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- Witness Statement of 30 November 2018
- Witness Statement of 17 December 2018

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Claim No: _____

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ROYAL COURTS OF JUSTICE

BETWEEN:

JEREMY BERNARD CORBYN

Claimant

– and –

JULIAN FRASER BRENNAN

Respondent

WITNESS STATEMENT OF JULIAN FRASER BRENNAN

I JULIAN FRASER BRENNAN of 3 Byland Road, Skelton, Saltburn-by-the-Sea TS12 2NJ, born on 14 September 1956 in Epping in the County of Essex, say what follows:

- 1** This Witness Statement is for possible High Court proceedings brought against me for alleged defamation.
- 2** Such proceedings would stem from my statements in response to: (a) the failure of the Prime Minister to act lawfully when she decided to give notice to the European Council under Article 50(2) of the Treaty on European Union; and (b) the failure of the Leader of the Opposition to deal with that issue, and him going along with the Prime Minister's cover-up for his own purposes.
- 3** Within the past twelve months I have written, published and distributed statements about Jeremy Corbyn which, if they were untrue, would certainly be defamatory of him and actionable at law.

- 4 As a matter of fact, I insist that none of them can cause any harm to the actual reputation to which Mr Corbyn is entitled in law, and that I have not defamed him. The apparent “gap” between his true character, which my words reflect, and his publicly projected persona, which is generally believed by others to be true, is due to the extent of his dishonesty in pretending to be something which he is not.
- 5 In the second paragraph of my letter to him of 3 June 2018 I put to him (amongst other things) that he is “**not an honest and honourable person**”; that he “**lacks integrity**”; and that he has “**acted in breach of public trust**”. In the same paragraph I also said: “**you put your own ambitions above the interests of your country, your party, and the people you say need a Labour government; that you have let down Labour voters, supporters and members by your repeated failures to act; that you are like any other politician who is prepared to mislead, deceive and cover-up in order to gain or stay in power; that you lack character; that you are a hypocrite**”. That document has been distributed to others. In repeating the statements, I insist that Jeremy Corbyn is “**unfit to be either the Leader of the Opposition or our country’s Prime Minister**”.
- 6 Given that proceedings have not been issued for the potentially defamatory written statements I have made about Mr Corbyn, *no qualified privilege attaches to anything I say in this document.*
- 7 In an e-mail I sent to Jeremy Corbyn on 28 November 2018 I said that he should re-read my letter of 3 June 2018. That was in the context of what I stated in the attachment to the e-mail about points numbered 1 to 10 of that letter. I refer to **Exhibit “R/JFB/1”** which is a copy of that e-mail, and **Exhibit “R/JFB/2”** which is the *Public Interest Announcement Regarding Potential Defamation Proceedings* that was attached to the e-mail. I ask that the two documents, which are attached hereto, are read now.

8 As seen, *in relation to Theresa May I have surrendered my immunity from suit.*

Theresa May could have sued me for defamation from June 2017. As Mr Corbyn knew at the time, in a letter dated 18 June 2017 (headed **YOUR RESIGNATION** in bold, underlined caps) I put the following to Theresa May:-

“You asked the country for an electoral mandate for Brexit, and did not get the backing you sought. You lost the Parliamentary majority your party had in the House of Commons. You acted dishonestly in calling the general election and you acted dishonestly throughout the election campaign. You have managed to retain the support of Conservative Members of Parliament only because they are unaware of important facts behind the general election. You are now seeking support for a two-year Parliamentary session. You do not have a mandate to do so. You made competence and credibility over Brexit the principal election issue, doing so after you knew that you had made serious errors of judgement and a major blunder over your Article 50 Notice. You have improperly continued with your Brexit plan, even though you know that you acted unlawfully when you signed your letter of Notice and knew that the matter should be returned to the Supreme Court. You have dishonestly failed to disclose relevant information to members of the Cabinet and to Parliament.”.

9 Under section 4A of the Limitation Act 1980 the time limit for actions for defamation or malicious falsehood is “**one year from the date on which the cause of action accrued**”. In relation to any claim that could have been brought against me by Theresa May for statements I wrote, published and distributed that were potentially libellous the year passed in June 2018. Her non-action against me mean that, as a matter of law, the presumption of truth was mine and that what I stated is part of her true reputation. I said she is dishonest. That is what she is.

- 10 Theresa May did not sue me because if she had done so she would have lost, and would have faced some very serious consequences. Her inaction during the twelve month period indicates acceptance of what I stated.
- 11 The presumption of truth has not changed due to my legal immunity being relinquished. What it means is that it is open to Theresa May to require me to prove what I have stated. If she sued me and I failed to show an absence of defamation the presumption would evaporate and her reputation for honesty and integrity would be restored. Other than that, nothing has changed.
- 12 *If Theresa May does not sue me for defamation she must resign.* This is due to the precise nature of what I have said and reiterate. In Exhibit "R/IFB/2" I referred to the points numbered 1 to 10 of my letter of 3 June 2018 to Mr Corbyn, which was Enclosure number 7 to my letter of 6 July to Theresa May.
- 13 What I stated is now shown in context. My letter to Mr Corbyn said as follows:-
- “In relation to what I say about you being incompetent, I say that a competent Leader of the Opposition would have challenged the Prime Minister and held her to account for:-
1. Failing to give lawful notice under Article 50 of the Treaty on European Union.
 2. Acting in breach of the Judgment of the Supreme Court in *Miller*.
 3. Calling for a General Election, rather than resigning.
 4. Failing to protect the interests of Gibraltar and Gibraltarians.
 5. Acting in abuse of power over the 2017 General Election.
 6. Wilfully misleading voters during the 2017 General Election.
 7. Acting in abuse of power over the Conservative Party’s agreement with the DUP.

8. Failing to comply with her fiduciary duties as First Lord of the Treasury.
9. Entering into an unlawful agreement with the European Union.
10. Wilfully misleading UK business about 'certainty' over Brexit.

"You have acted unlawfully in breach of Convention rights. You could have protected the UK national interest, but failed to do so. You had various opportunities to have caused the Prime Minister to resign or face a successful vote of no confidence in the House of Commons. You should have acted to defend and uphold our country's democracy. You either do not understand your legal duties as Leader of the Opposition or you wilfully disregard them. Had you done your job as Leader of the Opposition properly, Labour could have won last year's General Election. You could have resigned in April this year, caused Theresa May's resignation and caused the Conservative Party massive losses in the local elections on 3 May 2018.

"I now refer to my e-mail to you of 30 March 2017 (copy attached). You need to consider the fact that (in addition to your salary of £76,011 as the Member of Parliament for Islington North) in the year from 1 April 2017 to 31 March 2018 you were paid an additional salary of £69,725 as the Leader of the Opposition. Despite receiving that salary you disregard the legal duties and obligations of your position. The Leader of the Opposition forms part of our country's constitutional checks and balances."

- 14 I refer to the attached **Exhibit "R/JFB/3"** which is a copy of my e-mail of 30 March 2017 to Mr Corbyn. It was open to Mr Corbyn to show that I was wrong in what I stated in that e-mail, by him acting competently as Leader of the Opposition and holding the Prime Minister to account in Parliament for acting

in breach of the Common Law, as elucidated in the Judgment of the Supreme Court in *Miller*, and for failing to give lawful notice under Article 50 of the Treaty on European Union. He did not do so.

- 15 Instead, he went along with what I put at points 3 to 8 set out above (at para. 13) – most notably with the Prime Minister’s call for an early Parliamentary General Election (after she had ruled one out on 20 March 2017) and with the signing of the confidence and supply agreement between the Conservative Party and the Democratic Unionist Party. Jeremy Corbyn knew that the Prime Minister broke the law and had acted in abuse of power in order to “cover-up” her initial errors in deciding to give notice under Article 50(2) TEU.
- 16 I refer to Exhibit “R/JFB/4”, which is a draft of the letter I intend to send to Theresa May tomorrow by Royal Mail Special Delivery (No. SF 6037 1412 1GB). At the latest she should announce her resignation as Prime Minister this coming Tuesday in the House of Commons. If she should not do so she should instead make an announcement that she is issuing legal proceedings against me for defamation. Theresa May must do one of the other. I refer to Exhibit “R/JFB/5”, which is the announcement she should make in the House of Commons if she is to sue me.
- 17 Jeremy Corbyn must also decide which of the two courses of action he is going to take.
- 18 In the event Mr Corbyn does sue me I will have to prove that the Prime Minister acted unlawfully when she decided on 28 March 2018 to give notice under Article 50(2) and prove that her notice was unlawful.
- 19 As I have stated previously, there can be no cover-up and no dishonesty about Brexit on the part of Theresa May if, contrary to what I say, there was no failure by her to give lawful notice under Article 50. If that is so, it surely follows that

the Prime Minister could not have acted unlawfully in relation to the 2017 General Election and, subsequent to that, will not have acted unlawfully in relation to the Conservative Party/DUP Agreement. That, in turn, means my assertions would be defamatory of her. If that is so, Jeremy Corbyn as Leader of the Opposition would not have been required to hold the Prime Minister to account in Parliament for any wrongdoing.

- 20 By definition, what I say are omissions and failures to act by Jeremy Corbyn cannot possibly be true if Theresa May acted lawfully in the first place. If I am wrong about Theresa May, Jeremy Corbyn cannot be deemed to have acted improperly in the way I have said. What I say about him acting dishonestly rests on that. **All of what I say which is potentially defamatory is predicated on the Prime Minister acting unlawfully when she decided on 28 March 2018 to give notice under Article 50(2).**
- 21 As Jeremy Corbyn's failure to act against Theresa May is evidenced by events, any defamation proceedings which he were to issue against me would require me to prove Theresa May's legal failures over Brexit and her dishonesty about them. If I succeeded in doing that I would then need to show Mr Corbyn's knowledge of, and disregard for, Mrs May's misconduct. **In any proceedings the first requirement for me would be to establish in fact and law, and with credible evidence, that Theresa May acted unlawfully when, on 28 March 2017, she signed the draft letter to the President of the European Council.**
- 22 That is what I will do if proceedings are issued against me. Neither Theresa May nor Jeremy Corbyn would be required to prove anything at all. The onus of proof that what I say is not defamatory is entirely mine. I can prove it all and, if necessary, will do so. However, I urge caution about either of them acting at law, as doing so will have serious consequences for them once I have proved the truth of what I have said. Instead, they should both resign.

23 My Skeleton Argument will explain the unlawfulness. From that document the unlawfulness for which Theresa May and Jeremy Corbyn have to answer will be shown. It will be seen that Parliament cannot approve the Withdrawal Agreement the Prime Minister reached with the European Council last Sunday. Also, it will set out the constitutionally correct pathway out of the crises caused by their misconduct. I refer to the attached Exhibit "R/JFB/6", which is a copy of the Parliamentary Bill – the *Rectification and Resolution Bill* – which I drafted to deal with the situation which the country finds itself.

