

IN THE COURT OF SESSION

ANSWERS

for

SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION, Office
of the Advocate General for Scotland, Victoria Quay, Edinburgh
RESPONDENT

in petition of

(FIRST) **ANDY WIGHTMAN MSP**, MG.21, The Scottish Parliament,
Edinburgh;
(SECOND) **ROSS GREER MSP**, MG.21, The Scottish Parliament, Edinburgh;
(THIRD) **ALYN SMITH MEP**, PO Box 6469, Wick;
(FOURTH) **DAVID MARTIN MEP**, 43 Midlothian Innovation Centre,
Pentlandfield, Midlothian;
(FIFTH) **CATHERINE STIHLER MEP**, PO Box 29253 Dunfermline;
(SIXTH) **CHRISTINE JARDINE MP**, 125a St John's Road, Edinburgh; and
(SEVENTH) **JOANNA CHERRY MP**, 139 Dundee Street, Edinburgh
PETITIONERS

ANSWERS TO STATEMENT OF FACTS

The parties

1. Admitted that the petitioners are as designed in the instance of the petition; and that they have standing. The judgments averred by the petitioners are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied.
2. The judgments averred by the petitioners are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied.

3. Admitted that this court has jurisdiction. The Crown Suits (Scotland) Act 1857 and the reported judgment averred by the petitioners are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that this respondent is the Secretary of State for Exiting the European Union, Office of the Advocate General for Scotland, Victoria Quay, Edinburgh.
4. Admitted.

The date on which grounds giving rise to the petition first arose

5. Admitted that on 7 December 2017 the solicitor to HM Advocate General for Scotland sent a letter to the solicitors acting for the petitioners. The letter of 7 December 2017 is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that the petitioners seek an order for a reference for a preliminary ruling from the Court of Justice of the European Union (CJEU) under Article 267 of the Treaty on the Functioning of the European Union (TFEU). The letter of 7 December 2017 repeated the firm and repeated stated policy of Her Majesty's Government (the Government), that the United Kingdom's notification under Article 50(2), Treaty on European Union (TEU) will not be withdrawn. In the light of the same, no genuine dispute exists as to the proper construction of Article 50(2), TEU. In any event, *esto* there is a justiciable issue as to the proper construction of Article 50(2) TEU, that issue first arose on the giving of notice by the United Kingdom to the European Council under Article 50(2) on 29 March 2017. Reference is made to the Prime Minister's letter to His Excellency Mr Donald Tusk of 29 March 2017. More than three months have passed since the date of that notice and therefore the date on which an issue as to the proper construction of Article 50(2) could have first arisen. This application is time-barred in terms of s. 27A, Court of Session Act 1988 as amended. In any event the application is at least in so far as directed to the issue of the proper construction of Article 50(2) time-barred in terms of the said Act.
6. The letter of 7 December 2017 is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.

Remedies sought

7. Admitted that the petitioners seek various orders. *Quoad ultra* denied. Explained and averred that the petitioners fail to identify the policy

they seek to have reduced. In the light of the stated policy of the Government that the United Kingdom's notification under Article 50(2) TEU will not be withdrawn, no genuine dispute exists as to the proper construction of Article 50(2) and no declaratory order is necessary.

8. Admitted that the petitioners seek various orders. *Quoad ultra* denied.

Purported position of the Government

Letter of 7 December 2017

9. The pre-application correspondence of 28 November 2017 and the letter of 7 December 2017 are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that in the letter of 7 December 2017 the Government stated that it did not recognise the factual assertion and premise upon which these proceedings were proposed to be raised as relied upon in the pre-action letter of 28 November 2017 that:

“the stated and consistent public position of the United Kingdom Government ... is that it is not legally possible – as a matter of EU law – for the United Kingdom unilaterally to withdraw its Article 50(2) TEU notification”.

No such “stated and consistent public position” was subsequently identified by the petitioners prior to raising these proceedings. No such “stated and consistent public position” is averred in these proceedings. The letter of 7 December 2017 was a candid and straightforward response to the first petitioner's unsubstantiated allegations. The letter of 7 December 2017 repeated the Government's policy position that the United Kingdom's notification under Article 50(2) TEU will not be withdrawn.

