

European Scrutiny Committee

Oral evidence: Regulating after Brexit, HC 1262

Wednesday 20 April 2022

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Watch the meeting

Members present: Sir William Cash (Chair); Richard Drax; Margaret Ferrier; Mr David Jones; Marco Longhi; Craig Mackinlay; Anne Marie Morris.

Questions 1 - 43

Witness

[I](#): Rt Hon Mr Jacob Rees-Mogg MP, Minister for Brexit Opportunities and Government Efficiency, Cabinet Office.



Examination of witness

Witness: Rt Hon Mr Jacob Rees-Mogg MP.

Q1 **Chair:** Minister, on behalf of the Committee, I would like to welcome you and thank you very much for appearing this afternoon. You are not only no stranger to the Committee; you were actually a member of this Committee for many years some time ago. It is good to see you back, albeit on the other side of the table. Your relatively new post as Minister for Brexit Opportunities and Government Efficiency is vitally important and absolutely necessary if we are to make the most of the regulatory autonomy and decision-making freedom we now have outside the European Union.

As I am sure you will agree, Brexit was not done with the signing of the withdrawal agreement or the new trade deal. Rather, important questions remain regarding how we will regulate the economy post-EU/Brexit, and deliver and signpost the benefits of Brexit for the public and for business. These are issues that we as a Committee are deeply interested in. Our inquiry into the future of EU retained law is ongoing, and we have recently considered further work looking at the opportunities for and the challenges of regulating differently after the UK's withdrawal from the EU. We trust that this work is informing Government policy, and that you are making the most of the evidence base we are developing and the high-quality analysis that we regularly publish.

During today's session, we are going to look at recent Brexit-related machinery of Government changes, Government activities and plans in the area of Brexit opportunities and their delivery, sectors of the economy where the UK has introduced new laws or policies that would not have been possible while we were a member of the EU and, finally, the Brexit freedoms Bill and the future of EU retained law. Before we start, perhaps you might be kind enough to say a little about your new role.

Mr Rees-Mogg: Thank you, Chair, and thank you for inviting me before this Committee. This Committee is my primary scrutineer in my role as Minister for Brexit Opportunities. As you know, I hold this Committee in the highest regard. Under your very distinguished chairmanship, it has developed an expertise that is unrivalled on the functioning of EU law and how that relates to the UK. It has produced incisive reports now going back to 2010. You are supported by some very distinguished experts who, when I was on the Committee, brought an enormous amount to our understanding of regulations coming from the EU and affecting the UK.

In my new role as Minister for Brexit Opportunities, I do not have the whole of the role that Lord Frost had. The Northern Ireland protocol and the TCA are with the Foreign Secretary and I am focusing on the domestic side of it. I am very much looking at implementing the TIGRR report and as many of those proposals as we can. I will be responsible for a procurement Bill that will be a major Brexit opportunity to simplify the



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processes of procurement within the United Kingdom. That is devolved, so there will be some differences in the different parts of the United Kingdom. There is also a Brexit opportunities Bill, also known as the retained EU law Bill, where I am very much looking forward to seeing your report, because your thoughts and insights will be very helpful to the evolution of that Bill.

Q2 **Chair:** Having explained, as you have, where you think you are going to go on all this, can you also explain how your portfolio interacts with the responsibilities of other ministerial colleagues, for example the Foreign Secretary and the Minister for Europe and North America?

Mr Rees-Mogg: There needs to be a close relationship between Ministers in different parts of Government, because different bits of Government overlap in areas of interest. The responsibility for the Northern Ireland protocol is with the Foreign Secretary, so any negotiations about that are being done by the Foreign Secretary's team, by the Foreign Office, as are any evolutions of the TCA.

From my point of view, this is a very significant advantage, because it means I can focus on what we are doing domestically and do not have to spend a great deal of time in the proverbial smoke-filled rooms. There is one important difficulty, which is that we need to ensure that Brexit freedoms apply to Northern Ireland as well as to the rest of the United Kingdom. That is a difficult question at the moment, because, as we saw at the spring statement, the alleviation of VAT on certain environmental products was not extended to Northern Ireland because of the terms of the protocol.

It is widely accepted that the protocol is not working and needs reform. When that work is completed, the Brexit freedoms that I am proposing and pushing forward will apply to Northern Ireland, but that work needs to be completed. That is with the Foreign Secretary. She has my very strong support in doing that.

Q3 **Mr Jones:** I was wondering if the Minister could also outline the responsibilities of the Minister for Europe and North America. How does he fit in this process?

Mr Rees-Mogg: He works with the Foreign Secretary. The Foreign Secretary has the primary control of this, but delegates within her Department, particularly considering the responsibilities she has with Ukraine at the moment. The internal workings of the Foreign Office are not my area but are a matter for the Foreign Secretary. He works for and to her.

