

## **Why giving Parliament the final say is so vital**

### **Overview**

- The House of Lords voted to amend the EU (Notification of Withdrawal) Bill to give effect to the following four points:<sup>1</sup>
  - The PM cannot conclude an Article 50 agreement on the terms of UK withdrawal from the EU without approval of both Houses of Parliament
  - This approval has to be granted before the European Parliament debates and votes on the agreement
  - This approval has to be granted for an agreement on the future of the UK-EU relationship (ie not just the withdrawal settlement)
  - This approval is required if the PM decides to leave the EU with no such agreement in place
- This is an essential amendment Open Britain is urging MPs to now support. A guaranteed democratic check and balance in the system will ensure that the final agreement is in the best interests of the country and economy.
- This is not about thwarting Brexit: Article 50 will be triggered on the Government's planned timetable, giving life to the mandate of June 23<sup>rd</sup>. This is about giving democratic oversight to Brexit's execution.
- There are two key principles Open Britain believes are essential to have enshrined in legislation:
  - The UK Parliament will vote on the draft deal the Government returns with before or at the same time as the European Parliament (likely to be October 2018 at latest) which will give enough time for any concerns expressed to be taken in to consideration and shape further negotiations;
  - If the Government cannot get agreement from Parliament for its deal, the UK will not crash out of the EU on to the WTO as a default consequence of the Government's failure, as Parliament would have to give consent to this course of action.

Below are some key reasons to support this amendment.

### **The Government are not offering a meaningful vote**

- On 7<sup>th</sup> February in the House of Commons, Brexit Minister David Jones claimed that the Government had made a concession which would honour the above principles, but in reality did nothing of the sort. The Government still offered a 'deal or no deal' ultimatum. David Jones said: "There will be a meaningful vote. The vote will be either to accept the deal the government will have achieved...or no deal. Frankly, that is the choice this House will have to make."<sup>2</sup> The Prime Minister has also consistently maintained that she wishes to have the ability to walk away from negotiations unchecked, which would deny Parliament a vote in those circumstances.

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<sup>1</sup> <https://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0152/hcb152.1-2.html>

<sup>2</sup> <https://www.ft.com/content/922423fa-ed4b-11e6-ba01-119a44939bb6>

- Lord Bridges, Brexit Minister in the Lords, reiterated this position, saying: “the commitment is to bring forward a Motion on the final agreement to be approved by both Houses of Parliament before it is concluded”, adding that the Government’s position was to prevent “Denying the Prime Minister the ability to walk away from the negotiating table.”<sup>3</sup>

### **This comes down to whether ‘no deal’ is acceptable for the UK**

- Lord Bridges highlighted the key dividing line in this debate when he made clear that the Government wanted to retain the ability to leave the EU, unchecked, with ‘no deal’:

“Denying the Prime Minister the ability to walk away from the negotiating table, as proposed new subsection (4) would do, would only incentivise the European Union to offer us a bad deal. The European Union is bound to see that there are a number of people in Parliament who think that any deal is better than no deal. We heard some noble Lords argue just now that to go to WTO terms would be bad for Britain.”<sup>4</sup>

*Please see Annex 1 for further information on the WTO no deal scenario*

### **Strengthening the Government’s negotiating hand**

- Government claims that this amendment would weaken its negotiating hand are based on the false premise that the EU wants to offer the UK a bad deal to keep us in the EU. The EU has accepted the UK is leaving. They have gone as far as to publish a White Paper about their future as the EU27.
- The EU’s primary objective in Brexit negotiations will be to protect the political stability of the bloc. This means giving us a deal which offers the EU competitive advantage over the UK, so Continental Eurosceptics see there is a demonstrable cost to departure. A ‘deal or no deal’ ultimatum to the UK Parliament is therefore the optimum scenario for the EU: they can offer the UK as bad a deal as they wish knowing that Parliament will accept it as the lesser evil to crashing out with no deal at all. This also suits the PM, knowing she can force through whatever she returns with. This does not, however, suit the country, forcing upon them a deal no matter the cost.
- By contrast, the PM would be strengthened in negotiations if she were able to argue that she had to get the final deal through Parliament and, if she did not, she would request an extension of negotiations. What is the stronger starting position for the UK: urging the EU to agree an ambitious deal when the EU knows this has to have the support of the UK Parliament; or urging the EU to agree an ambitious deal when the EU knows you’ll accept whatever they offer?
- Furthermore, building in a process whereby the PM has to remain close to Parliamentarians from the outset, knowing she needs their support, increases the likelihood she will deliver a deal they will support.

