

**APPLICATION FOR SUMMONS OR WARRANT FOR ARREST
FOR ALLEGED OFFENCE**

(Criminal Procedure Rules, rule 7.2(6); section 1, Magistrates' Courts Act 1980)

This is an application by

C. David H. Wolchover

Address:

[REDACTED]

Email:

Telephone:

Mob:

Professor Joshua Silver

Professor of Physics, University of Oxford

Address:

[REDACTED]

Email:

Telephone:

for the court to issue a summons against the proposed defendant.

Alleged offence (give details in boxes (2) and (3) beneath):

Misconduct in Public Office, contrary to Common Law.

Date of alleged offences: on or before 29 March, 2017.

Proposed defendant:

Name: The Rt Hon **Theresa May** MP

Address:

[REDACTED]

Email address (if known):

Phone (if known):

Mobile:

1. Complete the box above and give the details required in the boxes below.¹

2. Sign and date the completed form.

3. Send or deliver a copy of the completed form to the magistrates' court office.

Do not send this form to the proposed defendant unless the court tells you to do so.

The court may determine your application with or without a hearing and without receiving representations from the proposed defendant. The court will not usually arrange a hearing so it is important that the information you put in this form is complete and accurate.

¹ Forms for use with the Rules are at: www.justice.gov.uk/courts/procedure-rules/criminal/formspage.

(1) Consent to prosecute

Do you need consent to prosecute?

Yes No

If yes, you must include with your application written evidence of that consent.

Some offences may not be prosecuted without the consent of the Attorney General, the Director of Public Prosecutions or another authority. The legislation that creates the offence will say whether such consent is required.

2) Previous application(s)

Have you applied before for the issue of a summons or warrant in respect of any of the allegations you are making? Yes No

If yes, give details. *Include the name of the court to which you applied, the date of the application and the name of the proposed defendant you gave that court if that was different to the name in this application.*

(3) Other proceedings

Has any other prosecutor ever brought a criminal case against the proposed defendant in respect of any of the allegations you are making? Yes No

If yes, give details. *Include the name of the prosecutor, the court in which the case was brought and the result.*

(4) Details of the alleged offence(s)

CrimPR 7.3 requires that an allegation of an offence in an application for the issue of a summons or warrant must contain (a) a statement of the offence that (i) describes the offence in ordinary language, and (ii) identifies any legislation that creates it; and (b) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant.

Allegation

The Prime Minister, the Rt Hon Theresa Mary May, MP.

Misconduct in Public Office, contrary to Common Law.

The particulars of the offence are that the defendant wilfully and knowingly violated her clear constitutional duty when, in pursuance of the delegated authority reposed in her by section 1 of the European Union (Notification of Withdrawal) Act 2017 to activate Article 50 of the Treaty of European Union, she made the decision under Article 50(1) that the United Kingdom should withdraw from membership of the European Union, giving the requisite notice under Article 50(2) thereof by letter to the President of the European Council, Donald Tusk, on 29 March 2017, and in so doing exclusively applied the outcome of the European Referendum of 2016, knowing that both the European Union Referendum Act 2015 and the general principles of rationality and constitutional convention on the formation of policy required her to consider all relevant factors, principally diverse impact assessments on the consequences of the United Kingdom's withdrawal from the European Union.

For a review of the elements and ambit of the offence, see (annexed) Wolchover, D., "Did activating Article 50 constitute an indictable offence?" *Criminal Law and Justice Scrutineer*, 1:2, as reconstituted 9 March, 2019).

See also Wolchover, D., 'Litigating Brexit at the eleventh hour,' *New Law Journal*, online, October 18, 2018.

(5) Summary of the circumstances

CrimPR 7.2(6) requires that an application for the issue of a summons or warrant for arrest must concisely outline the grounds for asserting that the proposed defendant has committed the alleged offence or offences. Summarise your grounds for alleging that the proposed defendant has committed the offence(s) for which you want the court to issue a summons or warrant. Give an indication of the evidence on which you will rely if the court agrees to do so.