Q4 **Mr Jones:** Where in Government does the Brexit opportunities unit sit? How is it resourced?

Mr Rees-Mogg: We have 31 members of the Brexit opportunities unit and it sits physically in the Treasury building, but it sits metaphysically within the Cabinet Office.



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Q5 **Mr Jones:** I understand that the unit has been seeking a director since June of last year. That position has yet to be filled.

Mr Rees-Mogg: That position has now been filled.

Q6 **Mr Jones:** Who has filled it?

Mr Rees-Mogg: We had a very good joint temporary director, but an appointment has been made from the deregulation part of BEIS, and so we now have somebody in place as of Tuesday. It is as of yesterday.

Q7 **Mr Jones:** Do we know his or her name?

Mr Rees-Mogg: Mr Chris Carr. I have been very impressed by him in my early dealings. You will be glad to know that he has actually been in the office, which is reassuring.

Q8 **Anne Marie Morris:** Minister, can you tell us how the Government have gone about assessing the newfound legal and policy freedoms the UK has after Brexit?

Mr Rees-Mogg: It requires a new way of thinking, because previously Departments would say, "You cannot do this because it is not allowable under EU law," or "You have to do this because it is required under EU law". Now none of that applies. It is very refreshing in my view, because Ministers and Departments can simply think, "Is this a good thing to do?" There is not this external restriction, so it allows much more innovative and broader policy thinking.

It removes the great naysayer. That is, even if it was not actually the case, people who did not want to do something would say, "Are you sure that is allowable under EU law?" It was a very good way of stopping innovation, stopping things happening, raising the European flag, making people get legal opinions to see whether they could do it or not. It has all gone. Now, if a Bill comes to Parliament, that is our law. That is really exciting and democratic.

Q9 **Anne Marie Morris:** I would agree with you. Are you able to give us some examples of this innovative thinking, since we are now some way past the time at which this was possible?

Mr Rees-Mogg: We did the gene editing statutory instrument that has, I believe, now already come into force. That means that the gene editing of plants may be done. That is a very significant change. It is not to be confused with genetic modification, but it means that things that may happen naturally can now be sped up. That was not possible under EU law.

Last year, when we thought we were not going to have turkeys delivered for Christmas, the Secretary of State for Transport made between 30 and 35 changes to the law to ease up the training, approvals and systems for lorry drivers, the majority of which, only just over about half, were retained EU law that we would not otherwise have been able to do.



These flexibilities have been coming in, but the best is yet to come. It would be wrong of me to pre-empt the Queen's Speech. However, the Brexit freedoms Bill will provide the mechanism for updating, changing and removing retained EU law in a way that will allow this to be much smoother and faster.

Q10 Anne Marie Morris: That is excellent, but my question also involved policy, not just the law. By way of example, in what way could you demonstrate that the freedoms we have, where we are now, have proactively impacted policies that we have been able to put forward, as opposed to what you have been talking about, which has been much more reactive?

Mr Rees-Mogg: You are right to say that there is policy beyond law, because I would argue that our policy in relation to Ukraine would not have been possible had we been bound by the doctrine of sincere co-operation within the European Union. I defer to the Chair on this, who is a great expert on sincere co-operation and how that limited our action in foreign affairs, even though nominally we were still free. If you want a monument of our freedom at the moment, it is the extraordinary leadership the Prime Minister has given over Ukraine, which I think he would simply not have been able to do had we had to go along with and exercise our rights and influences through a combined EU mechanism.

Anne Marie Morris: That is extremely helpful. Thank you.

Q11 Chair: Perhaps, before I move on to the next question, just to add a rider to the discussion we are having at the moment, in the context of the historical status of Brexit, I have said on a number of occasions, and I wonder if you might like to think about and enlarge on it, if you wish, that, in terms of revolution that has taken place, going into the European Community was a revolution in itself. As things progressed, we ended up with more and more majority voting, decisions taken behind closed doors, no Hansard, no transcript. Nobody knew what was being decided.

In democratic and sovereignty terms, this is, to go back to the question that Anne Marie has just put, about assessing the newfound legal and policy freedoms. You say that Ukraine is a good example of the manner in which we can expand our ability to be more truly democratic. In terms of the whole range of law-making, that applies too. Would you not agree that we will have to complement those newfound freedoms of sovereignty, real democracy, decisions taken by Members of Parliament on behalf of their constituents and not because we are told to do it by the European treaties and the European Union?

Could you perhaps encapsulate the extent to which we will be able to open up new horizons in terms of economics, the whole role of the judiciary, the whole question of how we manage to enlarge our sovereignty, so that we are able to make laws, which is what the consent of the British people in general elections is really all about? Would you like to say anything about that sort of thing?