### **Principle of Parliamentary sovereignty**

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<sup>3</sup> [https://hansard.parliament.uk/lords/2017-03-07/debates/0C978865-1678-4A7F-98A5-6AE55B3FB652/EuropeanUnion\(NotificationOfWithdrawal\)Bill](https://hansard.parliament.uk/lords/2017-03-07/debates/0C978865-1678-4A7F-98A5-6AE55B3FB652/EuropeanUnion(NotificationOfWithdrawal)Bill)

<sup>4</sup> [https://hansard.parliament.uk/lords/2017-03-07/debates/0C978865-1678-4A7F-98A5-6AE55B3FB652/EuropeanUnion\(NotificationOfWithdrawal\)Bill](https://hansard.parliament.uk/lords/2017-03-07/debates/0C978865-1678-4A7F-98A5-6AE55B3FB652/EuropeanUnion(NotificationOfWithdrawal)Bill)

- Lord Pannick, signatory to the amendment, said in the Lords: “We are considering the Bill because, and only because, as he reminds the House, the Supreme Court ruled as a matter of law that parliamentary sovereignty is required at this stage of notification of withdrawal. I say, not as a matter of law—because I am not arguing a legal case—but as a matter of constitutional principle, that parliamentary sovereignty is as important at the end of the negotiating process.”<sup>5</sup>
- Bindmans LLP has circulated legal advice to Peers which suggests that, if no agreement is reached within the Article 50 negotiating period, the constitutional requirement to uphold Parliamentary sovereignty in those circumstances would be for Ministers to seek legislative consent from Parliament for the UK leaving the EU in the absence of a withdrawal agreement (paras 55 and 61). The advice specifies that this would require an Act of Parliament:<sup>6</sup>

“Parliamentary sovereignty and the principle of legality require Parliament expressly to authorise withdrawal from the European Union on the terms agreed with the European Union, or to authorise withdrawal if no acceptable terms can be agreed. Given the fundamental changes in the law and legal rights that will result, such authorisation must take the form of primary legislation. Parliamentary resolutions, without legislation, cannot change domestic law, nor amend or abrogate existing rights. Primary legislation would, moreover, provide legal certainty and minimise the risk of further legal challenge.”

#### **Same powers as national European Parliaments and the European Parliament**

- The final trade agreement with the EU will almost certainly be classified as a ‘mixed’ agreement, due to its depth covering shared competences. This means that ratification will have to take place at national and federal level of every Member State. Given that the Ministers and European officials with whom the UK will be negotiating will have to go back to every individual European parliament and the European Parliament - all of whom have a veto - before they can conclude the deal, this amendment simply seeks to give the UK Parliament the same power.
- Why would the UK Parliament opt to be the most underpowered of all European Parliaments throughout the Brexit negotiation process?

#### **Brexiters are starting to admit we will get a “bad agreement”.**

- The main purpose of this amendment is to introduce a democratic check and balance which prevents the UK having to accept a deal that is not in our national interest. This is made more important now that arch-Brexiters are themselves now openly saying that this is the likely outcome of negotiations. Lord Lawson, for example, has said that “a bad agreement is all that is likely to be on offer”.

“As the Prime Minister made clear in her excellent Lancaster House speech and as the subsequent White Paper reiterated, no agreement would be better than a bad

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<sup>5</sup> [https://hansard.parliament.uk/lords/2017-03-07/debates/0C978865-1678-4A7F-98A5-6AE55B3FB652/EuropeanUnion\(NotificationOfWithdrawal\)Bill](https://hansard.parliament.uk/lords/2017-03-07/debates/0C978865-1678-4A7F-98A5-6AE55B3FB652/EuropeanUnion(NotificationOfWithdrawal)Bill)

<sup>6</sup> [https://www.bindmans.com/uploads/files/documents/Final\\_Article\\_50\\_Opinion\\_10.2.17.pdf](https://www.bindmans.com/uploads/files/documents/Final_Article_50_Opinion_10.2.17.pdf)

agreement. Sadly—and it is sad—a bad agreement is all that is likely to be on offer.”<sup>7</sup>

- Why should the UK have to accept a ‘bad deal’ no matter the cost with the inability to question whether preferable alternatives may be available? Do we want to be in the lemming position that, however dangerous the cliff edge, we proceed regardless?