24 My Skeleton Argument will refer to the following legislation/legislative provisions and related authorities:–

- European Union (Notification of Withdrawal) Act 2017.
- Articles XIX and XXV of the Acts of Union 1706 and 1707.
- Schedule 5 to the Scotland Act 1998.
- Court of Session Act 1988.
- Courts Reform (Scotland) Act 2014.
- Act of Sederunt (Rules of the Court of Session 1994) 1994.
- Constitutional Reform Act 2005.
- Sections 7 and 8 of, and Schedule 1 to, the Human Rights Act 1998.
- Legal Aid (Supreme Court) (Scotland) Regulations 2009.
- Annex 1 to the Gibraltar Constitution Order 2006.
- Gibraltar (Appeals to Privy Council) (Amendment) Order 2009.
- Gibraltar English Law (Application) Act 1962.
- Article 4 of the Act of Settlement 1701.
- Article 29 of Magna Carta 1297.
- Bill of Rights 1688.
- Northern Ireland Act 1998.
- Sixth Article of the Act of Union 1800.

- European Communities Act 1972.
- European Union (Amendment) Act 2008.
- European Union Referendum Act 2015.
- Fraud Act 2006.
- *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5.
- *Golder v United Kingdom* [1975] 1 EHRR 524.
- *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223.
- *CCSU v Minister for the Civil Service* [1985] AC 374.
- *R (on the application of Lord Carlile of Berriew QC and Others) v Secretary of State for the Home Department* [2014] UKSC 60.
- *The Queen v The Secretary of State for Foreign and Commonwealth Affairs, ex parte: The Indian Association of Alberta, Union of New Brunswick Indians, Union of Nova Scotian Indians* [1981] 4 CNLR 86.
- *The Secretary of State for Foreign & Commonwealth Affairs v Quark Fishing Ltd* [2002] EWCA Civ 1409.
- *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2008] UKHL 261.
- *Andrew Wightman MSP & Others v The Secretary of State for Exiting the European Union* [2018] CSIH 62.
- *R v Ghosh* [1982] 1 QB 1053.
- *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67.
- *Three Rivers District Council v Governor and Company of The Bank of England* [2000] UKHL 331.
- *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702, 712.
- *R (Gulf Centre For Human Rights) v The Prime Minister and The Chancellor of the Duchy of Lancaster* [2018] EWCA Civ 1855 (in relation to the Treaty on

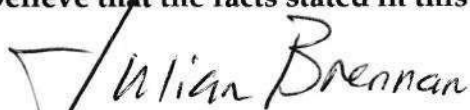
European Union; Treaty on the Functioning of the European Union; Charter of Fundamental Rights of the European Union; Articles of the Union; British-Irish Agreement; European Convention for the Protection of Human Rights and Fundamental Freedoms; Vienna Convention on the Law of Treaties).

- *Shindler and Anr v The Chancellor of the Duchy of Lancaster and Anr* [2016] EWCA Civ 469.
- *Costa v ENEL* (1964) Case 6/64 ECR 1141.
- *Ghaidan v Godin-Mendoza* [2004] UKHL 30.

25 I refer now to the attached Exhibit "R/JFB/7", which I drafted. I think – and I state this as a personal opinion based on factually correct information – the Prime Minister is acting unlawfully with the intention of introducing something similar to what is set out in the attached *Early Parliament General Election Bill*. I will refer to it in my Skeleton Argument as it is possible that certain preparatory acts have already occurred. This is not a "defamation" issue, as what I say is no more than an expression of opinion (the basis for which I am able to explain). Even if what I say is actually intended by the Prime Minister, this could not be proved (at least not by me due to restricted access) because the effect of me raising the issuing now will – if I were right – have the effect of stopping any such move from happening. My opinion in relation to this is nonetheless valid at the present time.

26 In any proceedings I will refer also to Exhibit "R/JFB/8" to Exhibit "R/JFB/30". Those Exhibits, unlike the first seven Exhibits, will be submitted separately.

I believe that the facts stated in this Witness statement are true.



Julian Fraser Brennan
30 November 2018

**This is the Exhibit marked “R/JFB/1”
referred to in the Witness Statement of
Julian Fraser Brennan of the 30th day
of November 2018.**

E-mail sent to Jeremy Corbyn on 28 November 2018

For the personal attention of Jeremy Corbyn (and copied to Theresa May, also for action)

Julian Brennan

Wed 28/11/2018 12:34

To:jeremy.corbyn.mp@parliament.uk <jeremy.corbyn.mp@parliament.uk>; corbynj@parliament.uk <corbynj@parliament.uk>; leader@labour.org.uk <leader@labour.org.uk>; karie.murphy@parliament.uk <karie.murphy@parliament.uk>; karie_murphy@labour.org.uk <karie_murphy@labour.org.uk>; kate.hollern.mp@parliament.uk <kate.hollern.mp@parliament.uk>; petersenn@parliament.uk <petersenn@parliament.uk>;

Cc:MAY, Theresa <theresa.may.mp@parliament.uk>; mayt@parliament.uk <mayt@parliament.uk>;

 1 attachments (199 KB)

Public Interest Announcement Regarding Potential Defamation Proceedings.pdf;

Dear Mr Corbyn

I refer to my letter to you of 3 June 2018 (and its attachment) and suggest that after PMQs you should re-read what I stated. That letter, and the points numbered 1-10 in it, are referred to in the attached statement. Please read it.

You will see that in my statement I say - as a fact - that Theresa May has acted "incompetently, dishonestly and unlawfully" in relation to Brexit and that she should resign or instruct her personal Solicitor to issue a claim against me for defamation. Clearly, what I say about her would be defamatory if it was not true. As it is true, she must resign.

The attached statement is exactly what is currently posted on my personal Facebook page (which is open). I can inform you that me saying Theresa May has acted incompetently, dishonestly and unlawfully has been posted by me in Comments on ten Facebook pages with approximately a total of 25 million followers.

After you have re-read my letter of 3 June 2018 you will see that you too must either resign as Leader of the Opposition or personally issue High Court proceedings against me for defamation. You cannot expect your words to carry any weight with voters while you continue to act dishonestly. As it is true about Theresa May, you cannot be trusted when you speak.

If you say that I am wrong in asserting this you will commit a breach of section 2 of the Fraud Act 2006. If you follow up by issuing a claim against me you will also act in breach section 2. You have no lawful option other than to accept what I say as true and resign your Office. That is why I use the word "must". If you resign you will be able to call on the Prime Minister to do the same, and show why her Article 50 notice was unlawful and why no Minister can sign any withdrawal agreement.

My address for service, should you decide to act against me, is: 3 Byland Road, Skelton, Saltburn-by-the-Sea TS12 2NJ.

Yours sincerely

Julian Brennan
Human Rights Defender

This is the Exhibit marked "R/JFB/2" referred to in the Witness Statement of Julian Fraser Brennan of the 30th day of November 2018.

Public Interest Announcement Regarding Potential Defamation Proceedings

PUBLIC INTEREST ANNOUNCEMENT REGARDING POTENTIAL DEFAMATION PROCEEDINGS

Watching the televised debate in the House of Commons I waited to hear the Prime Minister's response to SNP MP Joanna Cherry. Having listened carefully to the Prime Minister's statement in Parliament and to what followed – and having taking into account what Theresa May did not say, as well as what she did say – I have taken a decision. I formally make a public statement in response to what Theresa May has asserted as fact: I voluntarily surrender my legal immunity that stops Theresa May from issuing High Court proceedings against me for defamation for saying, in relation to Brexit, that she has acted incompetently, dishonestly and unlawfully. She should resign, or she should instruct her personal Solicitor to issue a claim against me for what I re-stated about her at points numbered 1 to 10 in the copy of a document dated 3 June 2018 (which was Enclosure 7 to my letter to her of 6 July 2018). Given that the resignations I called for have not happened, and are unlikely to happen, it is in the public interest that action over possible defamatory statements in Enclosure 7 is taken against me this week. I restate that I will defend robustly any defamation claim, and do so successfully, on the basis that what I have stated is true in fact and law. I am able to prove it with credible evidence, knowing that the burden of proof is entirely mine. I have made clear that I will not only resist any claim but will also issue a counter claim. I do not say anything to invite a claim which I know I can defeat; I act to encourage the Prime Minister's resignation. I assert the following facts: The Withdrawal Agreement which she commends to the nation, and says provides people with certainty, can have no force in law and cannot be implemented. It is invalid, as was her Article 50 notice. Acting as Prime Minister, Theresa May acted unlawfully when she decided to give notice to the European Council. She acted unlawfully over the signing of the DUP/Conservative Party Agreement. She acted unlawfully yesterday. I act as a Human Rights Defender.

This is the Exhibit marked "R/JFB/3" referred to in the Witness Statement of Julian Fraser Brennan of the 30th day of November 2018.

E-mail to Jeremy Corbyn, 30 March 2017

Subject: Your unlawfulness under S. 6 HRA

From: julianbrennan@yahoo.com

To: jeremy.corbyn.mp@parliament.uk

Date: Thursday, 30 March 2017 14:05:39 BST

Dear Mr Corbyn

I refer you to section 2(1) of the Ministerial and other Salaries Act 1975 (copy attached). That provision shows that the Leader of the Opposition need not be the national leader of the second largest party in the House of Commons. In relation to the Commons, it is the person who is "for the time being the Leader in that House of the party in opposition to Her Majesty's Government having the greatest numerical strength in the House of Commons". It is open to the Parliamentary Labour Party to elect a person other than yourself to be the leader of the Labour Party in the House of Commons, and for you to remain Labour Party Leader "in the country". It is for you and colleagues to consider whether you are now able to carry out both functions effectively, and for you to consider how necessary change can be effected in an orderly manner.

I say most emphatically that you cannot continue as the Leader of the Opposition. If you do, you will not be able to "give voice" to very serious concerns about the Government acting unlawfully and unconstitutionally. I am in no doubt that my view would be shared by millions of other people if they were aware of the facts. As I have stated previously, it is essential that the current state of affairs is not allowed to persist. The Government must be held to account. I emphasise that I do not say you have "done anything wrong". I simply say that **your failures to act** on vitally important matters, and your inability to act in the future, cannot go "unchecked". I am genuinely seeking to give you an honourable "way out". I think you have earned that, and some considerable respect, for your work and service as a backbencher and a constituency MP.

A decision by you to stand aside would be sufficient for me to consider that you've answered for your acts in breach of my Convention rights. Accordingly, I would not pursue your unlawful failures to act. Please be clear, though, you will be joined as a party in the High Court proceedings involving the Prime Minister if you fail to recognise the implications of your failures to act. It is essential that the country has in the House of Commons a Leader of the Opposition who can hold the government to account and uphold fundamental Constitutional principles and rights.

You will appreciate that, by being in receipt of a salary in accordance with Schedule 2 of the aforementioned Act, as Leader of the Opposition you are a section 6 public authority and can be held to account under the law for acting in a way which is incompatible with the Convention rights set out in Schedule 1 of the Human Rights Act 1998. I refer you to S. 6(6) HRA.

Yours sincerely

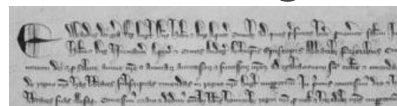
Julian Brennan



Section 2 of the Ministerial and other Salaries Act 1975.pdf
171.7kB

This is the Exhibit marked “R/JFB/4” referred to in the Witness Statement of Julian Fraser Brennan of the 30th day of November 2018.

