

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.