**Polling shows the public support Parliament having the final say**

- Polling for Open Britain shows that the public want Parliament to have the final say over whether the UK should accept the final deal with the EU.
- Furthermore, if the final deal is not good enough the public believe the Government should continue to negotiate with the EU and seek a deal that Parliament can accept rather than leave the EU without a deal, which is the path the Government are currently proposing.

	Total	Remain	Leave
<b>Which should have the final say in each of the following, the Government, or Parliament?</b>			
<b>Whether the final, overall deal should or should not be accepted by the UK?</b>			
Government	<b>33</b>	17	52
Parliament	<b>40</b>	63	24
Don't know	<b>27</b>	20	24
<b>If Parliament decides that the final deal is NOT good enough, which would you prefer:</b>			
The UK should leave the EU anyway, without a deal	<b>34</b>	9	63
The Government should continue to negotiate with the EU and seek a deal that Parliament can accept	<b>51</b>	79	27
Don't know	<b>15</b>	12	10

Source: YouGov poll for Open Britain<sup>8</sup>

- This is supported by polling by BMG Research, which shows that if Parliament rejects the Prime Ministers deal, just one quarter of Britons (25%) think “we should leave the EU with no set future relations in place and revert to trading with the EU on World Trade Organisation rules.” A greater proportion (27%), said that Theresa May should continue to renegotiate a deal while around one in seven (14%) said that we should stay in the EU on new terms that the Prime Minister would negotiate. Only one in six (15%) said that we should stay in the EU on existing terms (19% don’t know).<sup>9</sup>

**There is a precedent for this in the US**

- The Government claims that giving Parliament the power to authorise the final UK-EU deal, in whatever form, would undermine the Government. There is, however, precedent for this:

<sup>7</sup> [https://hansard.parliament.uk/lords/2017-03-07/debates/0C978865-1678-4A7F-98A5-6AE55B3FB652/EuropeanUnion\(NotificationOfWithdrawal\)Bill](https://hansard.parliament.uk/lords/2017-03-07/debates/0C978865-1678-4A7F-98A5-6AE55B3FB652/EuropeanUnion(NotificationOfWithdrawal)Bill)

<sup>8</sup> [http://www.open-britain.co.uk/mcfadden\\_people\\_want\\_parliament\\_to\\_be\\_able\\_to\\_send\\_the\\_government\\_back\\_to\\_the\\_negotiating\\_table\\_if\\_it\\_believes\\_the\\_final\\_deal\\_is\\_not\\_good\\_enough\\_for\\_britain](http://www.open-britain.co.uk/mcfadden_people_want_parliament_to_be_able_to_send_the_government_back_to_the_negotiating_table_if_it_believes_the_final_deal_is_not_good_enough_for_britain)

<sup>9</sup> <http://www.bmgresearch.co.uk/british-public-overwhelmingly-oppose-pms-plan/>

in the United States Congress “retains the authority to review and decide whether any proposed U.S. trade agreement will be implemented”.<sup>10</sup>

Trade Promotion Authority (TPA) laws to guide both Democratic and Republican Administrations in pursuing trade agreements that support U.S. jobs, eliminating barriers in foreign markets and establishing rules to stop unfair trade.

TPA does not provide new power to the Executive Branch. TPA is a legislative procedure, written by Congress, through which Congress defines U.S. negotiating objectives and spells out a detailed oversight and consultation process for during trade negotiations. Under TPA, Congress retains the authority to review and decide whether any proposed U.S. trade agreement will be implemented.

### **The Prime Minister used to support Parliamentary scrutiny**

- Theresa May has a history of supporting Parliament having a greater role in scrutinising Government’s EU negotiations. In 2007 Theresa May, then the shadow leader of the Commons, claimed that ministers should have to set out their negotiating positions to a Commons committee “and gain its approval” before talks with the EU. In a pamphlet co-authored with her current chief of staff she wrote:<sup>11</sup>

“Our feeble system of scrutiny undermines Parliament’s ability to check or restrain the Government’s actions in Europe...In our constitution, Parliament is supposed to be sovereign, but this weakness means that in practice it is not. We therefore need a system that gives Parliament real powers over ministers, enough time to scrutinise new EU laws, and the transparency to restore public trust in the process.”

