

How to leave the EU

Over the last three days I have tried one more time to persuade the government that the best way to leave is to table a Free Trade Agreement based on EU/Japan and EU/Canada, and offer talks after we leave on 31 October. If the EU says Yes then we can avoid all tariffs and new trade barriers whilst the free trade issues are discussed, if necessary at length.

If they refuse this sensible offer which is much in their own interest we leave on the basis of WTO trade, cutting tariffs on our imports as we do so. This is leaving with a WTO deal, including arrangements and agreements for government procurement, haulage, aviation, customs, pipelines, transport links, energy and much else which are now ready.

I have given this consistent advice since 2016. Had Mrs May followed it we would have left a long time ago and would probably have an FTA by now. We would not have paid them large sums of money, not had a long and expensive delay in departure, and not had to face laws and regulations from the EU which we do not have a say on. If we did it now it would avoid the unhappy parts of the Withdrawal Agreement and the further 15 month delay in exit. Above all it would avoid the vexatious and difficult processes with the Withdrawal legislation that await us, offering Remain MPs more opportunities to delay or damage Brexit. It would save us a lot of money, avoid a period until December 2020 when the EU can legislate and overrule us, and deal with the issues on the Irish border.

What is happening in the Commons is a clear polarisation into Leave and Remain teams, with the Leave team getting behind the Withdrawal Agreement route. The Remain team including all Opposition parties seems united, determined to use court actions, rushed hostile legislation and any Commons opportunity to delay or prevent Brexit. The poor negotiating by Mrs May, the loss of the Conservative/DUP majority, and the relentless pressure from the Benn Act and other Remain operations has weakened the UK bargaining position and placed the new government in a very difficult position. If the government does not recognise the need to table an FTA and choose a different route out, we are all left with sub optimal choices.

That letter

Yesterday I wrote about the Benn Act requiring the PM to send a letter asking for a delay to our exit date. I did so because I assumed the government would lose the Letwin amendment, and assumed there would be no vote on the Withdrawal Agreement. Those who want to know how I voted should know I voted against the Letwin amendment.

Today we need to think about what the PM should do over delay. The UK has

already had two delay requests accepted. There does not seem to be any point in a further delay. The EU is not going to negotiate further. The EU is understandably indicating it does not welcome a further delay request and would not rush to assemble a new Council to respond to one

I think the PM should set out his legal case for not sending a signed letter. More importantly he should talk to the nation about why the Benn Act is just the Breaking the PMs promises Act I described yesterday which should not be deemed good law. The last thing we need now is delay.

The debate about Brexit needs moving on. It is not a debate between no deal and deal. No deal is a whole set of agreements and arrangements for a clean WTO exit which is the best outcome from here. This is not a debate about the minutiae of customs arrangements, but a debate about the restoration of a free and independent country. We want an accountable democracy. This Parliament is the lackey of Brussels, seeking to block the people's Decision.

What is a fair and effective Act of Parliament?

The criminal law in our country has for long been a mixture of common law principles and decisions by judges, and Statute law where Parliament legislates to clarify and guide common law practice.

There have been various disagreements between the courts and Parliament over the law. In the end Parliament can legislate to change the law for the future despite a previous pattern of judgements or in place of established court principles. In that sense Statute law is superior law.

In effect though courts still retain powers especially if the law may be unclear as drafted by Parliament or it may be unenforceable. Whilst Statute law is usually supreme, both courts and Parliament have to recognise there are limits to their respective powers to move the law in the way they wish.

Today given the fluid and uncertain constitutional background created by Remain campaigners and lawyers, we need to ask are there any limits on what laws Parliament can pass? Let us take three prospective cases of possible Acts of Parliament.

The first, "The Sunny Sundays Act" would widely be recognised as bad law. This Act states the government must ensure every Sunday is sunny so people can enjoy their day off. Any such idea would be void as it is unenforceable, as government does not have the power to ensure it happens.

The second, "The reduction of rough sleeping Act" is a bit more difficult. This Act says that the Prime Minister has to sleep rough once a week until

Parliament thinks he or she has done enough to curb rough sleeping and passes a motion accordingly. Surely this too should be void, as it infringes the human rights of the Prime Minister and puts that office holder at security risks out on the streets.

The third is “The breaking of the Prime Minister’s promises Act” which requires the Prime Minister to reverse certain specified policies he had set out and campaigned for, because opposition forces in Parliament do not like them. The opposition with a small temporary majority got this through in order to undermine the Prime Minister’s popularity. Is this a fair and enforceable Act? Isn’t our constitutional way of dealing with a PM who no longer commands a majority to remove him by a vote of No Confidence?

These hypothetical proposals show the difficulties of having a minority government and taking away from it the sole right to initiate legislation. The country can become ungovernable with a headstrong Parliament that cannot supply a majority government yet refuses an election.

Deal or no deal?

The Withdrawal Agreement is unchanged, so I have no need to update my comments on it which set out the problems with it, especially concerning the powers of the ECJ and the money.

The Political Declaration is improved. It now makes it clearer that any joint military actions requires the consent of the UK government. More emphasis is given to basing a future trade relationship around a Free Trade Agreement.

The Declaration whilst confirming we become an independent coastal state for fishing purposes puts our fish back into play with the prospect of a new fishing quota and access based agreement with the EU.

It suggests the future agreement is based on an EU Association Agreement, designed to get countries to converge with the EU prior to joining. This is not a good model. The ECJ remains supreme over issues of EU law in any dispute.

The reworked Northern Ireland protocol raises the issue of how could Northern Ireland extricate from following EU rules and customs practices?

This is an important question, as this draft Withdrawal Treaty does not have an Article 50 allowing unilateral exit .

The Queen's speech

We are getting through the traditional Queen's speech debate this week. Normally it sets out what the government will do over the year ahead, specifying which pieces of legislation they will pass. The Speech also highlights any major events of the diplomatic year, telling us about State visits. It does not go into detail about budgets, departmental spending plans or the day to day business of government.

This Queen's speech debate is like no other I have participated in for one very simple reason. The government advancing it has no majority. Every item in it needing Parliamentary approval will require some opposition MPs to vote for it.

In the debate yesterday I asked the representative of the SNP what they would support amongst the list of Bills in the Speech. None seemed to be the answer. Labour has been a bit more helpful, liking the Domestic Abuse Bill.

There is no point in this Parliament continuing unless sufficient Opposition MPs agree to vote for some of the bills in the Speech. Short of any opposition support the legislative programme is a fantasy list, a list of Bills a future Conservative government would like to put through given a majority to do so.

The present Parliament has substantial negative capability, but is unwilling to come together to achieve anything. That is why we need a General election.