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Dear Mr Speaker,

I am writing to you regarding the Motion for Return on Law Officers' advice.

I very much welcomed your confirmation in the debate on the Humble Address that how to respond to the Motion is, in the first instance, a matter for Government. I want to reassure you that this Government takes very seriously its duties to the House.

In responding to this Humble Address, the Government recognises that the House must be provided with the information it needs to make one of the most significant decisions of recent times. As I set out to the House in my oral statement today, I consider that the historical precedents suggest that as Attorney General, I have a solemn constitutional duty to the House to advise it objectively and impartially on these legal questions, and to place such legal expertise as I have at its disposal. I did this today by making my statement to the House and answering questions raised by Members on legal issues related to the Withdrawal Agreement.

In addition to my oral statement, the Government today published a detailed legal commentary which analyses the effect of that Agreement. This was produced with my oversight and approval and I commended it to the House as both an accurate examination of the provisions of the Agreement and a helpful exposition of some of the salient issues that arise from them.

I recognise that issue has been taken as to whether the Government's response fulfils the Motion passed on 13 November. However, the effect of a motion calling for the publication of information which is subject to public interest duties is far from clear. In addition, I am obliged to say that the effect of this particular Motion is uncertain on its face. The terms of the Motion were as follows:

"That an humble Address be presented to Her Majesty, that she will be graciously pleased to give directions that the following papers be laid before Parliament: any legal advice in full, including that provided by the Attorney General, on the proposed withdrawal agreement on the terms of the UK's departure from the European Union including the Northern Ireland backstop and framework for a future relationship between the UK and the European Union."

In moving the Motion, the Right Honourable and Learned Member for Holborn and St Pancras indicated that the purpose of the Motion was to seek "the publication of the final and full advice provided by the Attorney General to the Cabinet concerning the terms of any withdrawal agreement". Therefore there is considerable uncertainty about what this Motion refers to.

One difficulty the Government faces is that the terms of this amended request are themselves extremely vague and it is not clear what is meant by them. The term "advice" could apply to advice given orally but recorded in writing, such as Cabinet minutes, or only to written advice.

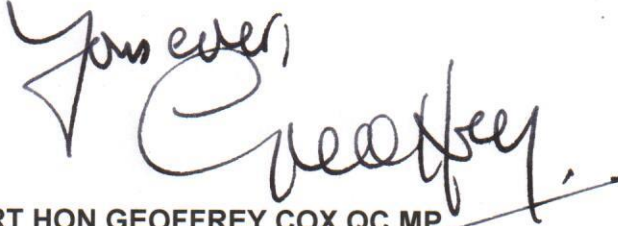
Nor is it obviously apparent what is meant by "full and final". Would this description limit this Motion to advice on the whole Withdrawal Agreement? Would it limit it to the latest piece of advice given in respect of any issue connected with the Agreement? The reason I make what may appear to be a semantic distinction is that the "full" advice might be said to relate to advice given over the course of a lengthy period, while "final" advice might well have been on narrow issues and may certainly not have encompassed all of the points raised in the House today. Unless there is clarity on these questions it is simply not possible for the Government to know how to comply with the Motion. It is particularly important that if anyone is to face sanctions for contempt he or she should fairly know how to comply with it.

Secondly, there is real doubt over the ambit of a motion to return. If it is to be used to cover confidential documents, as I said on the floor of the House, without amendment of the procedures of the House, there is no means by which a document can be reviewed to ensure that its disclosure does not harm the national interest.

Thirdly, given that the letter asking you to consider a motion for contempt asserts that the "Government has held Parliament in contempt", are you able to advise me what likely procedure could be adopted and what possible consequences would follow if the motion was carried?

In the light of the fact that I have appeared today before the House for over two and half hours to answer the questions of Members, without inhibition, on all points of law referred to me and that I have confirmed that I would have given no different advice to any party who sought it, I would respectfully suggest, that the Government has gone out of its way, while seeking to reconcile the public interest in the Law Officers' convention, to satisfy the Motion.

Therefore, while I have the deepest respect for the Motion passed by the House, I would respectfully submit that the matter should be considered by the Privileges Committee as a matter of urgency, who can review the question of compliance with the Motion in its full constitutional and historic context. The Government would strongly welcome the opportunity for the Committee to consider the ambit and scope of this particular power of the House and would agree to a motion couched in those terms.

Yours ever,

RT HON GEOFFREY COX QC MP
ATTORNEY GENERAL

P. I am of course content that this letter should be made public.