- In 2008 Mrs May said she was in favour of parliament having the power to dictate how ministers approach negotiations with EU leaders. She called for "clear sanctions" to be put in place if ministers "went on to negotiate a different position" in Brussels to the one Parliament had agreed. She said:<sup>12</sup>

"We should have a statutory scrutiny reserve so that ministers would have to gain parliamentary approval before negotiations in the Council of Ministers...The scrutiny reserve should be put on a statutory basis so that ministers are required to come to the committee before negotiations at the European Council and cannot override it."

### **Leave campaigners used to support Parliamentary sovereignty**

- It is the utmost hypocrisy for Leave campaigners to now deny Parliament the final say on this momentous decision. They have for many years campaigned to increase Parliamentary sovereignty and are seeking to deny it when it is most important.

*Nigel Farage:*

- 'I believe in democracy, I believe in self-government...I think our supreme court should be the ultimate arbiter in our land', The Heritage Foundation speech, July 2015, 20:38

*Daniel Hannan*

<sup>10</sup> <https://ustr.gov/trade-topics/trade-promotion-authority#>

<sup>11</sup> <http://www.independent.co.uk/news/uk/politics/theresa-may-brex-it-article-50-brussels-negotiating-strategy-brussels-a7386156.html>

<sup>12</sup> <https://www.politicshome.com/news/europe/eu-policy-agenda/brexit/news/79807/excl-theresa-may-called-ministers-get-commons-mandate>

- 'The sovereignty of Parliament is a shorthand for the sovereignty of the people', European Parliament 7 May 2009, 0:22
- 'It's basically about democracy. We fought a civil war in this country to establish the principle that only the people that we vote for get to raise taxes or pass laws', March 2016, 01:04

*Boris Johnson:*

- 'Sometimes the public can see all too plainly the impotence of their own elected politicians – as with immigration. That enrages them; not so much the numbers as the lack of control. That is what we mean by loss of sovereignty – the inability of people to kick out, at elections, the men and women who control their lives' – The Telegraph, 16 March 2016

*Sir William Cash:*

- 'I understood that we in our own Parliament, upon which in General Elections our democracy depends, when people go into the ballot box, when they do that sacred cross and the decide what kind of future they want, they do so because that is the basis on which they wish to be governed' – Oxford Union debate, December 2015

### **Parliament will retain power**

- The Prime Minister is threatening to walk out of talks with the EU as a supposed sign of strength. As noted in this brief, leaving the EU with no deal is only a threat to the UK economy. But, also, it is not as easy as the Prime Minister thinks.
- Article 50 states: *"Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period."* This means that the UK only leaves the EU if there is an agreement or after two years, so a walk out by the PM with no deal before two years will not result in our immediately leaving.
- In addition, our membership ceases when the UK Parliament repeals the European Communities Act 1972, which will happen if Great Repeal Bill receives Parliamentary consent. Parliament retains the power, therefore, to in theory only agree to repeal the ECA subject to further clarification of the Government's position.

## **Annex 1: WTO no deal scenario**

### **Economic evidence: the worst of all deals**

- Open Britain believes that this would be disastrous for the UK economy and should not be considered. Relying solely on WTO rules would result in a significant reduction in the openness of the UK economy and would see the introduction of new tariff and non-tariff barriers. As the Treasury and others have shown, it would be the alternative to membership with the most negative long-term impact.
- The Treasury has suggested it would reduce GDP by 7.5 per cent after 15 years and would shrink tax receipts by £45bn per year.<sup>13</sup> The National Institute for Economic and Social Research has shown that under the WTO model real wages would be projected to fall, by between 4.6 per cent and 6.3 per cent.<sup>14</sup> NIESR has also shown that all principal independent, expert economic studies have found that the WTO scenario has the gravest consequences for trade, FDI and GDP.<sup>15</sup> In short, the relationship that gives the UK the furthest distance from the single market does the most damage.
- If the referendum result was a reaction against the inequities of the global economy, this worst-of-all-worlds outcome would undermine government ability to tackle the problems we know exist. Investment would be lower and our manufacturing base would be hit, affecting both earnings and jobs. Anyone who wants to help those ‘just managing’ should rule it out.
- It is worth considering that the evidence presented pre referendum was prepared by the same civil servants who are advising the Government now. Ministers, therefore, are aware of the pitfalls and stark risks, so why entertain this possibility?
- It is important to note that the WTO governs the conduct of international trade. It does not cover matters relating to co-operation on policing, criminal justice, counter-terrorism or security and in foreign policy, so if we were to leave with no deal in place this would also mean that we would have no co-operation in these wider areas.