10. The reported judgment averred by the petitioners is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that the petitioner's reliance on statements in Parliament, recorded in the Official Report (*Hansard*), constitute a breach of Parliamentary privilege. *Adams v Guardian Newspapers Ltd* 2003 SC 425, per Lord Reed at [16]; *Coulson v HM Advocate* [2015] HCJAC 49 at [11]; *Kimathi and others v Foreign and Commonwealth Office* [2017] EWHC 3379 (QB), per Stewart J at para. 20. The petitioners' references to *Hansard* for the purposes of this application are unlawful

et separatim irrelevant. *Esto* reference to *Hansard* is lawful, any reference should be comprehensive and not partial.

11. This respondent's answer to Ms Fernandes MP's question and the answer of the Minister of State for Exiting the European Union, Lord Callanan, to Lord Elystan-Morgan's question, both on 13 November 2017, are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that the petitioners' references to *Hansard* for the purposes of this application are unlawful *et separatim* irrelevant. Reference is made to the preceding Answer. *Esto* the petitioners' references to *Hansard* are lawful (which is denied, on the grounds that they infringe Parliamentary privilege as condescended upon), they are partial. The Minister of State's reply followed questions by Viscount Ridley and Lord Elystan-Morgan as to the revocability of the United Kingdom's Article 50(2), TEU notice in the light of the decision in *R (Miller and another) v Secretary of State for Exiting the European Union* [2017] 2 WLR 583. On 14 November 2017 the Minister of State, in response to an invitation by Baroness Hayter to consider his comments on revocation, wrote to Baroness Hayter in clarification:

"As a matter of firm policy our notification will not be withdrawn. This is what I understood Viscount Ridley to be referring to in the House yesterday and this was the position the government put forward in the Supreme Court case. The Supreme Court proceeded on this basis and decided that it was not necessary for it to consider the legal position on this specific point further."

Further, on 20 November 2017 the Minister of State made a statement to the House in correction of his earlier answers. He stated, *inter alia*:

"I would like to take this opportunity to clarify the Government's understanding of the Supreme Court case. To reiterate, for the avoidance of any doubt, the Supreme Court proceeded in the Miller case on the basis that Article 50 would not be revoked but did not rule on the legal position regarding its revocability. It was, and remains, the Government's policy that our notification of Article 50 will not be withdrawn."

Purported failure in the duty of candour

12. The reported judgments and the Treasury Solicitor *Guidance* averred by the petitioners are referred to for their whole terms beyond which no

admission is made. *Quoad ultra* denied. Explained and averred that the Government has been candid in response to the pre-action letter of 28 November 2017. The petitioners' correspondence failed to specify the factual premise upon which it was proposed to raise the petition (*viz.* a stated and consistent position on the part of the Government of the legal impossibility of revocation). The letter of 7 December 2017 candidly stated that the Government did not recognise having taken the "stated and consistent position" alleged in the letter of 28 November 2017. The petition fails to identify the "stated and consistent position" alleged in the pre-action letter of 28 November 2017. Further, the letter of 7 December 2017 candidly stated the Government's firm and repeated policy position, that the United Kingdom's notification under Article 50(2) TEU will not be withdrawn. In the light of the same, no genuine dispute arises as to the proper construction of Article 50(2) TEU.

13. The reported decision averred by the petitioners is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied. Reference is made to the preceding Answers.
14. Denied. Explained and averred that the petitioners do not seek an order for reduction of the letter of 7 December 2017. The respondent's stated policy position, that the United Kingdom's notification under Article 50 will not be withdrawn, involves no unlawfulness.

The purported true Government position

15. The reported decisions averred by the petitioners are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied save in so far as coinciding herewith.
16. The reported decisions averred by the petitioners are referred to for their terms beyond which no admission is made. *Quoad ultra* denied save in so far as coinciding herewith.
17. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that the Government has stated that as a matter of policy the United Kingdom's Article 50(2) TEU notification will not be withdrawn. The Government's negotiations with the European Union proceed on that basis. The petitioners' reliance on statements made in Parliament is unlawful *et separatim* irrelevant. Reference is made to the preceding Answers.

18. The petitioners' legal argument is not admitted. The academic commentary averred by the petitioners is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that the conduct of international relations on behalf of the United Kingdom is a matter for the Crown in the exercise of prerogative powers. The petitioners are called upon to specify "*these claims by the ... Government*" relied upon. Their failure so to do will be relied upon.
19. Admitted that the petitioners make various submissions. The petitioners' legal argument is not admitted. The reported decisions averred by the petitioners are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU. Article 267 TFEU does not admit requests for advisory opinions. The CJEU will refuse to give a preliminary ruling where there is no genuine dispute. *Foglia v Novello II* [1981] ECR 3045; *Pohotovost v Vasuta* Case C-470/12.