Mr Rees-Mogg: Thank you for that very welcome opportunity. As a Member of Parliament, it was enormously frustrating, when taking up things for constituents, to find that you were seeking redress of grievance and the answer came back from Ministers, "We cannot do anything about that. It is not our responsibility". That undermined the whole basis of which we are all here and made us eunuchs, effectively. That has gone. A Minister cannot now get back to you and say, "That is not my responsibility". Even if it is with an independent regulator, that independent regulator only exists by virtue of an Act of Parliament.

With the EU, we could not seek redress of grievance if we did not like something in relation to VAT, trade, agriculture, fishing. Now you can raise it at Prime Minister's Questions or at other questions and it is the Minister at the Dispatch Box's responsibility. It is our opportunity to do something about it.

You mention our whole constitutional settlement. We changed our constitutional settlement fundamentally in 1972, away from the democratic arm. We talk a great deal about the supremacy of Parliament and the sovereignty of Parliament. I think that it often gets thought of, mistakenly, as if that is about the genius of Parliament. It is not. It is about the democratic representation of the people who send us here. We exercise their sovereignty in trust, rather than it being a sovereignty that has fallen on our heads like the rain falleth from heaven. Post 1972, their rights had been taken away.

You mentioned the judiciary. The judiciary could override Acts of Parliament. They cannot do that anymore. That right has gone. We are back to a common-law understanding of how our constitution works, with it being legitimate to do anything that is not specifically prohibited, with a Diceyan view of the sovereignty of Parliament, with Parliament able to legislate on anything on behalf of the people and that being the supreme law of the United Kingdom. That, fundamentally, reasserts democracy.

When people ask me, "What is the great benefit of Brexit?", the great benefit of Brexit is that people's votes count. They can vote for whatever form of Government they might want. You and I may agree with the form of Government that they want, or we may not, but it is their proper exercise of their democratic rights, which were taken from them, without them having a vote, and were taken back by them when they demanded them with a vote. That shows how strong and vibrant our democracy is.

Chair: That is very interesting and very helpful.

Q12 **Marco Longhi:** Can I start out by saying, perhaps somewhat belatedly, how pleased I am that you are in the role that you are? I have a question in three parts and I will perhaps deal with one part at a time, if I may. In which specific sectors is the UK well placed to maximise the opportunities afforded by its newfound regulatory freedom? Conversely, in which areas might diverging from the EU prove more challenging?



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Mr Rees-Mogg: As a note, because of my interests I am limited on financial services regulation that affects investment management. Having made that caveat, one of the easiest and first advantages is divergence in terms of financial services regulation. The announcement on Solvency II has been particularly important and welcome, which I am allowed to have a view on, because I have never had a direct interest in the insurance industry. That is one of the most important pillars of our current economic activity, but it is our future economic activity where perhaps there is more excitement.

The TIGRR report was very good on AI and data usages. How do we make this economy very competitive over the next 50 to 100 years? It is using those liberties when the EU will, by default, go to a dirigiste regime and we can have a much freer and light-touch regime. One of the people I work most closely with in the Government is George Freeman, who wrote the TIGRR report in these areas and has ministerial responsibility for it. I basically said to him that, as he knows the subject better than I do, I will support him in whatever freedoms he seeks to gain.

Where will divergence be more challenging? I am afraid I think that we must get away from this idea of divergence. I do not care what the EU does anymore, any more than I care what the United States or Singapore do. These are separate regulatory regimes and we do not always want to be looking over our shoulder, saying, "The EU is doing this. Therefore perhaps we should do it too".

I had better be careful, because this may be Government policy, so I do not want to upset collective responsibility too much. We may be putting speed limiters on people's cars because the EU is doing it. "Because the EU is doing it" is no argument for doing anything anymore. We want to get away from this mentality, "Are we diverging or not diverging?", because we want to be asking, "What is right for the United Kingdom?"

We want to look globally, and this goes to the Chair's question. What is the broader opportunity? It is fantastic that the Prime Minister is in India today. We want to be thinking about how India regulates its pharmaceuticals market, one of the best and most successful pharmaceutical markets in the world, not the narrow European sphere. Let us try to put divergence from the EU behind us.

Q13 **Marco Longhi:** You may have probably already addressed the second part of the question in some way. Could you perhaps give us some examples of initial legacy or policy changes that have been possible because of Brexit?

Mr Rees-Mogg: One that is coming forward and is in my area of responsibility is going to be the procurement Bill. If I may give you one taster of how we are going to simplify things, a business attempting to win a contract from the Government will have to enter the business name and address once, rather than—wait for it—70 times. It is about simplifying and easing.