### **Goods trade**

- Under the WTO model, the UK would be subject to the EU’s common external tariff when trading with the EU. Tariffs would be imposed on around 90 per cent of the goods the UK exports to the EU,<sup>16</sup> including 15 per cent on food, 10 per cent on cars, and 36 per cent on dairy. These costs would either be passed on to consumers in the form of higher prices, or be absorbed by businesses so lowering their profits and opportunities to expand and increase employment.

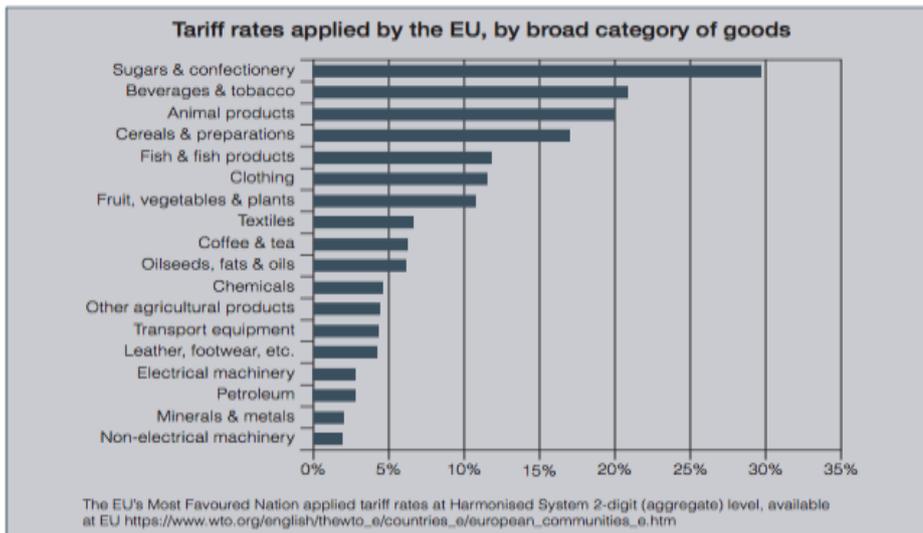
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<sup>13</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/517415/treasury\\_analysis\\_economic\\_impact\\_of\\_eu\\_membership\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517415/treasury_analysis_economic_impact_of_eu_membership_web.pdf)

<sup>14</sup> <http://www.niesr.ac.uk/sites/default/files/publications/National%20Institute%20Economic%20Review-2016-Ebell-121-38.pdf>

<sup>15</sup> <http://www.niesr.ac.uk/sites/default/files/publications/National%20Institute%20Economic%20Review-2016-Ebell-121-38.pdf>

<sup>16</sup> House of Commons Library, ‘The economic impact of EU membership on the UK’, September 2013, <http://researchbriefings.files.parliament.uk/documents/SN06730/SN06730.pdf>



Source: HM Treasury, April 2016

- WTO ‘most favoured nation’ tariff rules mean that, without an FTA in place, the EU would not be able to give the UK preferential tariff rates as these would need to apply to every other WTO member. If we unilaterally dropped tariffs on EU trade we would have to drop tariffs for all countries, with no guarantee of reciprocal action, which would be disastrous for domestic industries. Arch Brexiteer Professor Patrick Minford advocates this and has himself admitted that this would “mostly eliminate manufacturing” in the UK.<sup>17</sup>

**Service sectors**

- For service sectors, the WTO option means services would have much weaker market access, without the presumed right of commercial establishment (for example no financial services ‘passport’); no mutual recognition of qualifications; no formal equivalence agreement in any sector; no recognition by the EU’s regulatory bodies; and so as a result legal uncertainty about the ability to continue trading.
- In practice this would mean that services providers such as airlines and broadcasters would have their ability to trade with the EU significantly limited. US professional service providers like accountants, financiers and architects would not be able to operate freely across the EU as they can at present and would consider relocating to the Continent.
- Services would operate under the WTO’s General Agreement in Trade in Services (GATS), which focuses not on opening up market access and lowering non-tariff barriers but on the rules of service trade, in particular ensuring fair and equitable treatment of all participants (principle of non-discrimination). This is a far weaker agreement than being a member of the EU’s single market in services, even considering that this is incomplete.

