

The House of Commons and the Brexit deal: A veto player or a driver of policy?

*If, as expected, the House of Commons rejects Theresa May's EU Withdrawal Agreement, could it step in to determine what happens next? The House of Commons has not had to run anything directly since the Civil War in the 17th century, writes **Andrew Kennon**, and so could not long term: our political system depends on a government taking responsibility.*



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A key concern for the House of Commons when voting on the proposed deal with the European Union will be not only the merits of the agreement itself, but what happens if it is defeated. In theory, Parliament – and in particular the House of Commons – is the ultimate source of constitutional authority within the UK system. But, in this particular circumstance, if MPs reject what is on offer, will they be able to take the initiative and impose a different course of action, or will they simply have to wait for the government to act?

The key problem for MPs wanting to implement other solutions to the Brexit deal is time – not just 29 March but debating time on the floor of the House. The government has complete control of the business and time of the House – with the exception of specific time set aside for the opposition and backbench business. Furthermore, any solution which requires legislation could only get through Parliament with the government's support.

But is it possible to contemplate the House taking the initiative in finding a solution to Brexit? If the government's deal does not pass in the House on 15 January, might the government really say 'we want to hear what the House thinks of the various options'?

An 'all options' debate?

At this point many MPs will want – and the public might expect – a debate leading to a vote on a whole range of options. In procedural terms, there is a clear precedent from 2003 when the House voted on a variety of options for the composition of a reformed House of Lords – though the salutary lesson from that experience is that each option was rejected. One group of MPs will be solidly opposed to opening up the options like this: those who oppose the government's deal and want a no-deal exit.

It may be that, at the moment, there is no majority for any one solution – but that is because perhaps 200 Conservative MPs are committed to supporting the deal and have not expressed a second preference. Equally an unquantifiable number of Labour MPs are withholding their support for the deal in line with their party's current policy. With the deal rejected, Members on all sides of the House would be given the opportunity to canvass other options and establish which had most support.

It would involve an agonised struggle within the government for it to relinquish control and allow such an ‘all options’ debate. But a combination of the Grieve amendments to the Business of the House motions and an interventionist Speaker, may make it inevitable. The government could commit to listen to the debate and note the outcome of the votes without promising to implement any specific conclusion. Such a debate and series of votes would require a Business of the House motion and the provision of at least a day of parliamentary time – both in the gift of the government.

This is the point at which the various informal coalitions of opinion among MPs will need to crystallise their proposals and demonstrate the breadth and depth of their support.

Getting organised

It is worth considering how backbenchers will organise themselves to pursue their chosen preference. Already we have seen cross-party combinations of like-minded MPs tabling various amendments. The successful amendment to the Finance Bill on Tuesday 8 January (limiting the government’s ability to make tax changes under a no-deal exit) was tabled by a group of select committee chairs. Their membership of the Liaison Committee provides one structure within which specific plans could be developed with assistance from House officials. Indeed, in such a situation, the Cabinet Secretary might allow government officials to advise, as they do the Official Opposition prior to a general election. If the government were to find itself implementing the resolutions of the House, it might be a worthwhile investment to assist in their drafting.

By allowing an all options debate before finalising its own position, the government would retain some room for manoeuvre. By standing apart from the fray it might be able to reflect and avoid resignations.

Reaching the crunch point

The alternative is for the government to proceed with its own decision at the Cabinet meeting on Wednesday 16 January – either the default option of letting events unroll to a no deal Brexit on 29 March or to seek an extension of the Article 50 deadline so that a different deal can be negotiated.

Whatever the government decides, sometime before the end of January, the government will have to bring a motion to the House. To meet the terms of the EU (Withdrawal) Act, it will say something like ‘That this House has considered the matter of the Prime Minister’s statement of [16] January on Brexit’.

If the government does not provide for an all options debate, this ‘neutral terms’ motion will be tacitly endorsing whatever route the government has chosen.

If the government is going for a no-deal exit, amendments will be tabled to leave out from ‘House’ to end and insert ‘does not consent to the UK leaving the EU without a deal.’ An amendment might well go on to say ‘and instructs the government to seek an extension to the period governed by Article 50.....’ If the government decides against a no-deal exit, then there is bound to be an amendment which seeks to reinstate that option.

Either way, the Speaker is likely to select amendments which have wide cross-party support and to enable them to be voted on.

Telling the government what to do?

If an amendment is passed, would the government have to act on it? The instruction could not be enforced in the courts, but a government which did not accept the decision of the House would surely face (and might well lose) a motion of no confidence.

While the prospect of a no confidence motion might encourage a government reluctantly to follow the wishes of a majority in the Commons, there must be some doubt whether the Cabinet could stick together under such pressure. There would be little incentive for ministers who disagreed with the majority view of the Commons to remain in office. It is hard to imagine this being sustainable for a long period of time.

Forcing the government?

If the government proves unresponsive to demands from the House, what procedures may backbenchers deploy to their advantage? Members could resort to procedural guerrilla warfare, with extended points of order, barracking of ministers in the Chamber, multiple amendments to any government business and voting at every opportunity. Once the Finance Bill (now in the Lords) is passed, the threat of denying supply will not exist in the medium term. Equally, hostile amendments to the government's light legislative programme would carry little weight. But the perception of a government unable to do anything would be debilitating and would affect attitudes to an early general election.

The most obvious way in which the House could debate propositions not favoured by the government was on an Opposition Day – which normally occur once a week. A backbench business day would be a more neutral opportunity but that would have to be facilitated by the government. An imaginative Leader of the House would realise that letting go of control on such days might be to the government's advantage.

Otherwise, government business days would continue to provide plenty of chances for backbenchers and the Opposition to pursue their aims without being able to determine which business was debated.

Running the country?

The government cannot completely disengage from the process. Some decisions – revocation of the Article 50 notification or a second referendum – would require legislation which will require careful coordination.

The House has not had to run anything directly since the Civil War in the 17th century. It is possible to fantasise about a situation which could arise, particularly if neither of the main parties really wanted an immediate general election:

- The business of the House would be set by a cross-party business committee perhaps chaired by the Speaker
- The business considered would be brought forward by the relevant select committee – whether draft legislation, policy proposals, expenditure recommendations sort administrative changes
- MPs would vote without party whipping, reflecting their judgment and constituency interest.

This fantasy might work in the short-term but the House of Commons is not geared up to run the country directly and our system of politics does depend on a government taking responsibility and being held to account, ultimately, in a general election.

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