Petitioners' esto case

20. The reported decisions averred by the petitioners are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
21. The reported decision averred by the petitioners is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
22. Denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.

Grounds of challenge

(a) Purported relevant legal background

23. The TEU is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
24. The TEU is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
25. The TEU is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
26. The Vienna Convention on the Law of Treaties 1969 is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
27. The Vienna Convention on the Law of Treaties 1969 is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
28. The Vienna Convention on the Law of Treaties 1969 is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
29. The Vienna Convention on the Law of Treaties 1969 is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
30. The Scotland Act 1998 is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.

(b) Purported relevant factual background

31. Admitted. Explained and averred that on 23 June 2016 the EU referendum took place and the people of United Kingdom voted to leave the European Union. On 29 March 2017 the Government gave notice to the European Council under Article 50(2) TEU of the United Kingdom's intention to withdraw. Reference is made to the Prime Minister's letter referred to above. The Government's policy is that the notice will not be withdrawn.

32. The reported decision averred by the petitioners is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
33. The European Union (Notification of Withdrawal) Act 2017 is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
34. The Prime Minister's letter of 29 March 2017 is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
35. Admitted that negotiations regarding the United Kingdom withdrawal from the EU have been ongoing since 29 March 2017. *Quoad ultra* denied.
36. The European Union (Withdrawal) Bill is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
37. The respondent's statement to the House of Commons on 13 November 2017 is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that the petitioners' reliance on statements made in Parliament is unlawful *et separatim* irrelevant. Reference is made to the preceding Answers.
38. The respondent's answers to questions following his statement to the House of Commons on 13 November 2017 are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that the petitioners' reliance on statements made in Parliament is unlawful *et separatim* irrelevant. Reference is made to the preceding Answers.
39. Mr Bridgen MP's question and the respondent's answer to the question on 13 November 2017 are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that the petitioners' reliance on statements made in Parliament is unlawful *et separatim* irrelevant. Reference is made to the preceding Answers.
40. The European Union (Withdrawal) Bill, as amended, is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.

41. Admitted. Explained and averred that the petitioners' reliance on statements made in Parliament is unlawful *et separatim* irrelevant. Reference is made to the preceding Answers.

(c) Purported legal grounds

42. The reported decision averred by the petitioners is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith.
43. Admitted that the petitioners make various submissions. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
44. Admitted that the petitioners make various submissions. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
45. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
46. The reported decisions averred by the petitioners are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied.
47. Denied.

(i) Wording

48. The TEU is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.

49. The reported decision averred by the petitioners is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
50. The reported decision averred by the petitioners is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
51. The TEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
52. The EU Treaties are referred to for their whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
53. The TEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
54. The TEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.

(ii) Good faith

55. The TEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred

that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.

56. The reported decision averred by the petitioners is referred to for its terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied.
57. The TEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.

(iii) Context

58. The TEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
59. The reported decision averred by the petitioners is referred to for its terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
60. The TEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.

61. The TEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
62. Denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
63. The TEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.

(iv) Objectives/purpose

64. The TEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith.
65. The TEU is referred to for its whole terms beyond which no admission is made. The opinion of Lord Kerr of Kinlochard is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith.
66. The TEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith.

(v) Vienna Convention on the Law of Treaties (VCLT)

67. The reported decision averred by the petitioners is referred to for its terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied.

68. The VCLT and the TEU are referred to for their whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith.
69. The TEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that the United Kingdom has given notice under Article 50(2) TEU. In the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
70. The VCLT and the TEU are referred to for their whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith.
71. The VCLT and the TEU are referred to for their whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith.

(vi) Conclusion

72. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
73. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
74. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
75. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated

position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.

76. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
77. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.

