



HM Government

Government Response to the Humble Address
Motion submitted under Standing Order No. 24 on 9
September 2019



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Presented to Parliament
by the Prime Minister
by Command of Her Majesty

September 2019

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Letter from the Chancellor of the Duchy of Lancaster to the Rt Hon Dominic Grieve QC MP



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The Rt Hon Dominic Grieve QC MP
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Our reference: CDL/00320

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', written in a cursive style.

Rt Hon Michael Gove MP

Letter from the Chancellor of the Duchy of Lancaster to the Rt Hon Hilary Benn MP



Rt Hon Michael Gove MP
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Rt Hon Hilary Benn MP (Chair)
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House of Commons
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Our reference: CDL/00319

11 September 2019

Dear Hilary,

Operation Yellowhammer: planning assumptions

Thank you for the opportunity to appear before your EU Exit Select Committee last week. You were, naturally, interested in Operation Yellowhammer, the Government's planning for a reasonable worst case scenario in the event of a no deal Brexit.

We are currently updating the assumptions for Operation Yellowhammer but in light of the motion brought forward by the Rt Hon Dominic Grieve MP that was passed in the House of Commons on Monday night, I thought it would be helpful to publish the Operation Yellowhammer document based on assumptions drawn up under the last Government. This document is complete save for one section that has been marked as redacted on the basis of its commercial sensitivity. I am, of course, happy to offer the opportunity for Privy Counsellors to read the full unredacted version in person.

It is also my intention, as I stated at your committee, to publish revised assumptions in due course alongside a document outlining the mitigations the Government has put in place and intends to put in place. I hope to publish these as soon as possible and will write to you shortly with publication plans.

As you will be aware, by longstanding convention the Government does not release Cabinet and Cabinet Sub Committee papers. This is an important principle stated within the Ministerial Code and recognised by the exemption at section 35 of the FOI Act to protect the requirement for Ministers to receive free and frank advice and to maintain the ability to engage in open discussion, in the public interest, in order to reach a collective decision. It is important to note that this document is not a formal Cabinet Committee paper and so its release does not compromise this principle.

Finally, during the debate on 9 September, the Shadow Secretary for Exiting the EU incorrectly stated that the Yellowhammer assumptions represent a 'most likely scenario' and are a Brexit 'impact assessment'. I should reiterate that the document is neither an impact assessment, nor a prediction of what is most likely to happen. It describes what could occur in a reasonable worst case scenario, thus providing a deliberately stretching context for government planning to ensure that we are prepared for Exit.

I am copying this letter to the Rt Hon Dominic Grieve MP, the Rt Hon John Whittingdale MP and the Rt Hon Keir Starmer MP.

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 a prominent initial 'M' and a long, sweeping tail.

Rt Hon Michael Gove MP

Operation Yellowhammer: HMG Reasonable Worst Case Planning Assumptions

As of 2 August 2019

- When the UK ceases to be a member of the EU in October 2019 all rights and reciprocal arrangements with the EU end.
- The UK reverts fully to 'third country' status. The relationship between the UK and the EU as a whole is unsympathetic, with many MS (under pressure from the Commission) unwilling to engage bilaterally and implementing protections unilaterally, though some MS may be more understanding.
- No bilateral deals have been concluded with individual member states with the exception of the reciprocal agreement on social security coordination with Ireland. EU Citizens living in the UK can retain broadly all rights and status that they were entitled to prior to exit from the EU, at the point of exit.
- Public and business readiness for a no-deal will remain at a low level, and will decrease to lower levels, because the absence of a clear decision on the form of EU Exit (customs union, no deal etc) does not provide a concrete situation for third parties to prepare for. Readiness will be further limited by increasing EU Exit fatigue, due to the second extension of Article 50, which will limit the effective impact of current preparedness communication. [To be reviewed]
- Business readiness will not be uniform – in general larger businesses across sectors are more likely to have better developed contingency plans than small and medium sized businesses. Business readiness will be compounded by seasonal effects, impacting on factors such as warehouse availability.
- Concurrent risks associated with autumn and winter such as severe weather, flooding and seasonal flu could exacerbate a number of impacts and stretch resources of partners and responders.
- Private sector companies' behaviour will be governed by commercial considerations, unless influenced otherwise.
- HMG will act lawfully and in accordance with the rule of law, including by identifying the powers it is using to take specific actions.