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We have to look at a whole range of things that the EU regulates that other economies do not and we need to decide whether the regulations were necessary in the first place. When I took on this job, I thought that it was about easing regulations that the EU has to make them more business friendly. I then had a meeting with Sir James Dyson—if you will forgive me namedropping, but he is somebody I particularly admire. He said to me that I had to understand that there are vast swathes of regulation that no other country has. That is what we need to be looking at. It is this big picture of getting away from EU-minus to saying, “What they do is history and we will take the opportunity of doing things very differently”.

Q14 **Marco Longhi:** I am mindful of your remarks around personal interest. More specifically, what would your thoughts be on the potential benefits of changes to EU-derived financial services, agri-food and data protection legislation?

Mr Rees-Mogg: We need to free up financial services so that they can be as competitive as they historically were. The great swathe of EU law that came through was fantastic for incumbents, but very bad for challengers. Backing incumbents is bad for the consumer, because it keeps prices high.

I will stick to Solvency II, because it is an area where I am completely free to talk. Talking about proposals to increase very significant the de minimis threshold where Solvency II does not apply to insurance companies, so that you can get challengers coming in that are not a systemic threat to the global or UK marketplace, gets new businesses growing and helps consumers, because it reduces the cost of insurance. It is looking at capital ratios. We want to look at this for banks as well. Are we doing the right things for banks?

With agri-foods, as I said, we are already doing the gene editing for plants. We can do that for animals as well, though that will require legislation, because we want to keep up with what other countries are doing. We want high standards. We want good food. Of course we do, but other countries round the world eat very good food too, have very high standards, but do not make farmers’ jobs completely impossible by loading them with regulation. That is an area that we need to look at.

We will bring forward a new data protection Bill. The data protection regulations we have seem to me to be extraordinarily onerous, if you just think about the rules we have to follow as Members of Parliament in relation to our storage of data on constituents. I do not know how long the disclaimer is that you give your constituents to sign when they come to see you in a surgery, but mine runs well over to the second page. It serves no useful purpose at all. When constituents come to see me in the surgery of course they want me to use their data to find out why they have not had whatever it is they are expecting from the public sector.



It creates such onerous rules on record keeping that you have an incentive not to keep historic records. If a constituent has not been in touch with you, it is better to delete the file than to keep it. That is very unhelpful if a constituent is not in touch with you for three years and you then say, "Actually, I do not have any of the information because I have deleted it". You are then starting from scratch. We have a system that is deeply unsatisfactory and a huge burden on SMEs, and Members of Parliament are effectively an SME in this context.

Q15 Craig Mackinlay: Thank you, Minister. I would like to pick up on a few bits. The TIGRR report was quite exciting to all of us and you have mentioned that already. Is the benefits of Brexit paper effectively the Government's interpretation of how they are going to take the baby steps towards implementing some of these, or is something else going to be published?

Mr Rees-Mogg: I am not promising any further report will be published, but we will now be taking actions. There will be legislative actions in the next Session. Those will draw on the TIGRR report significantly and, in some cases, go significantly further than the TIGRR report. As I was mentioning, there is the Brexit freedoms Bill/retained EU law Bill. I actually approve of the fact that we give our Bills very boring names. It is tempting to use the populist name, but the dry naming of UK legislation is a virtue of our system. That will provide the mechanism for the most fundamental reforms.

Bear in mind that most EU law came in via secondary instruments and therefore most of it can reasonably be removed by secondary instrument. Once Departments have the power to change EU law and remove it, they will be much more likely to do it than they are now, when it is a major bureaucratic burden to do it. TIGRR has been extremely useful. We are taking forward lots of its recommendations. Some of them are still under consideration. Some of them are actually being taken further.

Q16 Craig Mackinlay: On the benefits of Brexit paper, which is 105 pages, it was published before you were in post. I am sure you would have written it in a slightly different way. It had lots of good things about what might be done, and areas we might want to look at and might want to regulate more, which was quite a worry. I know it is a framework and you are now in post. What are your personal criteria that you are looking at to decide the priority areas? Are they based on nanny state annoyances or pure profit that we could be earning for this country? What are your personal priorities of how you would be looking at those?

Mr Rees-Mogg: First, I do not want to use our departure from the European Union as a means of having more regulation. I do not want to see a 2(2) power recreated for Departments so that they can regulate without complete parliamentary scrutiny. Regulation ought to be difficult for the Government, because every regulation is an infringement of somebody's liberty, so, as a starting point, it should be hard.



I am very interested in your question, because you put your finger on a dilemma that we face and have not necessarily faced very well when you look at regulatory burdens. When you look at regulatory burdens, it is often judged on the narrow basis of administrative cost. A lot of the cost-benefit analyses or impact assessments focus on that. Actually, regulations have more than that administrative cost. They also have the detailed implementation cost on business and the inconvenience cost on individuals. We should look at making our constituents' lives easier and less bureaucratic and making their interactions with the state simpler.