The nature of the matter subject to review

78. The reported decisions averred by the petitioners are referred to for their whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that the Government's policy is that the United Kingdom's Article 50(2) TEU notification will not be withdrawn. Accordingly, there is no genuine dispute as to the proper construction of Article 50(2) TEU. There is no justification for the admission of the supervisory jurisdiction.
79. The reported decisions averred by the petitioners are referred to for their whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that the Government's policy is that the United Kingdom's Article 50(2) TEU notification will not be withdrawn. Accordingly, there is no genuine dispute as to the proper construction of Article 50(2) TEU. There is no justification for the admission of the supervisory jurisdiction.
80. The reported decision averred by the petitioners is referred to for its terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied.
81. The reported decisions averred by the petitioners are referred to for their terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied.

82. The reported decision averred by the petitioners is referred to for its terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied.
83. Admitted that the petitioners have various voting rights under explanation that how they exercise those rights is a matter for the petitioners. *Quoad ultra* denied.
84. Admitted.
85. The Explanatory Notes to the European Union (Withdrawal) Bill, quoted in part by the petitioners, are referred to for their whole terms beyond which no admission is made. Not known and not admitted what actions the Scottish Parliament might take. *Quoad ultra* denied.
86. The TEU is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
87. The petitioners' legal argument is not admitted. *Quoad ultra* denied.
88. Denied.
89. Denied.

Permission to proceed: the interest of the petitioner- section 27B(2), Court of Session Act 1988

90. Denied. Explained and averred that the petition does not demonstrate a real prospect of success. No decision or policy position of the Government is identified, whether in fact, lawfully or relevantly, giving rise to a genuine dispute as to the proper construction of Article 50(2) TEU. Accordingly, the petitioners do not have sufficient interest. In any event, in the light of the Government's stated policy that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU. There is no justification for the admission of the supervisory jurisdiction. Further and in any event, *esto* the petition raises a justiciable issue, that issue first arose on the giving of notice by the United Kingdom to the European Council under Article 50(2) on 29 March 2017. Reference is made to the Prime Minister's letter to His Excellency Mr Donald Tusk of 29 March 2017. More than three months have passed since the date on which the grounds giving rise to the

present application first arose. This action is in any event time-barred in terms of s. 27A, Court of Session Act 1988 as amended. For that reason also the petition has no real prospect of success. In any event it is time-barred at least *quoad* the issue of the proper construction of Article 50(2) TEU. Permission to proceed should be refused on that issue in the light of the time-bar denuding the petition of a real prospect of success.

91. Admitted that the petitioners as elected representatives are representatives of and democratically accountable to their respective electorates. Their voting intentions and reasons therefor are not known and not admitted. *Quoad ultra* denied save in so far as coinciding herewith.
92. The Explanatory Notes to the European Union (Withdrawal) Bill, relied upon in part by the petitioners, are referred to for their whole terms beyond which no admission is made. The reported decisions averred by the petitioners are referred to for their whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied save in so far as coinciding herewith. Explained and averred that there has been no vote, and there is no scheduled opportunity to vote, in the Scottish Parliament on any legislative consent motion in respect of the European Union (Withdrawal) Bill.
93. The TFEU is referred to for its whole terms beyond which no admission is made. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
94. Admitted that the petitioners as elected representatives are representatives of and democratically accountable to their respective electorates. Their voting intentions and reasons therefor are not known and not admitted. *Quoad ultra* denied save in so far as coinciding herewith.
95. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.

96. The third, fourth and fifth petitioners' citizenship is not known and not admitted. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
97. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
98. Admitted that the petitioners as elected representatives are representatives of and democratically accountable to their respective electorates. Their voting intentions and reasons therefor are not known and not admitted. The petitioners' legal argument is not admitted. *Quoad ultra* denied. Explained and averred that in the light of the Government's stated position that the United Kingdom's Article 50(2) TEU notification will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU.
99. Denied. Explained and averred that the petition does not demonstrate a real prospect of success. No decision of the Government is identified giving rise to a genuine dispute as to the proper construction of Article 50(2) TEU. Accordingly, the petitioners do not have sufficient interest. There is no justification for the admission of the supervisory jurisdiction.

Purported constitutional duty to consider the matter

100. Admitted that the Government is domiciled throughout the United Kingdom and that, accordingly, this court has jurisdiction. The reported decisions averred by the petitioners are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied.
101. Admitted that this court has jurisdiction. *Quoad ultra* denied.
102. Admitted that this court has jurisdiction. *Quoad ultra* denied.
103. Admitted that the petitioners as elected representatives are representatives of and democratically accountable to their respective

electorates. Their voting intentions and reasons therefor are not known and not admitted. Admitted that this court has jurisdiction. *Quoad ultra* denied.