Key planning assumptions

1. For the purpose of freight flow and traffic management as 31 October is a Thursday, day 1 of exit is now on a Friday rather than the weekend which is not to our advantage. Exit

day may coincide with end of October half term school holidays, which vary across the UK. (CCS/DExEU)

2. In a small number of instances where the impacts of Brexit would be felt negatively in the EU as well as in the UK, Member States may act in way which could also benefit the UK (e.g. energy for Ireland). (CCS/DExEU)
3. France will impose EU mandatory controls on UK goods on Day 1 No Deal (D1ND) and have built infrastructure and IT system to manage and process customs declarations and support a risk based control regime. On D1ND, between 50-85% of HGVs travelling via the short Channel Straits may not be ready for French customs. The lack of trader readiness combined with limited space in French ports to hold “unready” HGVs could reduce the flow rate to 40-60% of current levels within one day as unready HGVs will fill the ports and block flow. The worst disruption to the short Channel Straits might last for up to 3 months before it improves by a significant level to around 50-70% (due to more traders getting prepared), although there could continue to be some disruption for significantly longer. In the event of serious disruption, the French might act to ensure some flow through the short Channel crossings. Disruption to flow across the short Channel Straits would also cause significant queues in Kent and delays to HGVs attempting to use the routes to travel to France. In a reasonable worst case scenario, HGVs could face maximum delays of 1.5-2.5 days before being able to cross the border. HGVs that are caught up in congestion in the UK will be unable to return to the EU to collect another load and a proportion of logistics firms may decide to avoid the route should there be significant and prolonged disruption. Analysis to date has suggested a low risk of significant sustained queues at ports outside of Kent which have high volumes of EU traffic, but BDG will continue to work directly with stakeholders at those ports to support planning readiness (BDG/DfT)
4. UK citizens travelling to and from the EU may be subject to increased immigration checks at EU border posts. This may lead to passenger delays at St Pancras, Cheriton (Channel Tunnel) and Dover where juxtaposed controls are in place. Dependent on the plans EU Member States put in place to cope with these increased immigration checks it is likely that delays will occur for UK arrivals and departures at EU airports and ports. This could cause some disruption on transport services. Travellers may decide to use alternative routes to complete their journey. (BDG/FCO/HO/DfT)
5. Demand for energy will be met and there will be no disruption to electricity or gas interconnectors. In NI there will not be immediate disruption to electricity supply on Day 1. A rapid SEM split could occur months or years after EU Exit. In this event, there would not be security of supply issues. However, there will likely be significant electricity price increases for consumers (business and domestic), with associated wider economic and political impacts. Some participants could exit the market, thereby exacerbating the economic and political impacts. (BEIS)
6. The BDG/DfT planning assumption on reduced flow rates describes a pre-mitigation reasonable worst case flow rate that could be as low as 40% D1ND via the short

Channel Straits, with significant disruption lasting up to six months. Unmitigated, this will have an impact on the supply of medicines and medical supplies.

