

Johnson faces possible legal action as he plots to ensure UK leaves EU on October 31

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Conservative Prime Minister Boris Johnson is intent on thwarting the legal requirement to request an extension to the October 31 date for the UK leaving the European Union (EU) if no deal is agreed. Stating last month that he would rather “die in a ditch” than request an extension, Johnson is therefore set on a collision course with the dominant pro-Remain faction of the ruling elite that could now end in legal action.

The Benn Act was passed by opposition MPs in Parliament last month. Officially known as the EU Withdrawal Act (No. 2), it stipulates that if Johnson cannot reach a deal with the EU by the end of its two-day summit on October 19, he must write the letter requesting an extension in order to prevent a no-deal Brexit on October 31.

Johnson has called it the “surrender act.” However, it emerged in legal documents made public in a Scottish court yesterday that Johnson has committed to personally signing a letter requesting an extension.

Edinburgh’s Court of Session (Outer House) case was brought by pro-EU forces led by the Scottish National Party to establish whether the Scottish courts have the power to fine or even jail Johnson if he fails to abide by the Benn Act. The claimants are also requesting, in a case to be heard next Tuesday, that the Court of Session (Inner House)—which has more powers to exercise its authority—rule that a judge or civil servant would be able to sign the letter to the EU on behalf of Johnson if he fails to do so by October 17.

One of the claimants in the case, Jo Maugham, a barrister, tweeted paragraphs from the UK government’s written arguments which were read out in court. The paragraphs, according to Maugham, are from the written case of the prime minister. They state that Johnson 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.”

They continue, “[I]n the event that neither of the conditions set out in section 1(1) and (2) is satisfied he [Johnson] will send a letter in the form set out in the schedule by no later than October 19.”

Maugham released the information even as the government refused to release its written submissions to the media. He told PA Media yesterday that they were requesting the court hand down an interdict to Johnson: “We want to see the courts tell him that: ‘Unless you send the letter, no later than October 19, unless you cease trying to frustrate parliament’s intention, there will be personal consequences for you, you could go to prison.’”

The Outer House is set to issue its ruling next Monday.

With less than a month until the October 31 deadline, on Wednesday, Johnson submitted proposals to the EU as the basis for reaching an agreement. His document proposes that Northern Ireland leave the EU’s Customs Union along with the rest of the UK on October 31, but still retain access to the EU Single Market for goods. The plan would involve customs checks that would supposedly take place within the Republic of Ireland and so theoretically avoid a hard border.

His proposals were sent to the EU on Wednesday and were initially received cautiously by senior EU figures. The EU’s main Brexit negotiator, Michel Barnier, declared only that while “there’s improvement... we’re not there yet.”

This position hardened within hours as he told ambassadors Thursday that the British offer was “not operational in any way.” The *Times* noted that Barnier opposed “the lack of detail and the ability of the

Northern Ireland Assembly to veto the deal,” meaning that suggestions from London that changes could still be made to their text were “meaningless.”

The European Parliament’s Brexit steering group said the proposals did not “represent a basis for an agreement to which the European Parliament could give consent.”

European Council President Donald Tusk said he was “open but still unconvinced” about Johnson’s proposals. Tusk spoke out after a 20-minute call with Irish Premier Leo Varadkar.

Varadkar is a staunch opponent of any moves to remove or water down the existing backstop proposals that would actually ensure there was no return to a hard border between the Republic of Ireland and Northern Ireland after Brexit. Speaking Friday in Copenhagen at a joint press conference with Danish Prime Minister Mette Frederiksen, Varadkar said that Johnson’s alternative to a backstop could not be supported as it “appears to create two borders”—one in the Republic’s territory—with the North.

He added, referring to the Democratic Unionist Party (the loyal coalition partners of the Tories), “What’s being put on the table by Prime Minister Johnson is not supported by businesses in Northern Ireland, by civil society, and is only supported by one political party.”

Varadkar signalled his preference, as did other EU leaders, for a further Brexit delay.

Brussels has now given Johnson a deadline of just one week, until October 11, to come up with satisfactory proposals. The *Times* disclosed, “European ambassadors set the October 11 cut-off date last night [Wednesday] after Michel Barnier, the EU’s lead Brexit negotiator, told them that the government needed to ‘fundamentally amend its position’ before formal negotiations could take place.”

On Friday, Johnson did not speak about the Edinburgh court revelations, but he continued to insist that the UK will leave the EU October 31, as he tweeted, “New deal or no deal—but no delay.”

Steve Baker, a leader of the Tory’s hardline anti-EU European Research Group that has long demanded a no-deal Brexit, tweeted earlier of the court documents, “all this means is that Government will obey the law. It does not mean we will extend. It does not mean we will stay in the EU beyond Oct 31.”

Brandon Lewis, the security minister and a close ally

of Johnson, indicated that the government is preparing a move to avoid a further extension but provided no details. He told *Sky News*, “There are so many people who are determined to frustrate Brexit, we’re not going to tell them what our plan is.”

The government is known to have been wargaming various scenarios on how to avoid honouring any extension request they are forced to make. One plan being considered is bypassing the legislation altogether by utilising an Order of [the Privy] Council to suspend the Benn Act until after October 31. Former pro-EU Prime Minister John Major said last week this may be Johnson’s preferred route.

Another means would be to enlist one of Europe’s anti-EU figures, such as Hungary’s Prime Minister Viktor Orban, to veto a Brexit extension. For the EU to enforce a Brexit extension, following a UK request, requires the consent of all 27 EU states. On Thursday, footage was posted on Twitter of the Hungarian Foreign Minister Péter Szijjártó and Ambassador Kristóf Szalay-Bobrovniczky leaving the Cabinet Office in London at the same time as an “emergency” Cabinet meeting was being held on Brexit.

On Friday evening, the EU dug in its heels in opposition to UK demands that further talks be held in Brussels over the weekend on Johnson’s proposals. The *Guardian* cited a “senior EU diplomat” who 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.”



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