Draft of letter to be sent by Royal Mail Special Delivery on 1 December 2018



1 December 2018

Theresa May
The Flat
10 Downing Street
London SW1A 0AA

Personal and urgent letter for Theresa May

Dear Mrs May

As you have not resigned as I have repeatedly suggested, it is possible that you consider what I have said is untrue and that I have defamed you. If that were so, and that I was shown what I have stated is contrary to your true reputation, I would: (a) withdraw the relevant statement(s); (b) make a public statement with a sincere and fulsome apology that has a rectifying effect; and (c) consider carefully any other remedial course of action put to me. Defamation is a serious matter. Given your position and work responsibilities it is simply not acceptable for your honesty and integrity to be undermined by false statements. That would be contrary to the national interest abroad, and contrary to the public interest at home. My engaged Convention right to freedom of expression under paragraph 1 of Article 10 is affected by duties and responsibilities coming within paragraph 2 of that Article.

After watching you on television on Monday (the 13th) I decided to waive my immunity from suit and allow you to issue proceedings in the High Court. Either I am right and you should resign; or you are right and what I have said is defamatory. Since you are seeking to persuade the House of Commons and the country at large about a particular course of action in relation to Brexit – which as you know I say is unlawful and not at all permissible – you **must** act. Enclosed are two copies of a Witness Statement of yesterday's date. You know what I say is true. You should read the document and ensure one copy is sent immediately to your personal Solicitor so you can be given independent professional advice. Following advice **you should either resign or sue me for defamation**. With so much at stake neither you nor Jeremy Corbyn can disregard what I say.

I reiterate my view that any action against me would be contrary to law. I caution against it, and emphasise that, in reality, you have no option but to resign. I suggest you inform Her Majesty the Queen that you will resign as Prime Minister on Tuesday following a statement in Parliament and that, in order to ensure continuity and stability, you can advise that David Lidington could act in the interim.

Yours sincerely

Julian Brennan
Director/Human Rights Defender

This is the Exhibit marked “R/JFB/5” referred to in the Witness Statement of Julian Fraser Brennan of the 30th day of November 2018.

Draft of a Personal Statement to be considered by Theresa May

**STATEMENT BY THE RT HON THEREA MAY MP
TO THE HOUSE OF COMMONS ON TUESDAY, 4 DECEMBER 2018**

Mr Speaker, with your permission I wish to make a Statement to the House.

At the beginning of the year an updated version of the Ministerial Code was published. In my Foreword to the document I said that the Code sets out “**the standards of behaviour expected from all those who serve in Government**”. That, of course, includes myself. Like all other Ministers I signed up to what is contained in the Code.

Paragraph 1.1 of section 1 of the Ministerial Code sets out a general principle. The principle is that: “**Ministers of the Crown are expected to maintain high standards of behaviour and to behave in a way that upholds the highest standards of propriety.**”. Paragraph 1.3 of section 1 says: “**The Ministerial Code should be read against the background of the overarching duty on Ministers to comply with the law and to protect the integrity of public life.**”.

My own behaviour has been called into question in relation to the Withdrawal Agreement I have commended to the House for approval. The issue relates to my personal conduct in relation to my official duties. It is said that I have acted in breach of paragraph 1.1 and 1.3 of the Code, and that I have done so dishonestly. It is said that my word – in Parliament and in the country – cannot be trusted. The legal validity of the Withdrawal Agreement has been challenged. What has been stated is very serious; though I accept that what I say is essential to the adoption of the Agreement. **I reject what has been said about me.**

As the Minister responsible for the Agreement and for upholding the standards set out in the Ministerial Code, and having regard to the resolution of this House of 19 March 1997 on the issue of “**Ministerial Accountability to Parliament**” (*Official Report columns 1046-47*), it is appropriate that I should inform the House about my position.

Obviously, in the present circumstances, what has been said against me cannot go unchallenged. I emphatically reject the allegation that I have knowingly and wilfully acted in breach of law. I have at no time knowingly failed to conduct myself or carry out my duties as required by the Ministerial Code. The person who asserts that I have acted unlawfully has said that I should have resigned as Prime Minister yesterday. I can say honestly and categorically that I know of no reason why I should do anything other than continue in office, and do my utmost to conclude an EU-UK Withdrawal Agreement.

The statements made are very serious and are likely to cause serious harm to my reputation as an honest person. That reputation is important to the conduct of my official duties, so I have decided it is in the public interest to “clear the air” and put the record straight. I have instructed my personal Solicitors to defend my reputation as an honest person by taking urgent action in relation to the defamatory statements made about me.

In reporting the steps I’ve taken, I am sure the House will appreciate why I do not intend to say anything further at this stage. I simply conclude by saying unreservedly that **I have not knowingly and wilfully broken the law.**

This is the Exhibit marked "R/JFB/6" referred to in the Witness Statement of Julian Fraser Brennan of the 30th day of November 2018.

Rectification and Resolution Bill

Rectification and Resolution Bill

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- 1 EU Referendum
 - 2 Nullity
 - 3 Revocations
 - 4 Exit Day
 - 5 Constitutional Requirements
 - 6 Further Legislation
 - 7 Early General Election
 - 8 Commencement
 - 9 Extent
 - 10 Short Title
-

Rectification and Resolution Bill

A B I L L TO

Rectify and resolve the problems caused by the European Union (Notification of Withdrawal) Bill and the related notice, uphold the democratic will and consent of the people of the United Kingdom and of Gibraltar, and for related purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 EU Referendum

The result of the referendum held on 23 June 2016 is confirmed, and it is the intention of the United Kingdom to withdraw from the European Union and from the European Atomic Energy Community.

2 Nullity

The nullity on 28 March 2017 of the notice given to the European Council on the following day is confirmed.

3 Revocations

The following are revoked:—

- (a) European Union (Notification of Withdrawal) Act 2017;
- (b) European Union (Withdrawal) Act 2018; and
- (c) European Union (Withdrawal) Act 2018 (Commencement and Transitional Provisions) Regulations 2018

and shall be deemed to have had no legal effects or to have caused, or shall give rise to, any legal liabilities, due to their wording or due to anything done under their provisions.

4 Exit Day

The United Kingdom will not withdraw from the European Union on 29 March 2019.

5 Constitutional Requirements

Upon this Act receiving Royal Assent the confirmation set out in section 1 will constitute a decision taken in accordance with the UK's own constitutional requirements.

6 Further Legislation

Subject to the provisions of section 7, Her Majesty's Government will introduce in the House of Commons a Parliamentary Bill which will explicitly:–

- (a) Require the Prime Minister to notify the European Council, within one month of the Bill's enactment, of the UK's intention set out in section 1;
- (b) Set out the means by which Parliament will accept or reject any finalised Withdrawal Agreement and the United Kingdom will or will not ratify any resulting Treaty or Treaties; and
- (c) Specify the applicable position if a finalised Withdrawal Agreement is rejected by Parliament or, if it is accepted, if any resulting Treaty is not ratified.

7 Early General Election

- (1) The Parliamentary Bill referred to in section 6 will be introduced in the House of Commons within one month of the formation of a Government following a General Election in the UK to be held on 7 March 2019.
- (2) Section 1(1) shall have effect despite the provisions of the Fixed-term Parliaments Act 2011 or of any related legislation.
- (3) The Salisbury Convention will apply in respect of sections 6(b) and (c) and the content referred to will depend on the explicit commitments in the election manifesto of the largest party that forms or leads the Government.

8 Commencement

This Act will come into force on the day it receives Royal Assent.

9 Extent

This Act applies and extends to the United Kingdom of Great Britain and Northern Ireland and to Gibraltar.

10 Short Title

This Act may be cited as the Rectification and Resolution Act 2018.

Rectification and Resolution Bill

A
B I L L
TO

Rectify and resolve the problems caused by the European Union (Notification of Withdrawal) Bill and the related notice, uphold the democratic will and consent of the people of the United Kingdom and of Gibraltar, and for related purposes

This is the Exhibit marked "R/JFB/7" referred to in the Witness Statement of Julian Fraser Brennan of the 30th day of November 2018.

Early Parliamentary General Election Bill

Early Parliamentary General Election Bill

CONTENTS

- 1 Failure to Approve
 - 2 Orders by Statutory Instrument
 - 3 Commencement, Extent and Short Title
-

Early Parliamentary General Election Bill

A BILL TO

Resolve by the means of an Early Parliamentary General Election the deadlock over the United Kingdom's withdrawal from the European Union, in an orderly fashion, through a Withdrawal Agreement concluded in accordance with Article 50(2) of the Treaty on European Union.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Failure to Approve

- (1) Having regard to the failure to approve the negotiated EU-UK Withdrawal Agreement, and to the adverse consequences of the withdrawal of the United Kingdom from the EU on 29 March 2019 without the agreement being concluded, an early Parliamentary General Election will be held on Thursday, 14 February 2019.
- (2) For the purposes of deciding the date of the next General Election, this section shall have effect despite any provision of the Fixed-term Parliaments Act 2011 or of any related legislation.

2 Orders by Statutory Instrument

- (1) The Prime Minister may by order made by statutory instrument provide for the implementation of regulations for the next General Election to be held and conducted in accordance with the terms of the Representation of the People Act 1983 and related provisions.
- (2) A statutory instrument containing an order under subsection (1) may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament.

3 Commencement, Extent and Short Title

- (1) This Act will come into force on the day it receives Royal Assent.
- (2) This Act extends to England and Wales, Scotland and Northern Ireland.
- (3) This Act may be cited as the Early Parliamentary General Election Act 2018.

Early Parliamentary General Election Bill

A
B I L L
TO

Resolve by the means of an Early Parliamentary General Election the deadlock over the United Kingdom's withdrawal from the European Union, in an orderly fashion, through a Withdrawal Agreement concluded in accordance with Article 50(2) of the Treaty on European Union.

Claim No: _____

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ROYAL COURTS OF JUSTICE

BETWEEN:

JEREMY BERNARD CORBYN

Claimant

- and -

JULIAN FRASER BRENNAN

Respondent

**WITNESS STATEMENT
OF JULIAN BRENNAN
OF 30 NOVEMBER 2018**

**J. F. Brennan
3 Byland Road
Skelton
Saltburn-by-the-Sea TS12 2NJ
julian@britishconstitution.org**

Claim No: _____

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ROYAL COURTS OF JUSTICE

BETWEEN:

THERESA MARY MAY

First Claimant

JEREMY BERNARD CORBYN

Second Claimant

– and –

JULIAN FRASER BRENNAN

Respondent

SECOND WITNESS STATEMENT OF JULIAN FRASER BRENNAN

I **JULIAN FRASER BRENNAN** of 3 Byland Road, Skelton, Saltburn-by-the-Sea TS12 2NJ, born on 14 September 1956 in Epping in the County of Essex, say what follows:

- 1 This is my second Witness Statement. Theresa May is now listed as the First Claimant. She must either inform Members of the Cabinet that what I assert is untrue, and then make a public announcement saying that she is instructing her personal Solicitor to act against me for defamation, or resign as Prime Minister. I say Theresa May has no option but to resign. I do so because I am able to prove in civil proceedings that she has repeatedly spoken and acted dishonestly over Brexit, and because me proving the truth of what I say would subsequently result in her arrest for breaches of the criminal law. To avoid such an outcome she should not sue me. I have suggested that she should take legal advice from her Solicitor. There are more problems with Brexit than is realised.