The reliance of medicines and medical products' supply chains on the short straits crossing make them particularly vulnerable to severe extended delays; three-quarters of medicines come via the short straits. Supply chains are also highly regulated and require transportation that meets strict Good Distribution Practices. This can include limits on time of transit, or mean product must be transported under temperature controlled conditions. Whilst some products can be stockpiled, others cannot due to short shelf lives - it will also not be practical to stockpile products to cover expected delays of up to six months. DHSC is developing a multi-layered approach to mitigate these risks. (DHSC)

ii. Any disruption to reduce, delay or stop supply of medicines for UK veterinary use would reduce our ability to prevent and control disease outbreaks, with potential detrimental impacts for animal health and welfare, the environment, and wider food safety/availability and zoonotic diseases which can directly impact human health. Industry stockpiling will not be able to match the 4-12 weeks' worth of stockpiling which took place in March 2019. Air freight capacity and the special import scheme is not a financially viable mitigation to fully close risks associated with all UK veterinary medicine availability issues due to border disruption. (DEFRA)

7. Certain types of fresh food supply will decrease. Critical dependencies for the food supply chain (such as key input ingredients, chemicals and packaging) may be in shorter supply. In combination, these two factors will not cause an overall shortage of food in the UK but will reduce availability and choice of products and will increase price, which could impact vulnerable groups. The UK growing season will have come to an end and the Agri-food supply chain will be under increased pressure at this time of year, due to preparations for Christmas, which is the busiest time of year for food retailers. Government will not be able to fully anticipate all potential impacts to the agri-food supply chain. There is a risk that panic buying will cause or exacerbate food supply disruption. (DEFRA)

ii. Public water services are likely to remain largely unaffected due to actions now being taken by water companies. The most significant single risk is a failure in the chemical supply chain. The likelihood of this occurring is considered low and the impact is likely to be localised, affecting up to 100,000's of people. Water companies are well prepared for any disruption; they have significant stocks of all critical chemicals, extensive monitoring of their chemical supply chains (including transportation and all deliveries) and mutual agreements in place. In the event of a supply chain failure, or the need to respond rapidly to other water supply incidents, urgent action may need to be taken to make sure people continue to have access to clean water. (DEFRA)

8. Some cross-border UK financial services will be disrupted. (HMT)

9. The EU will not have made a data decision with regard to the UK before exit. This will disrupt the flow of personal data from the EU where an alternative legal basis for transfer is not in place. In no deal an adequacy assessment could take years. (DCMS)

10. Law enforcement data and information sharing between UK and EU will be disrupted. (HO/NSS)

11. UK nationals will lose their EU citizenship and, as a result, can expect to lose associated rights and access to services over time, or be required to access them on a different basis to now. All MS have now published legislative proposals, but not all have passed legislation to secure all rights for UKNs. There is a mixed picture across MS in terms of the level of generosity and detail in the legislation. In some MS, UKNs need to take action now, whilst others they do not. Complex administrative procedures within MS, language barriers and uncertainty regarding the UK political situation are contributing to some UKNs being slow to take action. There will be gaps in both substance and understanding. Demand for help from HMG will increase significantly leading to an increase in consular enquiries and more complex and time-consuming consular assistance cases for vulnerable UKNs. Cross HMG support, including continued close engagement and clear communications messaging from UKG departments and the DAs will be needed to help manage the demand. (FCO)

ii. An EU Member State would continue to pay a pension it currently pays to a UK national living in the EU. (DWP)

iii. The Commission and individual Member States do not agree to extend the current healthcare arrangements for UK state pensioners and tourists beyond 31 October 2019 and refuse offers by the UK to fund treatments. Member States take no further action to guarantee healthcare for UK nationals and treat them in the same way as other 3rd country nationals.

UK pensioners, workers, travellers and students will need to access healthcare in different ways, depending on the country. Healthcare may require people to demonstrate residency, current or previous employment, enter a social insurance scheme, or purchase private insurance. Member States should treat people with urgent needs, but may require them to pay after the fact. There is a risk of disruption for patients and a minority could face substantial costs. (DHSC)

