

Johnson faces new constitutional crisis as Brexit talks grind to a halt

It appears increasingly unlikely PM will hit deadline for deal laid down in Benn act.



With a Brexit delay forced on him, Johnson could fight a general election on a platform of a hard Brexit. Photograph: Han Yan/Xinhua/Barcroft Media

Boris Johnson is careering towards a fresh constitutional crisis, after insisting there will be “no delay” to Brexit just hours after government lawyers promised in a court in Scotland that he would obey the law and request an extension if he failed to clinch a deal within a fortnight.

The prime minister tweeted that there must be “new deal or no deal - but no delay”, echoing the words he used in his party conference speech in Manchester on Wednesday.





New deal or no deal - but no delay. #GetBrexitDone #LeaveOct31

The dramatic scenes in court came as Brexit negotiations all but ground to a halt after the EU rebuffed UK requests for them to intensify over the weekend. It now appears increasingly likely Johnson will fail to hit the deadline for a deal laid down in what he calls the “surrender act”.

EU sources said there remained considerable doubt as to whether there was any basis for such discussions, given Johnson’s insistence on there being a customs border on the island of Ireland.

Meanwhile, Julian Smith, the Northern Ireland secretary, was told by a series of senior figures in Belfast that the “Stormont lock” envisaged in the proposal is unworkable, setting up a race against time to rework that aspect of the plan in time for the 17 October European council meeting.

The European Union (Withdrawal) (No. 2) Act, drawn up by rebel MPs and passed by parliament, states that if Westminster does not agree to a Brexit deal by 19 October, the prime minister has to write to the EU seeking an extension to article 50 until 31 January.

In extracts of legal papers submitted by the government to the court of session in Edinburgh, that emerged on Friday in a case brought by anti-Brexit campaigners, the government appeared to accept for the first time that it would have to make the request.

The papers, which the government declined to publish in full, stated that the prime minister accepts “he is subject to the public law principle that he cannot frustrate its purpose or the purpose of its provisions. Thus he cannot act so as to prevent the letter requesting the specified extension in the act from being sent.”

Campaigners brought the legal action to force Johnson to comply with the requirements of the act, also known as the Benn Act, after a series of suggestions from Downing Street sources that Johnson believes he has found a loophole in the law that will allow him to leave the EU on 31 October regardless.

The UK government refused to release copies of its submissions in this case to the media despite repeated requests by the Guardian, the BBC, and other news organizations.

Key excerpts of its pledge were read out instead by Aidan O'Neill QC, the lawyer for the green energy millionaire Dale Vince, the SNP MP Joanna Cherry QC, and the lawyer and anti-Brexit campaigner Jolyon Maugham QC.

O'Neill told Lord Pentland, the judge hearing the case, that Johnson had repeatedly contradicted that position, including in the Commons on Wednesday, by insisting the UK would leave on 31 October "come what may".

As a result, O'Neill said, the court still needed to issue legally binding orders to force Johnson to comply with the Benn Act in an interdict or injunction. If the prime minister refused to do so, O'Neill could return to court to ask for Johnson to be fined or jailed, he added. Pentland is due to give his ruling on Monday.

No 10 declined to comment. Yet senior government figures, including some cabinet ministers, continue to insist privately that while they will obey the law as narrowly interpreted, they can still avoid any delay to Brexit.

An attempt to circumvent the law would almost certainly result in another bitter court battle for the government - but Johnson's allies hope he could thereby present himself as the man trying to "get Brexit done" in the face of obstructionist remainers.

With a Brexit delay forced on him, Johnson could then fight a general election on a platform of a hard Brexit.

Senior government insiders suggest that to confront the challenge from the Brexit party, the Conservatives would have to promise to strike an even tougher bargain than the one the prime minister is currently offering to Brussels.

The backbench rebels who drew up the Benn bill hoped to avert a no-deal Brexit, but Johnson has angrily accused them of undermining the government's negotiating position.

In Brussels on Friday, a European Commission spokeswoman said: "We have completed discussions with the UK for today. We gave our initial reaction to the UK's proposals and asked many questions on the legal text.

“We will meet again on Monday to give the UK another opportunity to present its proposals in detail.” The spokeswoman added that the proposals did not “provide a basis for concluding an agreement”.

A senior EU diplomat said: “If we held talks at the weekend, it would look like these were proper negotiations. The truth is we’re still a long way from that. We need to work out quickly whether there is the opportunity to close that gap.”

But the Irish deputy prime minister, Simon Coveney, speaking after a meeting in Belfast with the Northern Ireland secretary, struck a more upbeat note, saying a deal was “not mission impossible”.

“I believe it is possible to change that [approach including the old backstop] but we have to make sure that while we change the approach the outcome has got to be the same,” he said, adding that he believed “it’s possible to do that with goodwill and energy on all sides” next week.

But Smith was told by several parties at the meeting that the proposal, backed by the DUP, to give the devolved government the final say on Brexit arrangements in the region after Brexit was a non-starter.

One source with knowledge of the meeting said: “The message has gone back from all quarters in Northern Ireland from Sinn Féin to the Traditional Unionist Voice that this is unworkable and it will destabilize the institutions and the Good Friday agreement and is not plausible - and in light of that, if he is serious about getting a deal, he has to come back with something more realistic.”

Source:

<https://www.theguardian.com/politics/2019/oct/04/boris-johnson-new-constitutional-crisis-no-brex-it-delay>

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