- 2 Theresa May acted unlawfully on 28 March 2017 in relation to the UK's notice under Article 50. The Prime Minister's notice has no legal effect. In legal terms (in respect of the UK leaving the European Union) the Government is in the exact same position it was on 25 January 2017, with: (a) a democratic mandate from a majority vote in a referendum sanctioned by Parliament; (b) the Conservative Party and the Labour Party acting in Parliament in support of that result being given legal effect and implemented; (c) a Judgement of the Supreme Court of the United Kingdom stating that there existed no legal power (statutory, common law or prerogative) for notification to be given to the European Council under Article 50(2) of the Treaty of European Union, and that a sanctioning Act of Parliament (ie primary legislation enacted by "the Queen in Parliament") would be necessary before a Minister of the Crown could give notice of the intention of the United Kingdom to withdraw from the European Union. All that was needed was an Act of Parliament that was "fit for purpose" and a letter giving notice. At that time, the referendum result needed to be "converted" into a decision that met the requirements of Article 50(1) and for Parliament to create the power to give notice under Article 50(2) and confer it on a Minister of the Crown. This could be done simply with a single and properly enacted statute and a letter. In legislative and administrative terms what was needed was no more than "a stroll through the park gates". The Prime Minister got it wrong. Theresa May made a serious error of judgement.
- 3 The correct decision in law on 28 March 2017 would have been for the Prime Minister to determine that any notice given at that time would involve her acting unlawfully – when her overarching duty was/is to comply with the law – and her acting in a way that would mean no legal effect could be given to the referendum result. By signing the letter of notice the Prime Minister effectively stopped Brexit. Theresa May should have gone to the House of Commons, said

what had gone wrong, apologised and introduced a new Bill. After its enactment, lawful notice could have been given. It was not a resigning matter.

- 4 The next legal stage of a process which began on 17 December 2015 when the European Union (Referendum) Act 2015 came into force has not been fulfilled.
- 5 None of this is difficult. As I have stated elsewhere, all that was ever needed for the problems relating to Article 50 to be avoided was for the Cameron government to have included something like the following as clause 2 in its European Union Referendum Bill:–

2 Withdrawal from the European Union

- (1) If in the referendum referred to in section 1 a majority of voters cast their vote for the United Kingdom to leave the European Union the Prime Minister will invoke Article 50 of the Treaty on European Union by notifying, under Article 50(2) TEU, the European Council of the UK's intention to withdraw from the Union.
 - (2) For the purposes of this section the references, on the ballot paper and in the notification etc, to: "the United Kingdom" and "the UK" include all territories for whose external relations with the EU the UK is responsible; and "leave the European Union" includes the withdrawal from all EU treaties which exist at the time the UK leaves the EU.
- 6 The country is now faced with a further problem; this time coming at the end.
 - 7 On 25 November 2018 the Prime Minister, acting on behalf of the United Kingdom of Great Britain and Northern Ireland, and in the exercise of prerogative powers, signed an international treaty that sets out the terms on which, subject to ratification, the United Kingdom will leave the European Union. In doing so the Prime Minister acted in excess of power. Further, the Prime Minister acted in breach of the legally binding oaths which she swore as First Lord of the Treasury and as a Privy Councillor. The treaty will only come into force and have effect in domestic law if it is ratified. However, as

the Prime Minister knows, once a treaty has been entered into by its High Contracting Parties it is legally binding in international law. Theresa May has misled people about this. She acted unlawfully, and she has acted dishonestly.

- 8 In considering this, it is important that no-one conflates. An unlawful act which is not justiciable in the Courts is not rendered lawful by that lack of jurisdiction. It remains unlawful. A Minister of the Crown who acts “on the international plane” on behalf of the United Kingdom of Great Britain and Northern Ireland does so in the exercise of prerogative power. Whatever is done internationally on behalf of the Crown with the authority of the Royal Prerogative must be lawful. The oaths sworn or affirmed by a Minister of the Crown bind the individual to the reigning Monarch. This “cascades” from the promise made by Her Majesty the Queen that all subjects would be governed “according to their respective laws and customs”.
- 9 Her Majesty’s Prime Minister who has sworn to *“be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors, according to law”* cannot act with *“the pretended Power of Suspending of Laws or the Execution of Laws by Regall Authority without Consent of Parlyament”*. Only an Act of Parliament could allow the Prime Minister to act in the way she did.
- 10 The unlawfulness of the Withdrawal Agreement for subjects of the Crown means that any Member of Parliament who votes in favour of the agreement will act in breach of the Oath of Allegiance s/he swore or affirmed at the beginning of this Parliament. Quite possibly, it is beyond the competence of the House of Commons to approve the Withdrawal Agreement. Importantly, any vote on it would bring the Government down, as the “payroll vote” cannot be mobilised. I refer to an important statement made by former Attorney General, the Rt Hon Jeremy Wright QC MP (now Secretary of State

for Digital, Culture, Media and Sport), stated correct on 15 October 2015:–

“International law binds the UK, both as a central tenet of our Constitutional framework and as a distinct legal regime at the international level. The Constitutional principle to respect the rule of law and comply with our international obligations is reflected in the Ministerial Code – which applies to me as much as to any other Minister. The Code states that there is an overarching duty on Ministers to comply with the law, including international law and treaty obligations and to uphold the administration of justice and to protect the integrity of public life.”.

- 11 It is arguable that it should not even be voted on and simply be left to “lay” as a visible demonstration Parliament and the country’s rejection of an unlawful treaty. Liability issues will almost certainly arise and Parliament needs the best available legal guidance. To my mind, the House of Commons should exercise caution and not rush into anything. My feeling is that ahead of any (if any) vote on the section 13(1)(b) motion, MPs should “nail down” the legal problems before acting.
- 12 As far as the wider legal issues are concerned, I am certain that the entire matter is one for the Supreme Court. I refer to this in some detail in my Section 7(1)(b) *Statement of Reliance* of 16 December 2018. I refer now to the attached Exhibits:–

Exhibit “R/JFB/31”

Letter of 4 December 2018 to the Prime Minister (with covering e-mail).

Exhibit “R/JFB/32”

E-mail of 4 December 2018 to the Leader of the Opposition.

Exhibit “R/JFB/33”

Letter of 14 September 2018 to the Prime Minister. (with covering e-mail).

Exhibit "R/JFB/34"

EEA (Continuation) Bill.

Exhibit "R/JFB/35"

Letter of 12 December 2018 to the Secretary of State.

Exhibit "R/JFB/36"

Exception and Revivals Bill.

I believe that the facts stated in this Witness Statement are true.



Julian Fraser Brennan

17 December 2018

This is the Exhibit marked "R/JFB/31" referred to in the Witness Statement of Julian Fraser Brennan of the 17th day of December 2018.

Letter of 4 December 2018 to the Prime Minister (with covering e-mail)

EXCEPTIONALLY URGENT - RE MOTION ON CONTEMPT OF PARLIAMENT (TO BE READ BY ALL RECIPIENTS)

Julian Brennan

Tue 04/12/2018 09:50

To: MAY, Theresa <theresa.may.mp@parliament.uk>; mayt@parliament.uk <mayt@parliament.uk>; sharkeyj@parliament.uk <sharkeyj@parliament.uk>; george.hollingbery.mp@parliament.uk <george.hollingbery.mp@parliament.uk>; seema.kennedy.mp@parliament.uk <seema.kennedy.mp@parliament.uk>; julian.smith.mp@parliament.uk <julian.smith.mp@parliament.uk>; christopher.pincher.mp@parliament.uk <christopher.pincher.mp@parliament.uk>;

Cc: correspondence@attorneygeneral.gov.uk <correspondence@attorneygeneral.gov.uk>; dexeu.correspondence@cabinetoffice.gov.uk <dexeu.correspondence@cabinetoffice.gov.uk>;

 1 attachments (5 MB)

Letter to the Prime Minister, 4 December 2018 (with appendices).pdf;

Please ensure the attached correspondence is brought to the Prime Minister's immediate attention. It is open for anyone to read the letter in order to be certain of the urgency and for it to be passed on to Theresa May's personally.

Julian Brennan
Council of Europe Human Rights Defender



4 December 2018

The Rt Hon Theresa May MP
Prime Minister
10 Downing Street
London SW1A 2AA

For the personal and most urgent attention of the Prime Minister

Dear Prime Minister

Contempt of Parliament

I refer to yesterday's letter sent by six leading Opposition MPs asking the Speaker of the House of Commons to give precedence to a motion being placed before the House of Commons that "***the Government has held Parliament in contempt***", and to the subsequent announcement by Mr Speaker that, having considered the matter carefully, he was satisfied "***there is an arguable case that a contempt has been committed***" and that he was therefore giving precedence for a motion to be tabled and taken "***as first business***" today.

So Members of Parliament can address the issue properly, you need to provide relevant information both to the Cabinet and, in accordance with paragraphs 1.1 and 1.6 of the Ministerial Code (*appended*), to the House of Commons formally.

You must disclose my letter of 4 November 2018 to you, and its covering e-mail of 5 November, marked "*Urgent Letter for the Prime Minister re the Court of Justice of the European Union*", to which my letter was attached (*appended*). The issue for the House is simple and straightforward: **Did you provide a copy of that correspondence to the Attorney General for England & Wales and/or to the Advocate General for Scotland?**

As is clear, the information provided in the correspondence was critical to the final Legal Advice the Law Officers provided to the Cabinet, and to the matter which was to be heard by the CJEU on 27 November. If the issues I raised with the Government about Article XIX of the Act of Union with England 1707 and "Article Sixth" of the Act of Union 1800 were not addressed the Advice will have been deficient.

In relation to the Protocol on Ireland/Northern Ireland annexed to the EU-UK "Withdrawal Agreement", I highlight that the words "***does not aim***" and "***intention to***" in (respectively) the fourth and fifth paragraphs of the Protocol's Preamble, the word "***Objectives***" in the title to Article 1 of the Protocol and the specific wording of Articles 1(4) and 2(1) (when read together) and the precise wording of Article 2(2) mean that it is entirely possible, as a matter of international law, that the "backstop" position could become permanent. It cannot be approved. It would be a breach of "Article Sixth" of the Act of Union 1800. That provision is part of a Constitutional statute; has not been repealed; and applies currently in respect of Northern Ireland and, in relation its maritime trade, to British Overseas Territories. The impact of the Withdrawal Agreement on sea trade between ports in Northern Ireland and the

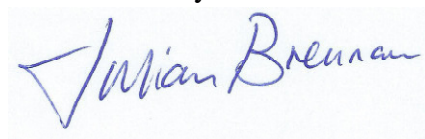
Port of Gibraltar is a major issue, upon which Parliament is entitled to know the considered legal position. I suggest to you that approval of the Withdrawal Agreement is not possible Constitutionally unless Parliament first enacts primary legislation that amends or repeals Article Sixth.