1. In pursuance of the European Union Referendum Act 2015 (EURA) the EU Referendum was held on 23 June, 2016. Of those who participated in the ballot 51.89 per cent voted in favour of the United Kingdom withdrawing from the Union as against 48.11 per cent voted to remain. Those voting to leave represented no more than 37 per cent of the registered electorate.
2. Constitutionally, the Referendum was merely advisory (and not binding). As such it could only be influential in guiding the formation of government policy on the question of whether the UK ought to remain in or leave the European Union.
3. Nonetheless Government ministers have consistently sought to treat the outcome as decisive rather than influential, pledging themselves to honour “or respect” – that is to say, to implement – the majority opinion of those who cast their votes in the ballot.
4. Those statements enjoyed no more than political force, as the Supreme Court confirmed in the case of *Miller v The Secretary of State for Departing from the European Union* (hereafter *Miller*). However, they did not exempt the government from the fundamental and conventional duty required in all reasonable and proper policy-formation and decision making, of considering all relevant factors.
5. As the Administrative Court held in the case of *Webster v The Secretary of State for Departing from the European Union*, section 1(1) of the European Union (Notice of Withdrawal) Act authorised (but did not command) the defendant, in her capacity of Prime Minister of the United Kingdom, to make the withdrawal decision on behalf of the United Kingdom in accordance with Article 50(1) of the Treaty on European Union. In pursuance of that delegated power, the defendant, on 29 March 2017, wrote to Donald Tusk, President of the Council of Europe, notifying him under Article 50(2), TEU, of the United Kingdom’s intention to withdraw from the European Union.
6. In making the withdrawal decision in pursuance of her delegated power the defendant failed to take any significant or systematic cognisance of any factors relevant to the decision, notably a range of political, economic, social, strategic and security impact assessments likely to follow withdrawal, notwithstanding the constitutional imperative to do so imposed on her (a) by the statutory non-binding nature of the referendum and (b) by the inherent obligation of good and effective governance requiring an informed and comprehensive review of relevant and reasonably tangible predictions.
7. The evidence of such failure emerges (a) from the many equivocations and inconsistent statements uttered by ministers on the floor of the House of Commons (described in the annexed article) and (b) from a Freedom of Information disclosure by the Cabinet Office on 23 January 2019 revealing that no impact assessments of the kind comprehensively detailed in the FOI request are held on file in the Cabinet Office, which they would assuredly have been had the Prime Minister perused any such assessments.
8. The consequences of the defendant’s failure to consider the impact of activating Article 50 are now being demonstrated graphically by the turmoil and negative predictions being reported on a daily basis.
9. The defendant’s failure was so serious and so knowing and deliberate as to amount to the offence of Misconduct in Public Office.

To (6) Application for warrant

Complete this box only if you are applying for the court to issue a warrant for the defendant’s arrest. Under s.1, Magistrates’ Courts Act 1980 the court can issue a warrant for the defendant’s arrest only where (a)(i) the offence to which the warrant relates can be, or must be, tried in the Crown Court, (ii) the offence is punishable with

imprisonment, or (iii) the defendant's address is not sufficiently established for a summons to be served on him or her and (b) (in all cases) the Director of Public Prosecutions consents to the issue of the warrant.

(a) Conditions relating to the offence or the defendant. *Tick as many boxes as apply.*

(i) the offence can be, or must be, tried in the Crown Court x

(ii) the offence is punishable with imprisonment x

(iii) the defendant's address is not sufficiently established for a summons to be served

Explain why, including what you have done to find an address for the defendant.

(b) The Director of Public Prosecutions consents to the issue of a warrant for the defendant's arrest

Yes No

If yes, you must include with your application written evidence of that consent.

(7) Declaration. *See Criminal Procedure Rules r.7.2(6), (7). You may be asked to make this declaration on oath.*

To the best of my knowledge, information and belief:

(a) the allegations contained in this application are substantially true,

(b) the evidence on which I rely will be available at the trial,

(c) the details that I have given in boxes (2) and (3) are true, and

(d) this application discloses all the information that is material to what the court must decide.

Signed:[To be signed



C David H Wolchover

Joshua Silver

..... (applicants)

Date:Saturday 9 March 2019.....

Decision – this record must be kept by the court

I considered this application today [at] [without] a hearing.

[The applicant confirmed on oath or affirmation the declaration in box (7).]

[The applicant gave me additional information [the essence of which was:]]²

² Include a brief summary of any information unless it is recorded elsewhere.

[The proposed defendant gave me additional information [the essence of which was:]]³

On the basis of the information contained in this application [as supplemented by the additional information described above]:

(a) I [am] [am not] satisfied that the requirements for the issue of a summons are met

[(b) I [am] [am not] satisfied that the additional requirements for the issue of a warrant are met]⁴

and I [issue] [refuse to issue] a [summons] [warrant] accordingly.

My reasons are these: *The court should give a brief indication of its conclusions.*

Signed:

Name: [Justice of the Peace]
[District Judge (Magistrates' Court)]
[Justices' Clerk / assistant clerk]

Date:

³ Include a brief summary of any information unless it is recorded elsewhere.

⁴ Complete only if the application includes an application for the issue of a warrant.