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The Rt Hon Dominic Grieve QC MP
House of Commons
London
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11 September 2019

Dear Dominic,

Operation Yellowhammer: planning assumptions

Following the debate on Monday 9 September on the motion you tabled, I am writing to set out how the Government intends to respond.

The Government is, of course, committed to sharing information with Parliament. When doing so however, the Government must comply with its legal obligations and be mindful of its duty to balance a commitment to transparency with the broader public interest. The importance of ensuring both a safe space for policy development, and the provision of confidential advice to Government from officials has long been recognised in government practice, in the Ministerial Code, and by Parliament itself, including in the Freedom of Information Act 2000. As you will also be aware, by longstanding convention under successive Administrations of all political colours, the Government does not release Cabinet and Cabinet Sub-Committee papers. This is stated within the Ministerial Code and is reflected in the Cabinet Manual.

This principle is recognised by the exemption at Section 35 of the Freedom of Information Act, to protect the requirement for Ministers to receive free and frank advice and maintain the ability to engage in open discussion, in the public interest, in order to reach a collective decision. Section 36 of the Act also provides an exemption if disclosure would prejudice the collective responsibility of Ministers of the Crown. The Act embodies the principle that there is a balance to be struck between the public interest in transparency, and the public interest in not releasing the material in certain circumstances.

I recognise that there is a legitimate desire from Parliamentarians on all sides to understand the impact that leaving the EU without a deal would have. This is why we have published approximately 750 pieces of communications on No Deal since August 2018, including over

100 technical notices explaining to businesses and citizens what they need to do to prepare. In addition, in relation to the request for documents provided to Cabinet on the Operation Yellowhammer planning, I have written as attached to the Rt Hon Hilary Benn to provide to the EU Exit Select Committee the text of Yellowhammer planning assumptions which detailed a reasonable worst case scenario. As I outlined to the EU Exit Select Committee last week, these assumptions are regularly updated and a review is currently underway, so I have provided the most recent complete iteration to the Select Committee.

The planning assumptions form the basis of the Government's no deal planning and underpin a number of discussions of the EU Exit Operations (XO) Committee. Given the convention that Cabinet and Cabinet Sub-Committee papers themselves should remain confidential, it is important to note that the document I have provided to the EU Exit Select Committee is not a formal Cabinet paper. Its release does not compromise this principle.

Turning to the request regarding communications between named individuals, as was made clear during the debate, this is an unprecedented use of the Humble Address procedure. In considering the request by Parliament, I am mindful of the need to ensure that Parliament is able to hold the Government to account for the decisions it takes.

The power to prorogue Parliament is exercised by Her Majesty the Queen, on the advice of her Prime Minister. Prior to his decision to request the Queen to prorogue, the Prime Minister was provided with advice. That advice was disclosed, in compliance with the Government's obligations under the duty of candour, in the ongoing litigation on prorogation. It is in the public domain. The information requested in the Humble Address overlaps with, but is far broader than that previously disclosed. It includes any communication and correspondence relating to prorogation sent or received by named individual civil servants, including special advisers.

As the Ministerial Code makes clear, Ministers have a duty to account to Parliament for their decisions, policies and actions of their department. In asking for this information the Humble Address appears to seek information as to the formation of that advice and the views and opinions of named individuals in respect of the advice. This is an unprecedented, inappropriate, and disproportionate use of this procedure. To name individuals without any regard for their rights or the consequences of doing so goes far beyond any reasonable right of Parliament under this procedure. These individuals have no right of reply, and the procedure used fails to afford them any of the protections that would properly be in place. It offends against basic principles of fairness and the Civil Service duty of care towards its employees.

The Government also agrees with the observations made by the Public Administration and Constitutional Affairs Committee (HC 1587, January 2019), to the effect that there are limits to the use of motions for return and in particular that they cannot be used to call for private papers. The Procedure Committee also noted the House does not use its power to call for personal papers or papers which are not within the Government's power to obtain (HC 1904, May 2019).

Moreover, the motion appears to direct the Government to carry out searches that could only be discharged by breaching the legal framework set by Parliament itself, whether the

Investigatory Powers Act 2016, the Human Rights Act 1998 implementing the European Convention on Human rights, or the Data Protection Act 2018. Such action would contravene the statutory obligations on the Civil Service under the Constitutional Reform and Governance Act 2010 to observe the rule of law. That cannot be set aside by a resolution of the House of Commons.

Where the Humble Address procedure has been used previously, it has been to request Ministers to provide specific documents. The procedure has not been, nor should it be, used to purport to place obligations on civil servants, or to seek to understand the private views of those individuals. Ministers, not civil servants, are the decision makers. They are accountable, both in Parliament and to the electorate, for the decisions taken. This Address is therefore inappropriate in principle and in practice, would on its own terms purport to require the Government to contravene the law, and is singularly unfair to the named individuals.

The Government's consistent stance on this matter is reflected in evidence submitted under the last Administration to both the Procedure Committee and to the Public Administration and Constitutional Affairs Committee.

I am happy to discuss this further with you, if helpful.

I am also publishing this letter on Gov.uk, so that this is available to all MPs and members of the public.

With every good wish,

A handwritten signature in black ink, appearing to read "Michael Gove". The signature is fluid and cursive, with the first name "Michael" and the last name "Gove" clearly distinguishable.

Rt Hon Michael Gove MP