I refer you to my letter of 13 November 2018 and its covering e-mail of 14 November 2018 (*both appended*) and to the legal implications which arise as a result of section 1 of the European Union (Notification of Withdrawal) Act 2017 and your decision on 28 March 2017 to sign the letter of notice to President Tusk.

I suggest to you that if the two documents I sent you were disclosed to the Cabinet (or the information contained in them was provided to the Cabinet by you honestly) the Government will fall. If you did not do so, there are grounds for Members of the Cabinet to resign honourably because of your repeated breaches of trust. To avoid that you could resign. If you do not disclose you will have to resign.

Further, you should read my letter addressed to you personally at “The Flat, 10 Downing Street”, and the Witness Statement enclosed with it. They were delivered by Royal Mail Special Delivery (No. SF603714121GB) and signed for this morning at 6.53. You will see from paragraph 26 of the Statement that the last Exhibit referred to was “R/JFB/30”. This letter, together with its covering e-mail, will be marked as Exhibit “R/JFB/31”. In relation to possible defamation you will need to forward this correspondence, with the other documents, to your personal Solicitor. **You must act today.**

Yours sincerely



Julian Brennan
Director/Human Rights Defender

Appendix One

Section 1 of the Ministerial Code (Total of 2 pages)

MINISTERIAL CODE

1 MINISTERS OF THE CROWN

General principle

1.1 Ministers of the Crown are expected to behave in a way that upholds the highest standards of propriety.

1.2 The *Ministerial Code* should be read against the background of the overarching duty on Ministers to comply with the law and to protect the integrity of public life. They are expected to observe the *Seven Principles of Public Life* set out at Annex A, and the following principles of Ministerial conduct:

- a. The principle of collective responsibility applies to all Government Ministers;
- b. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies;
- c. It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;
- d. Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with the relevant statutes and the *Freedom of Information Act 2000*;
- e. Ministers should similarly require civil servants who give evidence before Parliamentary Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the *Civil Service Code*;
- f. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;
- g. Ministers should not accept any gift or hospitality

which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation;

h. Ministers in the House of Commons must keep separate their roles as Minister and constituency Member;

i. Ministers must not use government resources for Party political purposes; and

j. Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the *Civil Service Code* as set out in the *Constitutional Reform and Governance Act 2010*.

1.3 It is not the role of the Cabinet Secretary or other officials to enforce the Code. If there is an allegation about a breach of the Code, and the Prime Minister, having consulted the Cabinet Secretary feels that it warrants further investigation, he will refer the matter to the independent adviser on Ministers' interests.

1.4 The Code provides guidance to Ministers on how they should act and arrange their affairs in order to uphold these standards. It lists the principles which may apply in particular situations. It applies to all members of the Government and covers Parliamentary Private Secretaries in paragraphs 3.7 – 3.12.

1.5 Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct to Parliament and the public. However, Ministers only remain in office for so long as they retain the confidence of the Prime Minister. She is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards.

1.6 Ministers must also comply at all times with the requirements which Parliament itself has laid down in relation to the accountability and responsibility of Ministers. For Ministers in the Commons, these are set by the Resolution carried on 19 March 1997 (*Official Report* columns 1046-47), the terms of which are repeated at b. to e. above. For Ministers in the Lords, the Resolution can be found in the *Official Report* of 20 March 1997 column 1057. Ministers must also comply with the Codes of Conduct for their respective Houses and also any requirements placed on them by the Independent Parliamentary Standards Authority.

Appendix Two

E-mail to the Prime Minister of 5 November 2018
with attached letter (Total of 9 pages)

Urgent Letter for the Prime Minister re the Court of Justice of the European Union

Julian Brennan

Mon 05/11/2018 05:20

To: mayt@parliament.uk <mayt@parliament.uk>;

Cc: george.hollingbery.mp@parliament.uk <george.hollingbery.mp@parliament.uk>; seema.kennedy.mp@parliament.uk <seema.kennedy.mp@parliament.uk>; sharkeyj@parliament.uk <sharkeyj@parliament.uk>; georgia.morrissey1@dexu.gov.uk <georgia.morrissey1@dexu.gov.uk>;

 1 attachments (4 MB)

Letter to the Prime Minister, 4 November 2018 (with appendices).pdf;

Please bring the attached letter to the personal and most urgent attention of Theresa May MP. Thank you.
Julian Brennan



4 November 2018

The Rt Hon Theresa May MP
Prime Minister
10 Downing Street
London SW1A 2AA

Dear Prime Minister

Article 4(3) TEU

Further to my letter of 24 October 2018, and following newspaper reports about an imminent deal with the EU regarding Northern Ireland, I am writing to reiterate the importance of Article 4(3) of the Treaty on European Union. That reads as follows:-

“Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

“The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

“The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.”.

I point out that under Article 4(3) the UK, in pursuance of the principle of “sincere cooperation”, is under a specific legal obligation to assist others to carry out their tasks under Article 50(2) TEU. That requires you to act in “good faith”, under Article 26 of the Vienna Convention on the Law of Treaties, by providing highly relevant information.

Your disclosure of important information will assist the Commission to undertake necessary tasks in the exercise of its legal obligations, under Article 17 TEU, to ensure the application of the Treaties and to oversee the application of Union law.

In relation to Northern Ireland you know that you acted unlawfully in agreeing the EU’s “backstop” in December 2017 – due it being impossible under the Sixth Article of the Act of Union 1800 – and that you have repeatedly failed to disclose the legal impossibility to the EU. You sought to extricate yourself from the situation by subsequently suggesting the backstop is not acceptable on policy grounds, when it was impossible legally. Your lack of good faith has caused very significant – and wholly unnecessary – problems.

Also in relation to “sincere cooperation” and “good faith”, you are aware that the consent of the European Parliament has to be obtained before the Council can conclude any Withdrawal Agreement with the UK. In relation to the specific tasks under Article 50(2), and the competences conferred upon those two institutions under the Treaties, you need to ensure that the United Kingdom assists by providing relevant information relating to the first 66 words of Article XIX of the Union with England Act 1707. As you know, the terms of section 1(2) of Government’s European Union (Notification of Withdrawal) Bill – with the words “***or any other enactment***” – meant that both the final votes in the House of Commons and the House

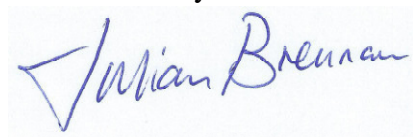
of Lords on 13 March 2017 and the notifications by the Speaker of the House of Commons and the Lord Speaker on 16 March 2017 were outside of Parliament's legislative competence.

Appended hereto are: A. Article XIX of the Union with England Act 1707; B. The Sixth Article of the Act of Union (Ireland) 1800; C. European Union (Notification of Withdrawal) Bill.

Taking account of what is stated in the second paragraph of your letter dated 29 March 2017, you have to disclose to the EU the facts relating to the nullifying effect which your signature had on the intended notice in the third paragraph of that letter. You are aware that the principles of "reasonableness" and "proportionality" mean that your decision to sign the letter of notification, instead of not doing so and informing the House of Commons of the legal problems that prevented notification, was in breach of your duties as a public law decision maker in the exercise of discretion. I refer you to *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223 and *Council of Civil Service Unions v Minister for the Civil Service* [1983] UKHL 6 and to *R (on the application of Lord Carlile of Berriew QC and Others) v Secretary of State for the Home Department* [2014] UKSC 60. You know that it is not possible for the UK to leave the Union without a new Act of Parliament and new notice.

As I have stated previously, you need to speak with the Secretary of State for Exiting the European Union regarding the duty of candour and the obligation of sincere cooperation so as to ensure important information is provided to the Court of Justice of the European Union in respect of the reference under Article 267 TFEU by the Inner House of the Court of Session during the appeal, *Andrew Wightman MSP & Others v The Secretary of State for Exiting the European Union* [2018] CSIH 62.

Yours sincerely

A handwritten signature in blue ink that reads "Julian Brennan". The signature is written in a cursive style with a large, stylized 'J' at the beginning.

Julian Brennan
Director/Human Rights Defender



Union with England Act 1707

1707 CHAPTER 7

XIX

That the Court of Session or Colledge of Justice do after the Union and notwithstanding thereof remain in all time coming within Scotland as it is now constituted by the Laws of that Kingdom and with the same Authority and Priviledges as before the Union subject nevertheless to such Regulations for the better Administration of Justice as shall be made by the Parliament of Great Britain And that hereafter none shall be named by Her Majesty or Her Royal Successors to be Ordinary Lords of Session but such who have served in the Colledge of Justice as Advocats or Principal Clerks of Session for the space of five years or as Writers to the Signet for the space of ten years With this provision That no Writer to the Signet be capable to be admitted a Lord of the Session unless he undergo a private and publick Tryal on the Civil Law before the Faculty of Advocats and be found by them qualified for the said Office two years before he be named to be a Lord of the Session yet so as the Qualifications made or to be made for capacitating persons to be named Ordinary Lords of Session may be altered by the Parliament of Great Britain And that the Court of Justiciary do also after the Union and notwithstanding thereof remain in all time coming within Scotland as it is now constituted by the Laws of that Kindom and with the same Authority and Priviledges as before the Union subject nevertheless to such Regulations as shall be made by the Parliament of Great Britain and without prejudice of other Rights of Justiciary . . . ^{F1} And that the Heritable Rights of Admiralty and Vice-Admiralties in Scotland be reserved to the respective Proprietors as Rights of Property subject nevertheless as to the manner of Exercising such Heritable Rights to such Regulations and Alterations as shall be thought proper to be made by the Parliament of Great Britain And that all other Courts now in being within the Kingdom of Scotland do remain but subject to Alterations by the Parliament of Great Britain And that all Inferior Courts within the said Limits do remain subordinate as they are now to the Supream Courts of Justice within the same in all time coming And that no Causes in Scotland be cognoscible by the Courts of Chancery, Queens-Bench, Common-Pleas or any other Court in Westminster-hall And that the said Courts or any other of the like nature after the Unions shall have no power to Cognosce Review or Alter the Acts or Sentences of the Judicatures within Scotland or stop the Execution of the same . . .

Changes to legislation: There are currently no known outstanding effects for the
Union with England Act 1707, Section XIX. (See end of Document for details)

Annotations:**Amendments (Textual)**

F1 Words repealed by [Statute Law Revision \(Scotland\) Act 1964 \(c. 80\)](#), **Sch. 1**

Modifications etc. (not altering text)

C1 Functions of Courts of Chancery, Queen's Bench and Common Pleas at Westminster now exercisable by High Court: [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\)](#), **s. 18(2)**

Changes to legislation:

There are currently no known outstanding effects for the Union with England Act 1707, Section XIX.



Act of Union (Ireland) 1800

1800 CHAPTER 38 40 Geo 3

ARTICLE SIXTH.

Subjects of Great Britain and Ireland to be on same footing from 1 Jan. 1801.

That it be the sixth article of union, that his Majesty's subjects of Great Britain and Ireland shall, from and after the first day of January, one thousand eight hundred and one, be entitled to the same privileges, and be on the same footing as to encouragements and bounties on the like articles, being the growth, produce, or manufacture of either country respectively, and generally in respect of trade and navigation in all ports and places in the united kingdom and its dependencies; and that in all treaties made by his Majesty, his heirs, and successors, with any foreign power, his Majesty's subjects of Ireland shall have same the privileges, and be on the same footing as his Majesty's subjects of Great Britain.

