

# Parliament, government and the courts

We live in a relatively free society with some separation of powers. The common law evolves through court decisions by Judges. Parliament can at any stage seek to change the law by an Act of Parliament. Statute law commands respect from the courts and can override common law but the courts do not always "obey" it. They interpret it. Sometimes they interpret it in ways that Parliament dislikes and regards as a distortion. In such cases Parliament can legislate again to give a clearer instruction to the courts.

All our current domestic law and all the powers of government, Parliament and courts are subordinate to the EU Treaties, EU regulations and directives and to judgements of the European Court of Justice. An EU law can override or strike down an Act of Parliament or a judgement of our Supreme Court if appealed to the ECJ. That was the kernel of the referendum debate for many people, with many Leave voters wishing to restore our domestic rule of law without EU supremacy.

The courts reserve the right to query or even ignore Statute law if they think an Act of Parliament is unclear, or violates human rights or some other superior law or legal principle. A law has to be clear, fair to all and enforceable. An Act of Parliament saying the sun must shine tomorrow, or saying 20 year olds must get up at 6 am or saying people whose surnames begin with an A cannot be allowed a driving licence would all likely to be void for good reasons.

The courts traditionally have not interfered in matters of Crown or government prerogative or high politics. They have tended to take the view if asked that Parliament has the necessary power to curb or remove a Prime Minister who uses Crown prerogative in ways that annoy MPs, who in turn will be influenced by public opinion on these issues. If a PM ceases to please Parliament can remove him or her by a No Confidence vote.

The courts have also taken the view that where an issue is hotly contested between parties and factions within the public, it is best to let politics and Parliament sort out the disagreement. It would be unacceptable if the UK's departure or staying in the EU fell in the end to be decided by a judgement in the Supreme Court. Of course the Supreme Court needs from time to time to find against the government in judicial review cases where litigants are challenging the way government has made a decision or enforced a policy. That is not the same as the Supreme Court presuming to itself the unique power to settle the biggest political question of the decade. However big a mess Parliament has made of it, this needs to be resolved by Parliament. If Parliament finds a way to get us to remain in the EU after October 31, then it will fall to the electorate to remove from office those who have failed to implement the will of the people.

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# Yellowhammer – is that it?

The Yellowhammer document when released turned out to be thin and poorly researched.

A lot of it which went largely unreported was grudgingly reassuring. Our water supply will be fine. We will still have normal services for electricity and gas. Demand for energy will be met. There will of course be no overall shortage of food. There is a “low risk of significant sustained queues at ports outside of (sic) Kent”.

Perhaps the worst warning was that a large number of foreign vessels might still be fishing in our waters, and doubt is expressed about our ability to enforce the return of our fishery to UK control immediately. I think I have higher expectations of our coastal patrols and of the conduct of our neighbours than that, who should want to obey the new law.

The two worries the Remain press have concentrated on are the unproven suggestions that there could be shortages of some imported medicines and some imported foods owing to delays and congestion at Calais. At no point does the document suggest we will create delays at Dover, and the paper accepts that the UK is not going to impose delay inducing barriers and extensive checks at our border. Their worry about Calais, denied by the port authorities there, is that the new checks at Calais will defeat UK truckers seeking entry to France and will create queues. This in turn I suppose they think might delay the lorries going from Kent to the continent to pick up continental products to come back causing knock on effects on the Kent side. As many of our lorries go out empty this seems unlikely. Most of the full ones are run by large logistics companies or directly by large exporting companies who will I am sure be able to complete the electronic documentation in advance of travel to meet the requirements. That is what they are paid to do, and what they do for non EU trade today.

I was talking to a food importer this week who is looking at taking more product for the north via Immingham, discovering it is quicker and cheaper than the Dover/Calais route. Some will do this, and more would do so if problems did start to emerge at Calais.

This worst case wrongly assumes markets stop functioning. Logistics is very competitive. There are many options. During our years in the EU the Calais/Dover route has sometimes been troubled by strikes, ferry and train delays or cancellations, crashes and congestion on the motorway networks either side of the channel, but we have never run out of food or medicines. If a complex supply chain is disrupted by French strikes you choose a new sea route or resort to air freight to see you through. Yellowhammer implies Dover is fine, subject only to too many Calais delays caused by UK trucks not complying with standard customs and shipment filings. It is difficult to see why this should happen, as it would be bad logistics business to do that. There would also be plenty of other options for frustrated customers if they tried it.