You want to look at all these costs and try to remove regulations that do not contribute in all ways. They should not be expensive administratively, they should not be expensive in terms of the procedures required, but they also should not be a huge burden on the individuals filling out the forms. We all see this in our constituency surgeries, do we not? There are people who are not good at dealing with bureaucracy who come to us for help, because the Government have set up a system that makes life difficult for them. Government should cut through all that. It is a genuine cost, but we want business to be prosperous as well.

Q17 Craig Mackinlay: What about you personally? What are your areas that you would like to be focusing on first? I raised that point of whether it should be potential profit for the country, where we look more attractive to an international investor, rather than the EU, as somewhere it could go. You have described very well the behavioural annoyances: "Do we need to do this, and why? What does it cost just to implement it?" That is very good, but are you looking at things there where we could be an international place where companies would go, "Do you know what? That is the place to do X business?" What is that X, in your view?

Mr Rees-Mogg: There are lots of yeses and there is also a slight, "Do not forget". Do not forget that the bulk of business done in this country is not foreign direct investment. It is what is already going on. How are we going to deal with the cost of living problem we face? It is by supply side reforms. Are those supply side reforms going to come from reforming and removing EU regulation? Yes. That is our real opportunity. It is, in a more jargony way, non-fiscal interventions to make the economy more efficient and lower cost. With a cost of living problem, that must be our priority. It must be overwhelming.

Then you ask, "How do we make this the most attractive place in the world for people to invest?" What is that? That is welcomeness and openness to foreign capital flows. It is a regulatory environment that is helpful for foreign capital flows. It is a tax environment—in brackets: this is a matter for the Chancellor: close brackets; it is important that I emphasise that. None the less, it is something that makes the UK more or less attractive to foreign investors.

This is going to be things like AI. It is going to be GDPR. It is going to be clinical trials, which was specifically in the TIGRR report and is being worked on. It is all of that. We are under pressure to do it, because there



is a cost of living problem. That means we have to do it. I have a slight feeling that, when everything is going well, when the economy is booming, it is always a little difficult to take deregulatory steps, because every regulation has an advocate.

You probably know the *bête noire* of all this—I will have a pop at them while we are here—and it is the chemicals lobbyists. The chemicals lobbyists lobbied like mad to stop REACH regulations coming in. They thought that they were a terrible idea. Once they were in, they lobbied like mad to keep them. Once you have regulations, even people who did not like them in the first place are suddenly saying, “These are marvellous”. Why? It is because they protect incumbents.

You expend political capital in deregulating and in supply side reforms. It is much harder to spend that capital—perhaps prices are higher—in easy economic times. In difficult economic times, it is less political capital to get the deregulation and so we are under pressure to do it now. That is something that, with the support of your Committee, I hope the Government can do a great deal of.

Q18 Craig Mackinlay: You mentioned speed limiters. It does not seem to be a direction that you have been espousing just now. That is one of the first things that we are hearing from Government over the last few weeks, about piggybacking on the back of foreign regulation, very much EU regulation, and here we are, talking about it as a potential. The other one I would raise with you is the global anti-base erosion, the OECD 15% standard rate of corporation tax. It worries me that we come out of one regulatory stranglehold and perhaps put another one around our neck.

You mentioned insurance. Whether we like it or not, or whatever, we want a cheap, efficient, good-value and working insurance market. That is very much based around using what some would consider to be low tax base places for some operations. Some would argue that that flows through into lower rates for all of us. Others would say that it means that they are avoiding tax somewhere. I am worried that we end up saddling ourselves with something new, having got out of the EU at great aggravation.

Mr Rees-Mogg: It is always worth bearing in mind that corporation tax is ultimately paid by individuals. It is either paid by the owners of the shares or paid by consumers in terms of higher prices. There is no such thing as a free tax. Sometimes people think that taxing corporations is a free tax that nobody really has to pay. Actually, all of us end up paying corporation tax. With large, international companies, it basically falls through on higher prices, because they will have a target for return on capital and will not be interested in a market if they do not get that return.

Q19 Craig Mackinlay: I have taken you off on a tangent there. I just wanted to get those couple of points in. Before he went, Lord Frost was very keen on a “one in, two out” basis of regulation. I am fairly disappointed by this



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benefits of Brexit paper, because it had quite a lot about new regulation. Perhaps new regulation might be required for autonomous vehicles in a whole brave new world that we have not really thought about yet. We would want them to be safe and all the rest of it. Particularly in the context of the net zero ambitions, there was quite a lot in there saying that maybe more regulation will be required. The state will be telling you what to do rather more than even now.

The tone throughout that paper was a little bit of a worry. What did you think it meant? It said there, a very clear statement, "We do not think it is consistent with delivering world-class regulation to support the economy in adapting to a new wave of technological revolution or to achieving net zero". It really was not keen on "two out for one in". It really was not keen throughout this paper.