104. The reported decisions averred by the petitioners are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that the Government's policy is that the United Kingdom's Article 50(2) TEU notification will not be withdrawn. Accordingly, there is no genuine dispute as to the proper construction of Article 50(2) TEU. There is no justification for the admission of the supervisory jurisdiction.
105. The Court of Session Act 1988 is referred to for its terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that no decision or policy of the Government is identified giving rise to a genuine dispute as to the proper construction of Article 50(2) TEU.
106. The petitioners' legal argument is not admitted. *Quoad ultra* denied.
107. Denied. Explained and averred that the Government's firm and repeated policy is that the United Kingdom's notification under Article 50(2) TEU will not be withdrawn. In the light of that policy there is no genuine dispute as to the proper construction of Article 50(2) TEU.
108. Denied. Explained and averred that the Government's firm and repeated policy is that the United Kingdom's notification under Article 50(2) TEU will not be withdrawn. In the light of that policy there is no genuine dispute as to the proper construction of Article 50(2) TEU.

Purported need for a reference under Article 267 TFEU

109. Denied. Explained and averred that in the light of the Government's firm and repeated policy that the United Kingdom's notification under Article 50(2) TEU will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU. Article 267 TFEU does not admit requests for advisory opinions. The CJEU will refuse to give a preliminary ruling where there is no genuine dispute. *Foglia v Novello II* [1981] ECR 3045; *Pohotovost v Vasuta* Case C-470/12.
110. The jurisprudence of the CJEU is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.

111. The reported decisions averred by the petitioners are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that in the light of the Government's firm and repeated policy that the United Kingdom's notification under Article 50(2) TEU will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU. The CJEU will refuse to give a preliminary ruling where there is no genuine dispute: *vid. inf.*
112. The reported decisions averred by the petitioners are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied: *vid. inf.*
113. Admitted that the petitioners seek a reference for a preliminary ruling. *Quoad ultra* denied.
114. Admitted that the petitioners seek a reference for a preliminary ruling on an expedited procedural basis. The Rules of Procedure of the CJEU and the reported decisions averred by the petitioners are referred to for their terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that in the light of the Government's firm and repeated policy that the United Kingdom's notification under Article 50(2) TEU will not be withdrawn there is no genuine dispute as to the proper construction of Article 50(2) TEU and therefore no necessity for a reference for a preliminary ruling, far less an expedited reference.
115. The question proposed by the petitioners for a reference for a preliminary ruling is referred to for its terms, beyond which no admission is made. *Quoad ultra* denied.

PLEAS IN LAW FOR THE RESPONDENT

1. The petitioners not having sufficient interest, permission to proceed should be refused.
2. The petition not demonstrating a real prospect of success, permission to proceed should be refused.
3. *Esto* the petition raises a justiciable issue, the application being time-barred in terms of s. 27A, Court of Session Act 1988 as condescended upon, the petition should be dismissed.

4. *Esto* the petition raises a justiciable issue, the application at least in so far as it is directed to the issue of the proper construction of Article 50(2) TEU being time-barred in terms of s. 27A, Court of Session Act 1988 as condescended upon, the petition should be dismissed *et separatim* the orders sought should be refused.
5. The petitioners' averments as to statements made in Parliament being in breach of Parliamentary privilege are unlawful *et separatim* irrelevant and should not be admitted to probation.
6. The petitioners' averments being irrelevant *et separatim* lacking in specification, the petition should be dismissed.
7. The petitioners' averments, so far as material, being unfounded in fact, the orders sought should be refused.
8. There not being a genuine dispute as to the proper construction of Article 50(2) TEU, the orders sought should be refused.
9. The policy of the Government not being unlawful *et separatim* wrong in law, the orders sought should be refused.

IN RESPECT WHEREOF,

IN THE COURT OF SESSION

ANSWERS

for

SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION

RESPONDENT

in petition of

**(FIRST) ANDY WIGHTMAN MSP;
(SECOND) ROSS GREER MSP;
(THIRD) ALYN SMITH MEP;
(FOURTH) DAVID MARTIN MEP;
(FIFTH) CATHERINE STIHLER MEP;
(SIXTH) CHRISTINE JARDINE MP; and
(SEVENTH) JOANNA CHERRY MP,**

PETITIONERS

2018

OFFICE OF THE ADVOCATE GENERAL