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# Loan Charge Review Announced

Following representations by many MPs including myself on behalf of constituents, the government has announced a further review of the loan charge.

I am reproducing today the letter I have been sent with all the details. As you will see the Treasury say the approach they have adopted towards the loan charge still stays in place, but there are arrangements concerning the Review and concerning payment of tax owing which constituents affected by this charge may like to use.

Dear John

## **DISGUISED REMUNERATION LOAN CHARGE REVIEW**

I am writing to give you an immediate update on the Loan Charge review announced today.

As you will know, the Loan Charge was announced at Budget 2016 and passed into law in Finance Act (No. 2) 2017. It is designed to tackle contrived tax avoidance schemes where a person's income is received as a loan and not repaid.

The Government is clear that such schemes do not work, that wages paid in this way have always been taxable, and that the underlying tax avoidance behaviour is unfair to the 99.8 per cent of taxpayers who did not use these schemes. The Loan Charge was introduced following 20 years of action by HM Revenue & Customs (HMRC) and the Government against these schemes.

There has been a significant amount of misinformation in relation to the Loan Charge, which has caused confusion and anxiety among those affected. However, those affected by the charge have also raised concerns which you will have heard and which the Government has sought to address.

In particular, I wrote to all colleagues on 18 July 2019 to provide an update on new measures to address concerns about the Loan Charge. These measures reflected extensive discussions with professional bodies, independent experts, the official Opposition and colleagues across the House, including members of the Loan Charge All-Party Parliamentary Group. They included confirmation that HMRC will exercise additional flexibility for individuals settling under the published terms who are in genuine hardship.

In addition, HMRC has confirmed that they will not force anyone to sell their main home to pay their debts, and that there is no maximum period over which payment can be made. They also announced simplified payment arrangements for those settling under the published terms. Those settling with income below £50,000 who are no longer involved in tax avoidance may have up to 5 years to

pay without providing detailed supporting information, with up to 7 years for those with income below £30,000.

### **Independent Review of the Loan Charge**

Nonetheless, the Government recognises that concerns persist about the Loan Charge.

The Chancellor of the Exchequer has therefore commissioned an independent review to consider the impact of the Loan Charge, focusing on individuals who entered directly into these schemes.

I am delighted that Sir Amyas Morse has agreed to undertake this independent review. As the Comptroller and Auditor General and Chief Executive of the National Audit Office between 2009 and 2019, Sir Amyas is highly respected across the House, and thus well suited to scrutinise this important subject fairly and independently.

The Review will report and provide recommendations to the Chancellor and me by mid-November 2019 so that any individuals affected can have certainty about their next steps in advance of the current 31 January 2020 deadline for individuals to file a 2018-19 Self Assessment return and pay the Loan Charge.

Sir Amyas will specifically consider:

- Whether the Loan Charge, as it applies to individuals who have directly entered into disguised remuneration schemes, is an appropriate response to the tax avoidance behaviour in question; and
- Whether changes announced by the Government in advance of, and since, the Loan Charge came into effect address any legitimate concerns that have been raised about the impact on individuals, including affordability for those affected.

In considering its recommendations, the Review will take into account the impact on wider taxpayer fairness and HMRC's ability to tackle tax avoidance effectively in the future.

The full terms of reference are available at [www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review](http://www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review).

### **Your constituents and the Independent Review period**

I would be grateful if you could make clear to any constituents raising the subject that, while the Review is under way, the Loan Charge remains in force in line with current legislation.

Individuals should continue to prepare to file a 2018-19 Self Assessment return and pay the Loan Charge by 31 January 2020. However, we do not know what Sir Amyas will recommend and I recognise that naturally some individuals may have concerns about forthcoming deadlines ahead of the Review's conclusion.

As a result, I can confirm that I have agreed with HMRC that those in the process of settling will be able to pause and wait for the outcome of the Review before deciding whether to proceed. However, individuals who are subject to the Loan Charge but who have not yet settled should still submit an information return to HMRC setting out their loan balance by 30 September 2019.

HMRC have published guidance, which is also available at [www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review](http://www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review).

Further details on the review will be available shortly.

**Jesse Norman MP**

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## [A big political upheaval in Parliament as MPs realign](#)

This Parliament has been characterised by a record number of Ministerial and Shadow Ministerial resignations, and by a large number of MPs deciding to resign from the party they belonged to during the election. Many of these resignations have been over differing approaches to leaving the EU, with a trend for MPs elected on platforms to leave moving over to stances and parties that wish to remain. It appears that UK politics is currently realigning on the basis of Leave or Remain, with the SNP and Liberal Democrats standing for Remain, the Conservatives for Leave, and Labour caught trying to straddle the two positions. The Deputy Leader has now declared for Remain, against his Leader who wants to be ambiguous.

