

Parliament and the Executive

For the Tuesday debate in accordance with the EU Withdrawal Act the government has tabled a neutral motion on our exit from the EU. The motion simply says Parliament has considered the matter of our withdrawal. Parliament after all has debated little else for the entire last two and a half years. It has also legislated twice to leave the EU on 29 March 2019. As I made clear to the Commons when we passed the EU Withdrawal Notification Act, that was the decision point. Parliament's wish to send the Article 50 letter should have been the end to the debate on the principle of leaving.

Some in Parliament have now decided they would like to move amendments to the government motion to undermine the legislation Parliament has put through to allow us to leave. It is true that passing a motion next week cannot of itself change the law, so unless the law is amended we will still leave. Some hope that if Parliament expresses a strong view that it has changed its mind it might get the government to think again. That would be unwise given the solemn promise made by Parliament and government that we would implement the decision of the referendum.

Some opponents of Brexit have therefore decided they wish to rewrite Parliamentary rules to try to legislate to stop Brexit against the wishes of the government. It has long been the practice agreed by all parties in government that government has three advantages over any other group in the House in order to allow it to govern. The first is that government leads over the choice of business in the Commons to allow it to get its legislative programme through. It still of course needs a majority for each proposal and may have to allow extensive debate and disagreement, often resulting in compromises. It would not be easy or orderly for any group of MPs to propose a Bill and then to try to get it through against other groups competing for time and support. All governments have readily made time available for private members bills and for Opposition debates as part of the deal over cross party working.

The second is anything that requires taxes to be raised and public money to be spent should need Parliamentary consent based on a resolution put to the House by a Minister. The government has to take responsibility for the whole budget and needs to keep control of spending as best it can.

The third is where a power to be exercised is a so called prerogative or Crown power the PM and the government act for the Crown or seek the Crown's assent. Other groups of MPs cannot claim to act in the name of the Crown nor exercise any such powers. Government Ministers negotiate with foreign governments on behalf of the UK.

The wish of some to legislate to delay or prevent our exit from the EU comes up against all of these issues. The Cooper and Grieve amendments wish to alter the idea of government business motions, asserting that their proposed bills would take precedence over anything the government might wish to do, with guaranteed Parliamentary time. They argue wrongly that their bills do

not have any financial implications so they do not need a Money resolution. They ignore the involvement of prerogative powers in negotiating and signing international treaties.

The government's strongest case in pushing back on these revolutionary constitutional proposals is that clearly any decision to extend our membership of the EU has substantial financial implications. Under the EU Withdrawal Act our payments to the EU cease on March 29 2019. The government has no power to authorise payments for contributions and programmes after that date. The so called £39bn of the Withdrawal Agreement would need new legislation to authorise it. All payments up to 29 March are legal under the European Communities Act, but this Act ceases to be on our Statute book after March 29th. Staying in for longer would doubtless be expensive and should need a government motion to approve the spending, with Treasury consent that it is affordable within the revised budget.

The government would also be right to warn that moving over to a new system of choosing how to spend Parliamentary time could make government very difficult. If a government cannot be sure of enough time to try to get its programme through it cannot govern effectively. Any government with a small majority will be especially at a disadvantage. Were this to be established as a new precedent then the next government with a decent majority would presumably legislate to stop Parliament having such extensive rights, and might make things less flexible and friendly to backbenchers and opposition than they are today under a settlement that has lasted for many years.

The government can also point out the EU has not offered us a few months delay on Article 50 and that would require negotiation with the EU over the terms. The EU would wish to negotiate with the government, not with a temporary alliance of MPs.