Changes to legislation:

There are currently no known outstanding effects for the Act of Union (Ireland) 1800, Article Sixth..

A
B I L L

TO

Confer power on the Prime Minister to notify, under Article 50(2) of the Treaty on European Union, the United Kingdom’s intention to withdraw from the EU.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Power to notify withdrawal from the EU

- (1) The Prime Minister may notify, under Article 50(2) of the Treaty on European Union, the United Kingdom’s intention to withdraw from the EU.
- (2) This section has effect despite any provision made by or under the European Communities Act 1972 or any other enactment.

5

2 Short title

This Act may be cited as the European Union (Notification of Withdrawal) Act 2017.

Appendix Three

Articles 1 and 2 of the Protocol on Ireland/Northern Ireland (2 pages)

ARTICLE 1

Objectives and relationship to subsequent agreement

1. This Protocol is without prejudice to the provisions of the 1998 Agreement regarding the constitutional status of Northern Ireland and the principle of consent, which provides that any change in that status can only be made with the consent of a majority of its people.
2. This Protocol respects the essential State functions and territorial integrity of the United Kingdom.
3. This Protocol sets out arrangements necessary to address the unique circumstances on the island of Ireland, maintain the necessary conditions for continued North-South cooperation, avoid a hard border and protect the 1998 Agreement in all its dimensions.
4. The objective of the Withdrawal Agreement is not to establish a permanent relationship between the Union and the United Kingdom. The provisions of this Protocol are therefore intended to apply only temporarily, taking into account the commitments of the Parties set out in Article 2(1). The provisions of this Protocol shall apply unless and until they are superseded, in whole or in part, by a subsequent agreement.

ARTICLE 2

Subsequent agreement

1. The Union and the United Kingdom shall use their best endeavours to conclude, by 31 December 2020, an agreement which supersedes this Protocol in whole or in part.
2. Any subsequent agreement between the Union and the United Kingdom shall indicate the parts of this Protocol which it supersedes. Once a subsequent agreement between the Union and the United Kingdom becomes applicable after the entry into force of the Withdrawal Agreement, this Protocol shall then, from the date of application of such subsequent agreement and in accordance with the provisions of that agreement setting out the effect of that agreement on this Protocol, not apply or shall cease to apply, as the case may be, in whole or in part, notwithstanding Article 20.

ARTICLE 3

Extension of the transition period

The United Kingdom, having had regard to progress made towards conclusion of the agreement referred to in Articles 1(4) and 2(1) of this Protocol, may at any time before 1 July 2020 request the extension of the transition period referred to in Article 126 of the Withdrawal Agreement. If the United Kingdom makes such a request, the transition period may be extended in accordance with Article 132 of the Withdrawal Agreement.

Appendix Four

E-mail to the Prime Minister of 14 November 2018
with attached letter (Total of 2 pages)

Urgent documents for the Prime Minister for today's Cabinet meeting

Julian Brennan

Wed 14/11/2018 06:30

To: MAY, Theresa <theresa.may.mp@parliament.uk>; george.hollingbery.mp@parliament.uk <george.hollingbery.mp@parliament.uk>;
seema.kennedy.mp@parliament.uk <seema.kennedy.mp@parliament.uk>; julian.smith.mp@parliament.uk
<julian.smith.mp@parliament.uk>; mayt@parliament.uk <mayt@parliament.uk>; sharkeyj@parliament.uk
<sharkeyj@parliament.uk>;

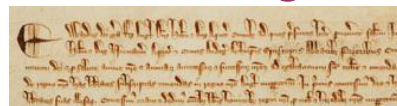
 4 attachments (383 KB)

1. Letter to the Prime Minister, 13 November 2018.pdf; 2. Letter to President Tusk, 14 November 2018.pdf; 3. Revocations and Notification Bill.pdf; 4. Declarations of Nullity Bill.pdf;

For the attention of all recipients

Please bring the attached letter and its enclosures to the personal and most urgent attention of Theresa May MP. Feel free to read the letter so you can be assured of the importance and urgency of the matter.

Thank you. Julian Brennan



14 November 2018

The Rt Hon Theresa May MP
Prime Minister
10 Downing Street
London SW1A 2AA

Dear Prime Minister

Draft EU Withdrawal Agreement

You are aware that neither yourself nor any other Minister of the Crown can lawfully sign a Withdrawal Agreement, and that as a matter of law the United Kingdom cannot leave the European Union on 29 March 2019. You have to make these facts, and the reasons for them, known to the Cabinet when it meets this afternoon. You cannot present the draft Withdrawal Agreement for approval, as to do so would be a breach of your overarching duty to comply with the law. The Cabinet should decide: (a) that you should send the enclosed letter to President Tusk; and (b) that the enclosed Parliamentary Bill – the *Revocations and Notification Bill* – should be introduced in the House of Commons for passing as emergency legislation. If the Cabinet determines that the circumstances do not require that, you should table the *Declarations of Nullity Bill* which I sent you originally on 15 October 2018 and now re-send. You are aware that both you and Jeremy Corbyn should resign by the end of today.

Yours sincerely

Julian Brennan
Director/Human Rights Defender

Encs: Text of letter of 14 November 2018 to President Tusk
Revocations and Notification Bill
Declarations of Nullity Bill.

This is the Exhibit marked "R/JFB/32" referred to in the Witness Statement of Julian Fraser Brennan of the 17th day of December 2018.

E-mail of 4 December 2018 to the Leader of the Opposition

FOR THE URGENT AND PERSONAL ATTENTION OF JEREMY CORBYN (TO BE READ BY ALL RECIPIENTS)

Julian Brennan

Tue 04/12/2018 10:22

To:jeremy.corbyn.mp@parliament.uk <jeremy.corbyn.mp@parliament.uk>; corbynj@parliament.uk <corbynj@parliament.uk>;
petersenn@parliament.uk <petersenn@parliament.uk>; karie.murphy@parliament.uk <karie.murphy@parliament.uk>;
kate.hollern.mp@parliament.uk <kate.hollern.mp@parliament.uk>; leader@labour.org.uk <leader@labour.org.uk>;
karie_murphy@labour.org.uk <karie_murphy@labour.org.uk>; jennie_formby@labour.org.uk <jennie_formby@labour.org.uk>;
akerr@cwu.org <akerr@cwu.org>;

 1 attachments (5 MB)

Letter to the Prime Minister, 4 December 2018 (with appendices).pdf;

Dear Mr Corbyn

Please read the attached correspondence which was sent to the Prime Minister about half an hour ago. It relates to the motion for Contempt of Parliament which is to be debated this morning in the House of Commons. I suggest that if you do not inform me today that you will be suing me for defamation you must resign as Leader of the Opposition. Your continuation in Office means that the Prime Minister cannot properly be held to account in Parliament for her dishonesty and her unlawfulness. The national interest is endangered by your continuing omissions and failures to act.

Yours sincerely

Julian Brennan

**This is the Exhibit marked “R/JFB/33”
referred to in the Witness Statement of
Julian Fraser Brennan of the 17th day
of December 2018.**

Letter of 14 September 2018 to the Prime Minister (with covering e-mail)

URGENT DOCUMENTS FOR THE PRIME MINISTER'S WEEKEND BOX

Julian Brennan

Fri 14/09/2018 16:21

To: ayse.atas@governmentlegal.gov.uk <ayse.atas@governmentlegal.gov.uk>;

Cc: jeremy.corbyn.mp@parliament.uk <jeremy.corbyn.mp@parliament.uk>;

 2 attachments (1 MB)

Letter to the Prime Minister, 14 September 2018 (with appendices).pdf; EEA (Continuation) Bill.pdf;

I have been informed that you are the person I should contact regarding legal work previously carried out by Oliver Gilman. Would you please ensure that the attached letter and the Parliamentary Bill are passed on for the Prime Minister's personal and most urgent attention. The importance and urgency is clear from the documents' contents. Thank you. Julian Brennan.



14 September 2018

The Rt Hon Theresa May MP
Prime Minister and First Lord of the Treasury
10 Downing Street
London SW1A 2AA

FOR THE PERSONAL AND MOST URGENT ATTENTION OF THE PRIME MINISTER

Dear Prime Minister

I refer to my letter of 12 September 2018.

If Jeremy Corbyn had acted honestly and disclosed information to Labour MPs this week, it would have been possible that before the House of Commons rose for the conference recess yesterday you could have faced – and lost – a motion of “No Confidence” in the following terms:–

“This House has no confidence in the Right Honourable Member for Maidenhead in her performance as Prime Minister, and calls on her to resign her office”.

That motion could have passed if Mr Corbyn had informed Nick Brown that you are unable to lawfully rely on DUP votes. You might dispute that, though you have not once – in more than a year – challenged my assertion that the Conservative/DUP agreement is not valid because you acted dishonestly in abuse of power in allowing it to be signed. However, that issue is immaterial to the specific wording of the above motion (which the Labour Front Bench should have been able to table). The wording of the Conservative/DUP agreement shows that the DUP only agreed to **“support the Government on all motions of confidence”**. The agreement does not extend to you personally. If for some reason the above motion had been tabled and ruled out of order you would nonetheless have been forced out of office as the material that could have been published in advance of the motion being debated would in any event have brought an end to your Premiership.

The case is very simple, and it relates to an absence of competence in the face of impending chaos and harm which the country and the rest of Europe faces with a hard Brexit. Again, leaving aside any legal issue which you might dispute in relation to Gibraltar and Scotland, and the fatal flaws in the European Union (Notification of Withdrawal) Bill, there is a straightforward issue of competence. I explain:–

- You failed to read Article 50 TEU properly. Its first two sentences (Article 50(1) and the first sentence of Article 50(2)) are inextricably linked. If one imagines that the final draft of the treaty had been edited differently, the two sentences could be viewed [more logically] in a different Article 50(1) that related to Member States which wish to withdraw from the EU. The “new” Article 50(2) can then be seen as relating solely to the response of the EU to notification by a Member State (from notification through to the conclusion of a withdrawal agreement). Without the wording being changed and simply by moving a sentence, the legal duties (and where they begin and end) become

much clearer. With that in mind (but taking Article 50 TEU as it exists), it is wholly clear that all the withdrawing State has to do is comply with the requirements set out in the first two sentences. Once it has done that it has no other obligations at all under Article 50 (See **Appendix A**).

- Having failed to see what I set out above – and despite having said umpteen times that you wanted to keep the UK’s bargaining position close to your chest, in your letter of notification you gifted the EU with a full view of your “cards”. You could have notified without giving anyone even a glimpse of a deuce. The best opening gambit available to the UK was to place all responsibility on the EU to be the “*offeror*” through the negotiating guidelines it had to issue under Article 50(2). At **Appendix B** is the text of a letter which you could have sent. Had you done so the UK’s position could have been crafted subsequently and with full knowledge of the EU’s negotiating position. With this correct reading of Article 50 it is clear that Article 50(2) places the onus on the European Union to “**negotiate and conclude**” a withdrawal agreement. That is a legal obligation under the EU treaties.
- Under Article 50(3) the onus is on the European Council to act in relation to any possible extension to the two year period. The wording of Article 50 places all “pressure” on the European Union to ensure that the withdrawal of a Member State is effected through an agreement. Despite that being crystal clear, your erroneous starting point allowed the EU to put the burden of problem-solving and conceding on the UK.