The Conservative party has currently lost the most MPs, with 29 now resigning the whip or having the whip removed. Most have become independent MPs. Four left to join Change UK alongside 7 Labour founders of that brief movement. 3 have now joined the Liberal Democrats. Nick Boles resigned the whip to become an Independent Progressive Conservative.

Labour has lost 15 MPs. The issue of Mr Corbyn's style of leadership has been an important factor, as well as the party's changing and vague stance on the EU. Several have gone citing the party's lacklustre response to antisemitism charges. Some are now Labour Independents, whilst others are in the Lib Dems or joined Change UK when it was first set up.

The Lib Dems as the most pro EU national party has picked up 5 seats, whilst losing one of its original MPs to independent status. He had promised in the 2017 election to honour the referendum result and rightly thinks his party no longer offers that.

This unusually high turnover has occurred with none of them thinking they should test their new views and new party loyalty in a by election. Electors are understandably angry where their MP has switched from say Labour to Lib Dems from a party that claimed to support Brexit to one that fundamentally opposes it, without asking for electoral endorsement. An MP moving from his or her party to be an independent, if they say they are doing so while still sticking with their policy promises at the last election have a good case for saying no to a by election, in contrast to those shifting from a Leave party to a Remain party in order to support Remain.

Conservative 288 minus 29

Labour 147 minus 15

Lib Dem 17 plus 5

Change UK 5 plus 5

The Independents 3 plus 3

Independent 32 plus 31

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## [The government says it will respect the law](#)

Yesterday the government rightly said it would respect the law. It also hinted at a major problem with the European Withdrawal Number 2 Act recently passed by both Houses. It is by no means clear how the government could comply with it, especially given the Kinnock amendment incorporated into it. The rule of law is an important concept. It usually includes the propositions that law has to be clear, reasonable and enforceable. Statute law carries the authority of being passed by Parliament but still needs to meet these tests for the court to enforce it. Quite often the courts and Parliament have exchanges about what the law means and how it should be applied.

This European Withdrawal Act of Parliament says the government “must seek to obtain from the European Council an extension” to UK membership for three months, if no agreement has been reached which Parliament approves . It goes on to give a reason – “to debate and pass a Bill to implement the Agreement between the UK and the EU (The Mrs May Withdrawal Treaty)...including provisions reflecting the outcome of the interparty talks as announced by the Prime Minister on 21 May 2019, and in particular the need for the UK to secure changes to the Political Declaration to reflect the outcome of those inter party talks”.

So the government is asked to pass a major piece of constitutional legislation which the Parliament has three times rejected, with no promises or guarantees from the official Opposition they will change their mind and now vote for it in a Parliament where the government has no majority and has numerous government supporting MPs who do not agree with the Agreement. In

addition it is asked to negotiate a new Political Declaration to include unspecified outcomes from talks which both sides said ended without agreement . Who will share with us what were the outcomes of the talks that now have to be negotiated into the Political declaration and what if the EU will not consent to those changes?

The draft letter laid down in the Act for the PM to send requesting an extension does not offer any reasons to the EU why an extension should be granted because it was drafted on the assumption the Kinnock amendment would not pass. The EU has previously said it would grant more time to secure the passage of the draft Withdrawal Treaty agreed with Mrs May, but later concluded the UK Parliament was not going to pass it given the long and acrimonious debates and the three votes against. The EU has also said it might grant an extension for an election or second referendum, but Parliament has expressly voted against an early election to resolve matters, and has not supported a second referendum on the various occasions it has considered this idea. There cannot now be an election prior to the exit date currently enshrined in UK and EU law.

How could anyone enforce a law of this kind on an unwilling government when Parliament is asking the government to do something which cannot be done or is based on a false assumption? The evidence is Parliament does not want to vote for the Withdrawal Treaty unamended, and there is no agreed set of changes to the Political declaration emerging from the inter party talks to take up with the EU. This law is a mess. It does not mention a so called "No Deal" Brexit, and does not take it off the table. It seeks to exit the EU based on the current Withdrawal Treaty which has thrice been rejected by the very same Parliament passing this Act. Government lawyers need to analyse this Act carefully.