

# The sovereignty of the people, and the battle of government and the Judges

It would be completely unacceptable if the UK's decision to stay for longer in the EU or to leave on the due date of October 31st fell to be decided by a few Judges. The people are sovereign. We exercised our sovereign right to decide between Leave and Remain. We accepted the promises of the main parties in Parliament that they would implement our decision. The ballot paper did not qualify leave, or suggest we could only leave if there was a deal the Establishment liked. Electors followed up the referendum by electing a Parliament dominated by two parties promising to implement the vote. The public put the Lib Dems in a weak third place on their proposal of a second referendum because they did not like the result of the first.

The sovereign people delegate their sovereignty to an elected government and Parliament to exercise for them between elections. The power of the people is restored at election time when we can change as many MPs as displease. Between elections the force of public opinion seeks to keep the MPs and government honest, loyal to its promises and keen to serve the public.

The relative power of Parliament and government has long been fought over in the courts and in Parliament. The law courts have usually accepted that matters of high policy and politics are matters for Parliament alone. They have also respected Parliamentary privilege which allows Parliament to talk freely about all matters, save the details of an individual's actions which are the subject of a live court case. Parliament respects the sole right of the courts to determine the guilt or innocence of people under the criminal law, and their right to determine civil cases without Ministerial interference. Ministers may of course intervene or undertake an action in a civil case by submitting a government view to the Judge for decision.

Government has been given powers to negotiate treaties, propose budgets and submit draft laws to Parliament for approval. Government controls the timetable of Parliament but by convention allows regular days for the Opposition to specify the subjects that most concern to them and to debate them. It does not provide Opposition legislation time. It is based on the assumption that government commands a majority of the House. If government no longer commands such a majority then there must be a General election so the public can choose a government who can.

There are currently some MPs who are determined to break this constitutional settlement. They wish to assert Parliament above the government so that government can no longer function. They want to strip government of its powers to control the timetable, propose the budgets and the laws. They wish to irresponsibly spend money the government has not provided and pass laws the government does not accept, without themselves having the votes or ability to take the responsibilities of government on themselves. Worse still, when the government challenges them to an election so the sovereign people can decide whether they want the government's approach or do want to

change to that of the Opposition, they block any such move.

The final irony is that an anti government alliance in the Commons uses its temporary power to propose a law to put through an Act of Parliament to make the PM do what he does not want to do, placing all these huge issues under the courts. So far from making Parliament sovereign as they claim, by usurping the power of the people in the referendum and denying an election, they want to submit Parliament to the power of the law courts. How can they seriously suggest that through this Act of Parliament our departure from the EU should fall to be decided by Judges, who will be invited to slap down the Prime Minister to do so? What Judge would want to overrule the decision of the people in a referendum?

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## Last of the summer whine

Some Remain advocates are using David Cameron's memoirs as an opportunity for another whine about the referendum.

I write to praise David Cameron. His decision to hold a referendum and to let the people decide was a good one. I am glad to read that he defends it in his new book. He should be proud that he decided to trust the people to make this important decision.

I must now give David some advice. He should also be proud of the decision the voters made. He and the government he led was unequivocal. They told us they would implement whatever we decided. That implied he rightly thought the UK could have a good future either way. I am very proud of the UK people voting as we did. We showed confidence in ourselves and our country. We saw that things can be better if we leave. As a man who led our country and studied public opinion closely for six years, he should welcome the clarity the voters gave him on this troubling issue.

I don't like to think of David still worrying about the consequences of what he put in train. He should remember that the Lib Dems called for a referendum on In or Out of Europe. Labour supported the legislation he put forward to give us a referendum. 544 MPs voted for the actual referendum we held. The main parties at one time or another have all favoured a referendum, understanding that the mighty Treaties we have signed between our original membership and today did need to be put to the UK electorate directly.

I would also argue that we show ourselves to be good Europeans by voting to leave. The EU project today is to seek the full political union that the large currency, economic and monetary union requires to make it successful. As the UK under governments of all three main parties has refused to join the Euro, we need to get out of the way to let all those who do want a much fuller union to complete their construction. Out of the EU we can spend our own money, make our own laws and be truly global in our outlook and reach.