Mr Rees-Mogg: The problem with "one in, two out", or whatever variant of it, is that it always had considerable exceptions, so EU law was excepted in the first version of it. My view is that we need to look at regulation in its totality. If we were going to have a "one in, two out", we would, inevitably, have excluded net zero, because net zero is going to be the biggest regulatory cost that we face. Therefore, we need to look at it in its totality, with no exceptions, so that we really know what we are doing in terms of regulation. We need to be able to say that to our voters and our voters will then have an ability to make a decision.

If we end up with a "one in, two out" and I stand at the Dispatch Box and say, "It has been a great success; we have got rid of £2 billion of regulations and we have added only £1 billion"—in the small print: "excepting net zero, which has added £x billion"—you would rightly be saying to me, "That is not realistic". I cannot sit here and say to you that, including net zero, we will be able to get rid of more regulations than we will be implementing. It would be the triumph of hope over experience.

As regards regulating new technologies, there is regulation and there is regulation. We need financial services regulation that makes people coming to do business in the United Kingdom know that their money will not be stolen from them. That is sensible regulation. We have had it for a long time. In many ways, it does not necessarily need to be done by the Government. The private sector in the 19th century had quite a regulated financial market in London without much state regulation at all. The Bank of England was only privatised in 1947. I look to the Chair, who will know the precise date. It does not necessarily need to be state driven.

There is pharmaceuticals regulation. You need people to know that the pharmaceuticals you are producing are not going to kill people. There is an argument for what is called smart regulation. Overall, the regulation of new technologies should be very light touch and enabling. This is where you get into discussions about sandboxes and a lot of what George Freeman is looking at. It should not be thinking, "This is how we regulate washing machines and we must now apply that to artificial intelligence".



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Q20 **Craig Mackinlay:** We have had 30 or 40 years of the precautionary principle. Do you think that your civil servants can be shaken away from that precautionary principle as easily as you may hope?

Mr Rees-Mogg: If we followed the precautionary principle to its logical extent, we would never go into either our kitchens or our bathrooms, which are the most dangerous places, I believe, in our houses, let alone walk up or down our own staircases, in which case we would never get outside the front door. I do not think that that is a sensible way to live one's life.

Q21 **Mr Jones:** Before we move on, I wonder whether I could raise one matter that the Minister mentioned earlier on and in fact was also mentioned by Mr Mackinlay. That was the issue of speed limiters on cars. The report in the *Telegraph* five days ago was that the British Government intended to require speed limiters to be fitted to cars because the European Union was fitting speed limiters to cars as from May of this year. I hope you are going to tell us that that is a completely false report in the *Telegraph* and that the Government have no intention of doing any such thing.

Mr Rees-Mogg: It is not a policy that has received collective agreement.

Q22 **Mr Jones:** Is it in the course of being discussed?

Mr Rees-Mogg: It depends what you mean by "discussed". You can read between the lines my views on this.

Q23 **Mr Jones:** I think the view of probably the bulk of the members of this Committee is that the very last thing we should be doing is emulating and adopting EU regulation. If we want to sell cars into the EU, we can fit them with speed limiters. If we want to sell them in the UK or elsewhere, we need not do so. Would you say that that was a fair summary of what our position should be?

Mr Rees-Mogg: I am very lucky. I have a couple of very old cars that will not be retrofitted with any speed limiter. Mind you, the oldest one probably would not get up to much speed anyway. As a Government, we are a deregulatory Government and we are not slavishly following the European Union. This is fundamentally important.

Q24 **Mr Jones:** Presumably you can relay to your ministerial colleagues the concerns of this Committee.

Mr Rees-Mogg: I will relay the concerns of this Committee.

Q25 **Richard Drax:** Can I also congratulate you on your appointment, Minister? No one better, in my view, could be in such a role. Thank you for all you have done for our country. How do you intend to manage some of the remaining and often interrelated constraints on the UK's regulatory freedom from Brexit? We have in mind the protocol on Ireland and Northern Ireland, the development of common frameworks and the devolved Administrations, and international commitments entered into by



the UK with the EU and other partners.

Mr Rees-Mogg: It is fundamental really. The Northern Ireland protocol does not work. It was suggested that animals would need to be vaccinated for rabies in order to go to Northern Ireland when there has been no rabies in the United Kingdom, I think, since 1922. We always used to be much concerned about rabies coming in from the continent, rather than vice versa.

We are one United Kingdom. It is important that that is maintained, that the protocol accepts that, that the protocol accepts that Northern Ireland is within our customs union, and so on and so forth. Some of the details of the protocol are simply not working and need reform. That is the Government's position. As I say, it is being dealt with by the Foreign Secretary.

