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Dear Colleague,

European Parliament: Legal obligations to prepare

The Government has today laid an Order under the European Parliamentary Elections Act 2002 to provide for 23 May 2019 to be the polling day for European Parliamentary elections in the event that we have not left the EU by that date.

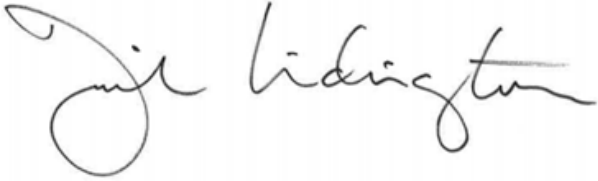
As the Prime Minister set out in her letter to President Tusk on 5 April, the Government's policy is to leave the EU with a deal and for the necessary legislation to pass before the 23 May so that the UK does not need to participate in European Parliamentary elections. It should be clear to all Members of Parliament that asking the public to participate in elections for an organisation that they voted to leave three years ago would damage trust in politics.

However, if the UK had not ratified the Withdrawal Agreement and were still a Member State of the European Union on the 23 May, the Government would be under a legal obligation to hold the elections. This is both because the EU Treaties provide that EU citizens have the right to be represented in the European Parliament and that the European Parliament needs to be properly constituted - with duly elected MEPs from all Member States - for it to perform its functions. To comply with both EU and domestic law the Government is required to act now in order to make preparations for holding elections - to fail to do so would be to make it impossible to hold elections, even if we had not left the EU.

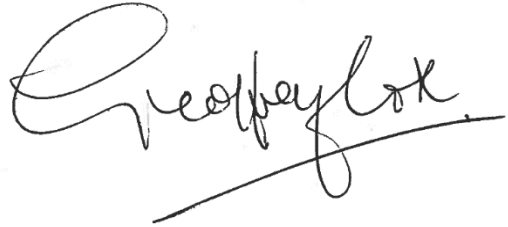
This is not only a matter of the Government's duty to comply with its obligations in European and international law, but of domestic law too. If we remain a Member State and do not make lawful preparations for European Parliament elections, any UK or other EU citizen entitled to vote in such an election could resort to legal action against the Government for the denial of their legal rights.

Therefore, the Government has laid this Order to appoint the date of such elections as part of lawful and responsible contingency preparations. This Order will come into force on 10 April 2019 to enable Returning Officers to undertake their obligations under existing law.

We reiterate that the Order does not make elections inevitable. If the UK ratifies the deal to leave the EU before the date of election that will automatically remove our obligation to take part and we would cancel them.

A handwritten signature in black ink, appearing to read 'David Lidington', written in a cursive style.

**RT HON DAVID LIDINGTON CBE MP
CHANCELLOR OF THE DUCHY OF
LANCASTER AND MINISTER FOR THE
CABINET OFFICE**

A handwritten signature in black ink, appearing to read 'Geoffrey Cox', written in a cursive style with a long horizontal stroke at the end.

**RT HON GEOFFREY COX QC MP
ATTORNEY GENERAL**

ANNEX

European Parliamentary Elections: Legal obligations

1. The Government has today laid an Order under the European Parliamentary Elections Act 2002 to provide for 23 May 2019 to be the polling day for European Parliamentary (EP) elections in the event that we have not left the EU by that date.
2. All Member States are required by European Union law to hold European Parliamentary elections. This arises from the EU Treaties, principally Articles 10 and 14(2) and (3) of the Treaty on European Union. EU law also determines the “polling period” during which European Parliament elections must be held. The polling period this year is 23-26 May 2019. So long as we remain a Member, this law is a binding obligation on the United Kingdom.
3. The domestic law in place for the administration of European Parliament elections – the European Parliamentary Elections Regulations 2004 – requires notice to be published “*not later than the 25th day before the date of the poll*”, disregarding weekends and bank holidays. Therefore to hold a poll on the Thursday falling within the “polling period” – that is, Thursday 23 May – the latest the notice of the election could be given is 12 April. Section 4 of the European Parliamentary Elections Act 2002 provides that the polling day is appointed by Order. The Order appointing the date of the poll would have to come into force on 12 April at the latest.
4. As the Prime Minister set out in her letter to President Tusk on 5 April, the Government’s policy is to seek a further short extension at the European Council that should end on 30 June 2019. If the parties are able to ratify the Withdrawal Agreement before this date the Government proposes that the period should be terminated early. The Government will want to agree a timetable for ratification that allows the United Kingdom to withdraw from the European Union before 23 May 2019 and therefore cancel the European Parliament elections.
5. Until we have secured that new exit date, we cannot yet have a sufficient legal guarantee that we will have left before the “polling period”. That means that, to comply with both EU and domestic law, the Government is required to act now to set in train the domestic law process for holding European Parliament elections. To fail to do so would be to make it impossible in any circumstances for the European Parliament elections to be held in accordance with the law, even if we had not left the EU. Failure to do so would put the United Kingdom in breach of its domestic and European Union law obligations.
5. That is why the Government has laid the Order before Parliament today. Of course, if we leave the EU before 23 May, we can halt preparations for European Parliament elections at that point.