**EU Free Trade Agreements (FTAs)**

- Moving on to WTO rules would mean losing preferential access to the EU’s FTAs with 36 countries which give the UK preferential access to over 50 markets around the world. In theory the UK, EU and third party countries could amend these FTAs to note the UK’s new

<sup>17</sup> <http://www.chroniclive.co.uk/news/north-east-news/mps-react-after-vote-leave-11269819>

status and continue on current terms, but this could only be possible if the UK's trade arrangements remain constant, ie within the single market, which the Government has already rejected. We would have to seek to renegotiate these as bilateral deals but offering far more restricted access to the EU and amidst an economic shock, and would therefore likely face new restrictions on access to these global markets with whom we currently trade freely.

### **Moving on to the WTO and setting a new tariff regime**

- The UK would have to set its own goods and service schedules. The only practical course for the UK is, at the point of Brexit, to submit to the WTO national schedules that replicate the EU's current tariff and GATS access schedules, as Liam Fox has now committed to do. The UK's schedule can only be adopted if none of the WTO's 163 members object. Views differ on how easy the process of establishing the UK's schedules at the WTO will be - agriculture is one area which presents particular challenges and where other WTO members may seek concessions from the UK. The key point is that this complex process is not guaranteed to proceed smoothly, could result in global trade disputes and would have to be completed before any third party would consider signing an FTA with the UK.

### **Not escaping EU rules and regulations**

- The EU will remain our largest trading partner. To maintain trade, UK businesses exporting goods and services into the EU would have to follow EU product standards and over time regulatory divergence would make trade increasingly costly. As the CBI has noted, "British businesses could face new barriers to trade such as burdensome customs procedures, discriminatory tax rules and practices, duplicate technical regulations, standards and conformity assessment procedures, sanitary and phytosanitary measures (SPS) and barriers to FDI."<sup>18</sup>

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<sup>18</sup> [http://www.cbi.org.uk/cbi-prod/assets/File/pdf/our\\_global\\_future.pdf](http://www.cbi.org.uk/cbi-prod/assets/File/pdf/our_global_future.pdf)

**Annex 2: Questions the Government must answer**

- Given the European Parliament and the 27 EU national Parliaments have a veto on the final deal, why does the Government propose that the UK Parliament have less influence?
- Will the Government specify what sort of deal with the EU would be worse than no deal – what would the components be?
- Leaving with no deal is almost certain if the Government maintains its rigid position that future UK-EU trade arrangements must be fully ratified by March 2019. Will the Ministers admit that this is highly unlikely and signal flexibility on this to alleviate concerns?
- Does the Prime Minister accept that there is no majority in the UK Parliament for ‘no deal’, and if so, will she admit that a ‘deal or no deal’ ultimatum incentivises the EU to offer a bad deal since they know that’s what the UK Parliament will be forced to opt for?
- If the Government is convinced of the benefits of the ‘no deal’ scenario, why are they concerned about this being put to both Houses and not winning those votes on merit of the arguments?
- The Treasury published its scenarios for leaving the EU with no deal, with a trade agreement and with membership of the EEA. Does the Government believe this analysis is still valid and, if not why not, and will Ministers publish their updated assessments of these scenarios?
- Will the UK Government commit to seeking to extend negotiations with the European Council if the UK Parliament does not agree to the terms of the draft deal presented?
- Given Ministers have conceded the point that the final deal should be subject to approval of both Houses of Parliament, why are they resistant to having this on the face of the Bill?
- Does the Government accept that their insistence that they believe in the primacy of Parliament and the final deal being subject to approval of both Houses of Parliament is fundamentally undermined by their refusal to back this amendment and having this in legislation?
- The US Congress has the authority to decide whether any proposed U.S. trade agreement will be implemented. If an economy the size of the US can handle the legislature having this degree of oversight, what is the UK Government scared of?
- What is the Government’s assessment of the short and long term impacts on, distinctly, UK service and goods sectors from our leaving the EU with no deal?
- What contingency measures has the Government put in place for the scenario that the UK leaves with no deal, and what legislation do they consider may be necessary to mitigate the effects of failing to reach a deal?