

Brexit: A Pre-Christmas Election?

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On 22 October the government secured a majority of 30 to approve in principle the Withdrawal Agreement Bill (WAB). However, snatching defeat from the jaws of victory, the government's programme motion to push the Bill through all of its House of Commons stages by the end of 24 October was lost by 14 votes. Prime Minister Boris Johnson announced that the Bill would be "paused" while the EU considers whether to agree an extension to the exit deadline of 31 October.

What next?

If the EU were to agree to a further extension of the 31 October deadline then it would be difficult for opposition parties to object should the government seek a general election. A motion under the Fixed Term Parliament Act 2011 would require a two-thirds majority of the total number of MPs. The government's previous attempts to carry such a motion failed due to concerns that the 31 October deadline, with the legislative default of a "no deal" Brexit, might occur during the election period, with no Parliament in place to block that outcome. That concern would not arise if the deadline were to be moved to accommodate an election.

An alternative route to a general election would be a vote of no confidence under the Fixed Term Parliament Act 2011. That would require only a simple majority in the House of Commons. It would trigger a 14 day period during which an alternative government might be formed. However, if the 31 October deadline were to be lifted, then there would be a reduced risk of the current government insisting on remaining in place through that period as it would no longer be able to deliver Prime Minister Johnson's "do or die" promise to deliver Brexit by that date. There would also be no pressing need for opposition parties to seek an interim government to avert a "no deal" exit.

It is not clear, though, that the Conservative and Labour parties would really be in a hurry to trigger a general election. The principal difficulty facing both the Conservative and Labour parties is that an election held before Brexit has occurred would, in reality, be about nothing other than Brexit. The Conservative party would be at risk from Brexit party challengers, while Labour would be at risk of leaking support from both "leave" and "remain" voters. In Northern Ireland, the DUP might also be concerned about potential challenges from other Unionist parties. Liberal Democrats would presumably be content to campaign on a straightforward "remain" platform, as would Plaid Cymru. The Scottish National Party, meanwhile, would probably relish the opportunity to seek a renewed mandate for Scotland within Europe. A general election focused on Brexit would risk placing even

greater strain on the Union, sharpening divisions between Westminster and the devolved governments and administrations. From Conservative and Labour perspectives, a politician who is not "Frit" is probably a politician who cannot count.

Back to the WAB?

The government secured a second reading majority of 30 in favour of the WAB. If the 31 October deadline were to be moved by agreement with the EU then there would be a strong case from both Conservative and Labour perspectives for reviving the Bill, with a programme motion that would allow more time for debate in both Houses. Both parties would be able to present that outcome as a victory of sorts. Crucially, for both, delivering some form of deal-based Brexit would secure a transition period and would allow for post-Brexit election manifestos, shifting the argument to other issues. A transition period would allow the Conservatives to run on the basis that they had delivered Brexit, with the transitional arrangements cushioning any adverse economic impacts. Labour, meanwhile, could present any successful amendments to the WAB as an "improved" or "softened" Brexit – particularly in relation to issues such as workers' rights or regulatory alignment.

Timing?

Before a general election can be held, the current Parliament must be dissolved. Fixed Term Parliament Act 2011, s 3 and the Electoral Registration and Administration Act 2013, s 14 provide that the current Parliament is dissolved at the beginning of the 25th working day before polling day. "Working days" exclude Saturdays, Sundays and public holidays.

The 25 working days requirement means that the government has very little time to decide whether to seek a pre-Christmas general election. Assuming that a 19 December poll would be considered too close to Christmas, the range of possible dates are:

- Polling day: 12 December (Parliament must be dissolved by 7 November)
- Polling day: 5 December (Parliament must be dissolved by 31 October)
- Polling day: 28 November (Parliament must be dissolved by 24 October)

The election timetable, fixed by statute, creates a challenge both in the UK and for the EU. The government's 19 October failure to secure a House of Commons resolution approving the revised Withdrawal Agreement and Political Declaration obliged the Prime Minister, under the Benn Act, to request an extension to 31 January 2020.

The EU must, therefore, decide whether to agree to that specific request, or to risk further procedural complexity by suggesting a longer extension. Agreeing an alternative date with a reluctant UK government might itself prove to be a difficult and lengthy process. It would then become necessary for the EU to "sell" any alternative date to its continuing Member States, justifying consequences such as the continued exclusion of MEPs elected to EU Parliament seats currently occupied by members representing UK regions.

The EU has a legitimate concern that any move to trigger a pre-Christmas UK election would rule out any further consideration of the WAB. The post-election time potentially available to scrutinise,

amend and pass a re-run of the WAB would also be limited by the run of public holidays over Christmas and the New Year. A new Parliament would require a new Queen's Speech, and therefore a new debate on the Queen's Speech. 31 January would very rapidly become a tight and challenging deadline. From an EU perspective, therefore, the balance of advantage might lie in a "flexextension", proposing a date that would give greater leeway, but with the possibility of early termination once the Brexit legislation has completed its tortuous passage through both Houses of Parliament.

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