In terms of framework agreements with the devolved authorities, these are not limits on what we can do if it is a devolved matter within England. They are means of informing people, so that the devolved authorities will know what is intended and will be able to say what they are intending to do, rather than means of limiting us. International agreements are a slightly different area, because we will come to some international agreements that we think are of fundamental importance.

There are some international agreements on product standards that we may find are useful in terms of both our imports and our exports, to maintain a uniformity of standard and a certain degree of economic efficiency, rather than having 150 or 160 different global standards. We must always be very careful about international obligations that we enter into, that they do not limit our freedom to make the economy more efficient.

To come to a point that the Chair of your Committee has made many times in this area, any commitments we now have are—I think I am quoting you correctly, Chair—political-legal, rather than legal-political. That is to say they are agreements that have been made through diplomacy and with political effect that may have a legal influence. Under the 1972 European Communities Act, they were legal-political. That is to say that they were the law, which required an enormous political effort to change. We have much greater flexibility, but the roles of this Committee and of democracy are important.

If Government—not this one but a future Government—fall into the lazy habit of saying, "This has been agreed; why do we not go along with it?", we will be saying, for our constituents, "Why are you making my life poorer and harder?" Let us change that regulation. Let us say to the international body, "Actually, that agreement that was made some years ago is one that we no longer think is suitable for us."

Q26 **Richard Drax:** I am going to push you a bit more on the Northern Ireland protocol, because this is a major concern for many of us, I know.



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When we left the EU, if I recall, the idea was to leave the EU lock, stock and barrel and to be a completely free, independent country, to make our own rules and live by them, and all the other things we sold to the British public. Do you agree with me that we have not actually achieved that yet until this protocol is resolved?

I know that it is not your Department per se. You have made that clear, but I have no doubt, knowing your stance, that you will be talking to the Foreign Secretary and others to ensure that this is resolved. For how much longer are we going to go on bartering, negotiating and prevaricating with the EU, which clearly does not want us to get rid of the protocol and clearly is never going to come to an agreement with us? For how much longer will we put up with this before we once again regain the United Kingdom? You yourself said that that was the aim, which we all want, the United Kingdom as one United Kingdom.

Mr Rees-Mogg: The protocol itself contains the procedure for its being superseded. That is really important to understand, because there is a lot of commentary that says, "We signed it and therefore surely we should accept it lock, stock and barrel". That is absolute nonsense. We signed it on the basis that it would be reformed. There comes a point at which you say, "You have not reformed it and therefore we are reforming it ourselves". The United Kingdom is much more important than any agreement that we have with any foreign power. That must be the case.

Q27 **Richard Drax:** What moves are being made? The Prime Minister has answered on many occasions that he understands the issue and it is going to be resolved. I do not know how much longer he can say that, certainly for those in Northern Ireland and those in the rest of the United Kingdom, so let us sort this once and for all.

Mr Rees-Mogg: I wish I could say more, but as you know there are elections in Northern Ireland coming up. Therefore, I ought not to say any more with elections going on. One has to be sensitive to the democratic process in Northern Ireland. What the Prime Minister has said is accurate. What the Foreign Secretary has said is accurate. The wheels are in motion.

Q28 **Richard Drax:** This is my final point. You raised the issue of VAT, which we could not carry through to Northern Ireland because of the protocol. Would you agree that, until this protocol is ended, we do not actually have a United Kingdom?

Mr Rees-Mogg: I definitely would not go that far. We have a United Kingdom. I would quibble over the word "could not". We could not, while in compliance with the Northern Ireland protocol, do it. Parliament can do anything. Your Chair, again, is an expert on notwithstanding clauses. It was established in clause 38 that we can do what we want, ultimately.

Chair: 38(2)(b) in particular.

Q29 **Margaret Ferrier:** It is nice to see you, Minister. We are talking about



the Brexit freedoms Bill. On 31 January, the Government announced that they would bring forward this Bill. How are preparations progressing for its introduction? Given the importance of the Bill, will you publish it in draft form? Lastly, can we look forward to it being included in the Queen's Speech on 10 May, but, more importantly, introduced in the next parliamentary Session?

Mr Rees-Mogg: This is a very difficult question for me, as you will remember, as you were one of my most frequent interlocutors in my previous role. I will confess that, in my previous role, I was being very cautious about the Brexit freedoms Bill and wondering whether it was possible to do it in the time available. About a week after it was announced, I was given the responsibility for making sure it was ready in the time available.

It is a very tight timetable. We are working very hard to make sure that it will be ready. There is a Bill team. We are on track for it to be ready and available by the summer of this year. I should not pre-empt what will be in the Queen's Speech, what will be in the Gracious Speech, but we are working very hard to make the Bill ready. It is an important piece of post-Brexit legislation and the OPC, the Office of the Parliamentary Counsel, is one of the most efficient parts of the Civil Service, so I am relying on it to ensure that it is drafted effectively in time.

