.

Any of the above methods of preventing No Deal will require Parliamentary time, and this was a lost opportunity to obtain that time. It is an example of Parliament failing to take control, but it is not the last of these opportunities. However, it shows that once again the clock is ticking towards the deadline, and if Parliament wants to take control, it would be best advised not to leave it as late as it did last time.

[1] See the European Union (Withdrawal) Act 2019 <http://www.legislation.gov.uk/ukpga/2019/16/contents>

[2] As David Allen Green @davidallengreen would say “by automatic operation of law.”