In effect what you achieved through your pointless threat of a “Hard Brexit” – and your subsequent failure to read, understand and take full advantage of the precise terms of Article 50 – led to the UK being placed in the highly problematic position in the negotiations of having to find and offer solutions. It was a fatal error of judgment to place the UK in the position of offeror and the EU in the position of acceptor/rejecter. The UK’s best opening position would have been, in its first response to the EU (ie subsequent to the EU’s position being set out in the negotiating guidelines and directives) to accept/concede a number of the EU’s stated positions (eg those that would inevitably be principles within any withdrawal agreement), and doing so with qualifications, and to seek a number of commensurate related improvements. The purpose of doing that would not be to secure anything of particular importance, but to consolidate the order and sequence, and establish the “rhythm”, for the negotiations. Also, anything which was wholly unacceptable should have been rejected in the first response. It was a serious mistake to leave the difficult issues to the end.

Now the end is in view the Government’s policy is the Chequers agreement, which isn’t acceptable to the EU. However, the major problem is that your agreement to the EU’s backstop position in relation to Northern Ireland last December doubled the pressure on the UK to offer something that is acceptable to the EU. From that point on all pressure on the EU to find a solution, and being responsible for the damaging effects of a Brexit without an agreement, just evaporated. Michel Barnier and Jean Claude Juncker exploited your domestic political “need” to achieve some success; by enticing you with the move on to Phase Two they made a closing position for you nigh on impossible. The smart move would have been for the UK to insist on completing Phase One, and holding the EU to its obligation under Article 50(2) to negotiate a withdrawal agreement. After all, a satisfactory “framework” for a future relationship is worth nothing if a mutually acceptable withdrawal agreement cannot be concluded. Your one big chance to turn the tables back to where they should have been in March 2017 was blown by your desire to return to Westminster with a piece of paper in your hand.

Given that Chequers is, for all intents and purposes, a “dead duck”; that you have perhaps up to a hundred Conservative MPs who are getting ready to turn against you; and that you will not secure any substantial concessions from the EU that will avoid a “cliff edge”, it is time for a major shift in position and policy so the UK: (1) leaves the EU in March 2019; (2) avoids a “hard Brexit”; and (3) puts all the responsibility and liability for any failure to “negotiate and conclude” a withdrawal agreement back in Brussels where it belongs.

Under Article 50(2) of the Treaty on European Union, and under EU law, the presumption is that the European Council should make a final offer to the UK so that it can – if the UK agrees – then seek the consent of the European Parliament to conclude the agreement. This reality has somehow been lost on you.

So, the question that arises is this: **How can all that be achieved?**

The answer (as I suggested to Jeremy Corbyn three months ago) is by “stealing the march” through Article 127 of the Agreement on the European Economic Area and an Act of Parliament. I refer you to the precise terms of Article 127 (See **Appendix C**) and highlight that the notice period is not twelve months as frequently stated; Article 127 says “**at least twelve months’ notice**”. As a Contracting Party, the UK can choose to give notice of its withdrawal at any time, and it can give as long a notice period as it wants. Having regard to the Judgment of the Supreme Court in *R (on the application of Miller and Dos Santos) v Secretary of State for Exiting the European Union* [2017] UKSC 5, all that is required of the UK is for the Government to give written notice to the Agreement’s other Contracting Parties in accordance with the provisions of a sanctioning Act of Parliament. As you will see, immediately after the notification of the intended withdrawal the other Contracting Parties must convene a diplomatic conference in order to envisage the necessary modifications to bring to the agreement. This new “Ace”, or “Joker” if you prefer, is the game changer the UK so urgently needs.

I refer you to the enclosed **EEA Agreement (Continuation) Bill**. Other than me pointing out that the phrase “continuous and balanced strengthening of trade and economic relations” is taken from the EEA Agreement’s Article 1, I think the text is self-explanatory. The many advantages are clear. Most importantly, it means that if a withdrawal agreement is not concluded a hard Brexit will be avoided and a” transitional period” is nonetheless secured. It places all the pressure on the EU to agree a withdrawal agreement and a framework for the future that is acceptable to the UK (#&PDQ). The terms of the Bill would mean that if the European Union had any problem with this approach, or wanted to make a problem over it, then one of its governing bodies, or a concert of them, would have to take formal decisions to seek the effective expulsion of the United Kingdom from the European Economic Area, and do so in breach of the UK’s rights as a Contracting Party to the EEA Agreement and in breach international law. The EU would also have to explain to the many hundreds of major companies, banks and financial institutions, and the hundred million working people across Europe why it considers doing that would be a positive step in the face of potential collapse of economic confidence and stability.

On the basis of the EU’s oft-stated mantra “Nothing is agreed until everything is agreed”, it can decide not to agree anything, or to make an entirely satisfactory offer of a comprehensive withdrawal agreement. What I propose provides a basis for such an agreement, whilst making sure that the United Kingdom would not fall foul of either a failure to agree or a non-ratification of any agreement, should such misfortune were to occur. It resolves, for the time being, all difficulties relating to Ireland and to Gibraltar. Personally, and having regard to the continuing process of healing and to the supreme efforts of very many people, North and South, and on both sides of the Irish Sea, to developing different types of relationship based

on good neighbourliness and mutual and equal respect, I think the people of Great Britain owe this to the people of Ireland. A hard Brexit would do untold damage to the standard of living and the quality of life of people across both jurisdictions.

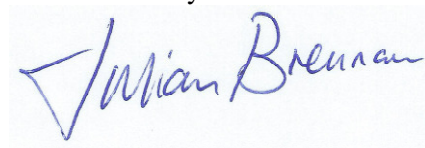
Through what I propose the UK would be able to achieve the most seamless and non-disruptive transition possible and, if the EU does not wish to negotiate a trade deal with the UK, everyone here will have had sufficient time to be ready for a different future outside the EU and the EEA. Very importantly, the approach I have developed means the United Kingdom could negotiate and agree trade deals anywhere in the world from 30 March 2019, unhindered by the EU. Any closing offer by the European Union would have to match all the benefits that the approach I suggest delivers, and avoid major problems that exist due to its stance towards Gibraltar, for it to be worthwhile. The “begging bowl” can be moved to the other side of the negotiating table.

I disagree with Jacob Rees-Mogg when he says there is only a need for a change of policy, and no need for a change in leadership. I argue he is wrong because you failed to come up with the policy that I am proposing, or one that is equally effective. It was your job to devise something better than your late-in-the-day inoperable Chequers policy. That was more about keeping things moving along and shifting the balance within the Cabinet. It was more a political manoeuvre than a serious attempt at delivering a policy plan which could turn the negotiations round. But time has run out. It's time for the realities to be accepted, and for effective action. Your failure in the negotiations to bring the EU to make an acceptable offer for a withdrawal agreement – a failure which has its origins in a vainglorious and useless letter of notification – means you should resign while there is still time to avoid the cliff edge.

I put it to you that you should make a formal request to the Speaker of the House of Commons and the Lord Speaker for Parliament to be recalled to meet on Monday; for the Bill I am putting forward to be introduced in the House of Commons as emergency legislation for it to be passed with all-party support; and for you to resign. The question that needs to be addressed now is, not what sort of agreement the UK wants, but **How does the UK secure its withdrawal from the EU and avoid a disastrous hard Brexit?** That is the single most important democratic question Parliament and the country needs to address, and nothing, but nothing – including joining new military action in Syria – should get in the way of that. That is the question I put my mind to solving some time ago, and I suggest that the answer I have come up with is viable. It is time for Parliament to show leadership and to speak with a clear voice. With a healthy dose of pragmatism and an acceptance that whilst Brexit does mean Brexit, realistically it is just not possible for it to be delivered totally by March next year.

I suggest you should clear the way Parliament to act. In my estimation, if the Government does not introduce the proposed Bill (or something very similar) and the UK suffers economic harm on the scale that is wholly foreseeable the Conservative Party will not govern again for more than a decade. That will be your legacy.

Yours sincerely



Julian Brennan
Director/Human Rights Defender

The conditions of admission and the adjustments to the Treaties on which the Union is founded which such admission entails shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The 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.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

Article 51

The Protocols and Annexes to the Treaties shall form an integral part thereof.

Article 52

1. This Treaty shall apply to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the

30 March 2017

Dear President Tusk

In accordance with the power conferred upon me through the European Union (Notification of Withdrawal) Act 2017, I am notifying the European Council of the United Kingdom's intention to withdraw from the European Union. Please understand the UK's notification to include the European Atomic Energy Community and Gibraltar.

I am will write again to set out the UK's position once the EU has formally issued the negotiating guidelines and directives.

Yours sincerely

The Rt Hon Theresa May MP
Prime Minister

Article 125

This Agreement shall in no way prejudice the rules of the Contracting Parties governing the system of property ownership.

Article 126

- 1.⁽¹⁹⁾ The Agreement shall apply to the territories to which the Treaty establishing the European Economic Community ⁽²⁰⁾ is applied and under the conditions laid down in that Treaty ⁽²¹⁾, and to the territories of Iceland ⁽²²⁾, the Principality of Liechtenstein and the Kingdom of Norway ⁽²³⁾.
2. Notwithstanding paragraph 1, this Agreement shall not apply to the Åland Islands. The Government of Finland may, however, give notice, by a declaration deposited when ratifying this Agreement with the Depositary, which shall transmit a certified copy thereof to the Contracting Parties, that the Agreement shall apply to those Islands under the same conditions as it applies to other parts of Finland subject to the following provisions:
 - (a) The provisions of this Agreement shall not preclude the application of the provisions in force at any given time on the Åland Islands on:
 - (i) restrictions on the right for natural persons who do not enjoy regional citizenship in Åland, and for legal persons, to acquire and hold real property on the Åland Islands without permission by the competent authorities of the Islands;
 - (ii) restrictions on the right of establishment and the right to provide services by natural persons who do not enjoy regional citizenship in Åland, or by any legal person, without permission by the competent authorities of the Åland Islands.
 - (b) The rights enjoyed by Ålanders in Finland shall not be affected by this Agreement.
 - (c) The authorities of the Åland Islands shall apply the same treatment to all natural and legal persons of the Contracting Parties.

Article 127

Each Contracting Party may withdraw from this Agreement provided it gives at least twelve months' notice in writing to the other Contracting Parties.

Immediately after the notification of the intended withdrawal, the other Contracting Parties shall convene a diplomatic conference in order to envisage the necessary modifications to bring to the Agreement.

Article 128

- 1.⁽²⁴⁾ Any European State becoming a member of the Community shall, and the Swiss Confederation or any European State becoming a member of EFTA may, apply to become a party to this Agreement. It shall address its application to the EEA Council.

⁽¹⁹⁾ The words "the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation" shall be replaced by the words "the Kingdom of Norway and the Kingdom of Sweden".