12. Gibraltar, due to the imposition of border checks at its border with Spain (and the knock-on effect of delays from the UK to EU), will see disruption to supply of goods (including food), medicines, trans-frontier shipment of waste and delays of 4+ hours for at least a few months in the movement of frontier workers, residents and tourists across the border. Prolonged border delays over the longer term are likely to adversely impact Gibraltar's economy. Like the UK mainland, cross-border services and data flow will also be disrupted. Despite the time extension to EU Exit, Gibraltar has still not taken decisions to invest in contingency infrastructure (port adjustments; waste management equipment) and there are still concerns that Gibraltar will not have passed all necessary legislation for No Deal, opening up potential legal gaps/risks mainly for the Government of Gibraltar. Gibraltar continues to plan for less significant border delays than our Yellowhammer scenario. Crown Dependencies may be affected by supply chain disruption. (FCO/MoJ)

13. Protests and counter-protests will take place across the UK and may absorb significant amounts of police resource. There may also be a rise in public disorder and community tensions. (HO)

14. Regional traffic disruption caused by border delays could affect fuel distribution within the local area, particularly if traffic queues in Kent block the Dartford crossing, which

would disrupt fuel supply in London and the South-East. Customer behaviour could lead to local shortages in other parts of the country. (BEIS)

15. [Redacted]

16. A small minority of insurance payments from UK insurers into the EU may be delayed. (HMT)
17. Low income groups will be disproportionately affected by any price rises in food and fuel. (HMT)
18. On D1 ND HMG will operationalise the “no new checks with limited exceptions” model announced 13 March, establishing a legislative framework and essential operations and system on the ground, to avoid an immediate risk of a return to a hard border on the UK side. The model is likely to prove unsustainable due to significant economic, legal and biosecurity risks and no effective unilateral mitigations to address this will be available. With the UK becoming a third country, the automatic application of the EU tariff and regulatory requirements for goods entering Ireland will severely disrupt trade. The expectation is some businesses will stop trade or relocate to avoid paying the tariff which will make them uncompetitive or to avoid the risk of trading illegally, while others will continue to trade, but experience higher costs which may be passed on to consumers. The agri-food sector will be the hardest hit, given its reliance on highly integrated cross border supply chains and high tariff and non-tariff barriers to trade. Disruption to key sectors and job losses are likely to result in protests and direct action with road blockages. Price and other differentials are likely to lead to the growth of the illegitimate economy. This will be particularly severe in border communities where both criminal and dissident groups already operate with greater threat and impunity. Given the tariff and non-tariff barriers to trade, there will be significant pressure to agree new arrangements which supersede the day one model within days or weeks. (NIO/NICS)
19. Up to 282 EU and EEA nations fishing vessels could enter illegally, or already be fishing in UK waters (Up to 129 vessels in English waters, 100 vessels in Scottish waters, 40 vessels in Welsh waters, 13 vessels in Northern Irish waters) on day one. This is likely to cause anger and frustration in the UK catching sector, which could lead to both clashes between fishing vessels and an increase in non-compliance in the domestic fleet. Competing demands on UK Government and DA maritime agencies and their assets could put enforcement and response capabilities at risk, especially in the event of concurrent or cumulative incidents, which are likely to include; illegal fishing, borders violations (smuggling and illegal migration), and any disorder or criminality arising as a result, e.g. violent disputes or blockading of ports. (Defra, HO, and the DAs in respect of fisheries protection).
20. There is an assumption that there will be no major change in adult social care on the day after EU Exit. The adult social care market is already fragile due to declining financial viability of providers. An increase in inflation following EU exit would significantly impact adult social care providers due to increasing staff and supply costs, and may lead to provider failure, with smaller providers impacted within 2-3 months and larger providers 4-6 months after exit. There are also possible concurrent localised risks: transport or staff disruption, severe winter weather or flu that could exacerbate the existing market fragility, and that cumulatively could stretch resources of providers and LAs. Intelligence

will continue to be gathered to forewarn of/prepare for any impacts on the sector including closure of services and handing back of contracts which are not part of normal market function. In addition, we will look at the status of preparations in four local authorities, which are identified as priority concerns, by mid-August. (DHSC)

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