The sooner we do so the better.

David tells us he would like the country to pull together more. He can help it do so by using his book launch to urge all his friends to get behind Brexit and help us make it a success.

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## [Pension flexibility for NHS Clinicians](#)

I have received the enclosed update from the Secretary of State for Health and Social Care about pension flexibility for NHS Clinicians:

Dear John

### **PENSION FLEXIBILITY FOR NHS CLINICIANS**

I'm writing to update you on the urgent steps that the Government is taking to resolve the pension tax issue that is affecting delivery of frontline NHS care for patients. Yesterday I published a consultation on a new package of pension flexibilities for senior NHS clinicians who face annual allowance tax charges, including consultants, GPs and top nurses.

The NHS Pension Scheme is a highly valuable part of the package of pay, terms and conditions for NHS staff, which continues to compare very favourably with schemes in other sectors. It provides hard working and dedicated staff with security in retirement after decades of public service and patient care.

The Government provides tax incentives to encourage pension saving across society. Pension scheme contributions can therefore be made tax-free. However, the cost of providing this tax incentive is very substantial so there are restrictions on the amount of pension saving that receives tax relief.

The relative generosity of the NHS Pension Scheme means that for some staff, largely senior doctors, changes to the way that these restrictions operate has resulted in their pension growing to a level beyond their tax-free allowance. A tax charge is levied on the value of pension growth that exceeds the tax-free allowance. This is causing significant financial concerns to senior clinicians, with many now looking closely at whether it is in their financial interest to do extra work for the NHS.

The Government recognises that in response to concerns about annual allowance tax charges, some clinicians are seeking to control their income and pension growth by limiting or even reducing their NHS work to avoid breaching their annual allowance for tax-free pension saving.

Discussions with the medical profession and employers have highlighted the need for clinicians to have wide-ranging pension flexibility to control the

amount of tax-free pension saving they build up in the NHS Pension Scheme and so manage their annual allowance tax liability without reducing their workload.

Accordingly, the consultation proposes giving senior clinicians the option to:

- Choose a personalised pension growth level at the start of each tax year (1 April) and pay correspondingly lower contributions. The level chosen would be a percentage of the normal scheme contribution in 10% increments. For example, 50%, 30%, or 70% of the full accrual level.
- Fine-tune their pension growth towards the end of the tax year when they are clearer on total earnings. This will allow them to 'top-up' their pensions to the maximum amount without hitting their tapered annual allowance limit.

This flexibility will allow clinicians to tailor the level of growth in their NHS pension so they can maximise their contribution to patient care without sudden annual allowance tax penalties and whilst sustaining growth in their pensions.

The Government is committed to ensuring that hard-working clinicians who provide additional care for NHS patients do not find themselves considering reducing their work commitments, as a result of the interaction between their pay, their pension and the tax regime that surrounds this. The consultation therefore seeks views on how new important flexibilities in the way the NHS Pension Scheme operates can ensure that senior clinicians are rewarded properly for additional work whilst managing the impact on their pension and their tax liabilities in a fairer manner.

It's vital that we get this right, so we want NHS staff and employers to contribute their views to the consultation so that we get these changes right. The consultation is open until 1 November 2019 and I ask you to encourage interested constituents to have their say. Subject to the consultation outcome and amendment of NHS Pension Scheme regulations, the new flexibilities would be in place ready for the next tax year.

The Government also recognises need for urgent action to help retain and maximise the contribution of our highly-skilled clinical workforce. NHS Employers last week published guidance on possible local approaches that employers can consider taking immediately to mitigate the impact of pension tax on their workforce this tax year.

Taken together, I believe these actions are a clear statement of intent by Government to find an urgent and comprehensive solution to this issue and ensure hardworking NHS staff are not penalised for working overtime. It's all part of our commitment to the NHS.

Yours ever,

**MATT HANCOCK**

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# 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.