⁽²⁰⁾ Words "and the Treaty establishing the European Coal and Steel Community" deleted by the 2004 EEA Enlargement Agreement (OJ No L 130, 29.4.2004, p. 3 and EEA Supplement No 23, 29.4.2004, p. 1), provisionally applicable as of 1.5.2004, e.i.f. 6.12.2005.

⁽²¹⁾ Words "those Treaties" replaced by the words "that Treaty" by the 2004 EEA Enlargement Agreement (OJ No L 130, 29.4.2004, p. 3 and EEA Supplement No 23, 29.4.2004, p. 1), provisionally applicable as of 1.5.2004, e.i.f. 6.12.2005.

⁽²²⁾ Words "Republic of" deleted by the 2007 EEA Enlargement Agreement (OJ No L 221, 25.8.2007, p. 15; EEA Supplement No 39, 26.6.2008, p.1), provisionally applicable as of 1.8.2007, e.i.f. 9.11.2011.

⁽²³⁾ Words "the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Kingdom of Sweden" replaced by the words "the Republic of Iceland, the Principality of Liechtenstein and the Kingdom of Norway" by the 2004 EEA Enlargement Agreement (OJ No L 130, 29.4.2004, p. 3 and EEA Supplement No 23, 29.4.2004, p. 1), provisionally applicable as of 1.5.2004, e.i.f. 6.12.2005.

⁽²⁴⁾ Subparagraph introduced by the Adjusting Protocol replaces former text.

**This is the Exhibit marked "R/JFB/34"
referred to in the Witness Statement of
Julian Fraser Brennan of the 17th day
of December 2018.**

EEA (Continuation) Bill

EEA Agreement (Continuation) Bill

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 - 2 Article 3
 - 3 Article 5
 - 4 Effects
 - 5 Diplomatic Conference
 - 6 Extent
 - 7 Commencement
 - 8 Short title
-

EEA Agreement (Continuation) Bill

A B I L L

TO

To avoid disruption to trade, commerce and business and to mitigate foreseeable economic harm and financial loss which will occur if the European Union fails to comply with its legal obligation under Article 50(2) of the Treaty on European Union to “negotiate and conclude” a withdrawal agreement and, as a result, jeopardizes the “continuous and balanced strengthening of trade and economic relations” across the continent of Europe, and for related purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Article 127

On 1 October 2018 the Prime Minister shall, under Article 127 of the Agreement on the European Economic Area, give to that Agreement’s other contracting parties notice of the United Kingdom’s withdrawal from the European Economic Area at midnight of either:—

- (a) the day before a new trade treaty between the United Kingdom (as a third state) and the European Union comes into effect, or
- (b) Thursday, 31 December 2020;

whichever is the earlier.

2 Article 3

Following the United Kingdom’s withdrawal from the European Union on Friday, 29 March 2019, the Government shall, until the earliest date referred to in section 1, take all necessary action to ensure the obligations set out in Article 3 of the Agreement on the European Economic Area are fulfilled.

3 Article 5

In the event of any proposed, intended or actual interference with the UK's right to serve its period of notice under Article 127, or any related detriment, Her Majesty's Government shall raise it, and/or any related issue, as a "matter of concern" at the level of the EEA Joint Committee or the EEA Council according to the modalities laid down in Articles 92(2) and 89(2), respectively.

4 Effects

(1) Subject to subsection (2), this Act does not alter any existing law or power or remove or vary any legal right, freedom, duty or obligation.

(2) This Act has effect despite any related provision made by or under the European Union (Withdrawal) Act 2018.

5 Diplomatic Conference

In developing policy on a possible trade treaty between the United Kingdom and the European Union, Her Majesty's Government shall have regard to the "necessary modifications" envisaged by the diplomatic conference that will, under Article 127, be immediately convened by the other Contracting Parties to the EEA Agreement after the UK's notification of its intended withdrawal has been given in accordance with section 1.

6 Extent

This Act applies and extends to the United Kingdom of Great Britain and Northern Ireland and to Gibraltar.

7 Commencement

This Act will come into force on the day it receives Royal Assent.

8 Short title

This Act may be cited as the EEA Agreement (Continuation) Act 2018.

EEA Agreement (Continuation) Bill

A

B I L L

TO

To avoid disruption to trade, commerce and business and to mitigate foreseeable economic harm and financial loss which will occur if the European Union fails to comply with its legal obligation under Article 50(2) of the Treaty on European Union to “negotiate and conclude” a withdrawal agreement and, as a result, jeopardizes the “continuous and balanced strengthening of trade and economic relations” across the continent of Europe, and for related purposes.

This is the Exhibit marked "R/JFB/35" referred to in the Witness Statement of Julian Fraser Brennan of the 17th day of December 2018.

Letter of 12 December 2018 to the Secretary of State



12 December 2018

The Rt Hon Stephen Barclay MP
Secretary of State for Exiting the European Union
9 Downing Street
London SW1A 2AG

FOR THE IMMEDIATE PERSONAL ATTENTION OF STEPHEN BARCLAY

Dear Secretary of State

Resignations for Misleading Parliament

I refer to questions put to Robin Walker MP (Parliamentary Under Secretary of State) in the Chamber of the House of Commons yesterday afternoon. A common thread ran through the debate, and it was to do with an absence of trust. Clive Efford MP referred to a feeling that people were *not always dealing from the top of the pack*. Following, more or less, on the heels of a question from Helen Goodman MP about Government policy on the *Wightman* Judgment, handed down by the CJEU on Monday morning, it reminded me of the phrase *cards face up on the table* in relation to Judicial Review. There is a strong and growing sense that a lot of Ministers are being kept in the dark. From my perspective, it is clear from watching the debates on television that a number of Ministers just don't seem at all comfortable with the "answers" they are giving to MPs from their prepared briefs.

The question that arises is this: **Are Ministers being given accurate or** (due to relevant facts being kept from them) **false information to provide to Parliament?** The principle of Collective Responsibility applies – as it should – but that does not involve Ministers speaking for the Government in a way that uniformly misleads. Ministers need to be adequately informed or they cannot fulfil their duties under the Ministerial Code. Due to the proceedings in Parliament being televised, recorded and broadcast, such improper withholding of information interferes with the Article 10 Convention rights of licence fee payers. That right includes "*the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers*". It is, of course, an improper interference with the right of their Member of Parliament to speak with and for their constituents. A good example of this is whether or not my letter of 24 October 2018 was provided to the Law Officers and whether or not the Attorney General was in a position to consider what is stated in it when preparing his Legal Advice of 13 November 2018.

Having regard to the Bill of Rights 1689, certain unlawful acts involved are most probably not justiciable in the courts. However, as I have said before, the fact that something that is unlawful but not justiciable does not somehow become lawful because it is not justiciable. It remains unlawful. In turn, Ministers are either being stopped from complying with the "**overarching duty to comply with the law**" or they are choosing to withhold important and relevant facts and information and are acting in wilful and flagrant breach of that duty to Parliament. **Parliament needs to know the facts.**

We know that a Secretary of State is responsible for the policy of his/her Department, and that the Department's Permanent Secretary is responsible for its operation. The following questions arise for you personally:—

1. Do Ministers in your Department know that the Government has wilfully and dishonestly acted in breach of the duty of candour in the various Brexit related Judicial Review proceedings and withheld the same information from Parliament?
2. If the answer to that is Yes, each Minister who knows that is so must apologise for misleading the House and resign from the Government.
3. If the answer is No, the next question is: Who decided to withhold the information from them and interfere with their ability to account properly to Parliament?
4. If the answer to that is the Secretary of State if it is a policy matter; and you must accept responsibility and resign. If the decision was taken by one or more Civil Servants, then the Permanent Secretary will be expected to resign due to it being an operational matter.
5. If you and/or the Permanent Secretary were told to withhold information by the Prime Minister, or someone acting in her name, then that is one more reason why Theresa May should resign. Your resignation would also be required.
6. Someone needs to identify who has previously seen the attached four documents: (a) copy of my letter of 24 October 2018 to the Prime Minister (headed **Sincere Co-operation and Good Faith**); (b) copy of that letter's related e-mail, also of 24 October (headed **Urgent Correspondence for the Personal Attention of the Prime Minister**); (c) copy of my e-mail to the private office of the Foreign Secretary, 24 November 2018 and (d) copy of my e-mail to you of 9 December 2018.

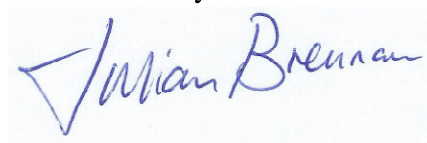
People throughout the United Kingdom are entitled to know if their Member of Parliament is being misled. MPs are entitled to know the answer to the above questions.

If that is happening someone is preventing Ministers of the Crown from doing their jobs; which in turn means Members of Parliament are being thwarted from doing their job.

MPs are entitled to be informed if Ministers act in breach of their individual duty to Parliament (set out in section 1.2b of the Ministerial Code) to “account, and be held to account, for the policies, decisions and actions of their departments and agencies”.

I remind you that you personally need to apologise to Parliament for misleading MPs in relation to your Statement to the House on Tuesday about the CJEU ruling, and to take appropriate action. I refer to the five related Exhibits attached.

Yours sincerely



Julian Brennan
Director/Human Rights Defender

**This is the Exhibit marked "R/JFB/36"
referred to in the Witness Statement of
Julian Fraser Brennan of the 17th day
of December 2018.**

Exception and Revivals Bill

Exception and Revivals Bill

CONTENTS

- 1 Conferral and revival of powers
 - 2 Extent, Commencement and Short Title
-

Exception and Revivals Bill

A BILL TO

To grant an exception to Article 1 of the Bill of Rights 1689 and to revive previous prerogative powers so they may be exercised in relation to international treaties.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Conferral and revival of powers

- (1) In relation to international treaties and treaty obligations Ministers of the Crown no longer come within the ambit of Article 1 of the Bill of Rights 1689.
- (2) When acting in relation to international treaties Ministers of the Crown may exercise any previous prerogative power.
- (3) Whatever done or not done under the two subsections above is not justiciable in any court of law.

2 Extent, Commencement and Short Title

- (1) This Act applies to the United Kingdom of Great Britain and Northern Ireland and to Gibraltar.
 - (2) This Act comes into force on the same day as the European Union (Notification of Withdrawal) Act 2017.
 - (3) This Act may be cited as the Exception and Revivals Act 2017.
-

Exception and Revivals Bill

A
B I L L
TO

To grant an exception to Article 1 of the Bill of Rights 1689 and to revive previous prerogative powers so they may be exercised in relation to international treaties.

Claim No: _____

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ROYAL COURTS OF JUSTICE

BETWEEN:

THERESA MARY MAY

First Claimant

JEREMY BERNARD CORBYN

Second Claimant

- and -

JULIAN FRASER BRENNAN

Respondent

**WITNESS STATEMENT
OF JULIAN BRENNAN
OF 17 DECEMBER 2018**

**J. F. Brennan
3 Byland Road
Skelton
Saltburn-by-the-Sea TS12 2NJ
julian@britishconstitution.org**