Q30 **Chair:** That was informative. Thank you. The Government have said that the Bill will "end the special status of EU law in our legal framework and ensure that we can more easily amend or remove outdated EU law in future". This is, to go back to our previous exchanges, quite a revolution, in terms of what we accepted when we came into the EU in 1972 and 1973, and of course the majority voting that went with it.

That demonstrated a degree of lack of democratic legitimacy, because the decisions were not being taken by our Parliament. They were being taken by other people and imposed upon us by our own voluntary acceptance, which we then, by leaving the European Union, have now repudiated. Having said that, what specific provisions do you think the Bill is likely to contain to ensure that these aims of achieving the ending of the special status will actually be demonstrated?

Mr Rees-Mogg: A key part of the special status has already ended. An Act of Parliament passed today is our highest form of law and it is not trumped by historic EU law. That was not the case prior to our formal departure, so that has happened. There is then the question of how you amend or repeal EU law. Some came in by specific Acts of Parliament and I would be interested in the Committee's view on how you deal with those. My view is that an Act of Parliament is an Act of Parliament, regardless of its origination, but I am certainly open to argument on that.

A piece of secondary legislation that has been brought in under either a regulation or a directive is of a lesser status, and 2(2) was used as the main pipeline to bring in EU rules, with remarkably little scrutiny. If you



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think of the work this Committee has done, it highlighted some of the more important matters for debate, but the European Standing Committees could not vote down an EU law.

Chair: They never did.

Mr Rees-Mogg: The ports directive, to which everybody was opposed, still went through and became law. Therefore, it seems to be perfectly reasonable that laws that came in without any democratic mandate can be removed by secondary legislation. That is not an unfair, unreasonable or improper way of dealing with it. On that basis, 80% to 90% of EU law will become reformable using normal parliamentary procedures.

There is then the percentage that is primary legislation. Although, as I say, I am happy to enter into discussion on this, once you start saying that an Act of Parliament came from a particular route, you begin to undermine the fundamental principle that an Act of Parliament is our highest form of law.

Q31 **Chair:** Would you agree that EU retained law has to be repealed? In particular, that is because EU retained law is the product of, because of the way it is composed in the withdrawal agreement Act, legislation that applies the principle of EU supremacy of law. That seems to me an extraordinary situation, that we have left the European Union and yet we are encapsulating the idea of the supremacy of EU law as the means of retaining law that, by definition, surely we ought to be repealing.

Mr Rees-Mogg: The supremacy only applies to laws passed before we left the European Union, so every day we are out of the European Union, and more laws are passed, that supremacy is eroding regardless. I hope the retained EU law Bill can speed that process up, but it is something that is eroding naturally.

There are types of EU law. You know just as well as I do that this is not simple. There are some Acts of Parliament that contain clauses in them that are derived from EU law and clauses in them that we decided to do for ourselves. If you take the 1982 Civil Aviation Act—I have the interactive list and I have been looking through some of them—you have to ask yourself how much of that we want to change for our own benefit.

I would veer towards a rigorously practical approach to this: what do we need to change? If we try to change everything, we will swamp Parliament. There will be too much for Parliament to legislate on and we will not deal with the important things because we will find that, for ease, people just copy and paste, and put it into more traditional UK legal language, as opposed to EU legal language.

We need a focus on the things that we must change and a process that facilitates that. We will have a financial services Bill. We will have a GDPR Bill. Those will be UK pieces of legislation, superseding and repealing things that have been done under the EU. If we spend time on—I will go back to the same example—the 1982 Civil Aviation Act, that will deter



and divert us from dealing with the issues that need fundamental reform, I think. If the Committee thinks otherwise, I would be very interested and open to that in your report.

Q32 Chair: I would like to move on to this question related to the supremacy of EU law provisions, which are contained in the current legislation. Can I put it this way round? Do you agree that, as some suggested, to get rid of the EU retained law would create uncertainty? Surely, what could not be more uncertain is to have two separate public statute books, one of which is pre-exit, which is between 1973 and the day we left, the date when the EU legislation ceased to apply.

The other kind of law, some of which actually predates our entry into the European Union, is still on the statute book, before 1972, but, most particularly in the context of the freedoms Bill, the legislation that will be taken under the democratic decision-making processes of the voters in Parliament making Acts of Parliament in the manner in which we were describing it earlier. That would be a fully democratic decision-making process.

Nothing surely—I invite you to consider the question—could be more uncertain than to have two separate statute books, one of which our own judges would be expected to interpret in accordance with the principles of the supremacy of EU law, and the other in accordance with democratic decision-making. Do you not agree that it is really quite inconsistent to suggest that that is uncertain when it is going to be more uncertain to have two separate public statute books?

Mr Rees-Mogg: There are two different points there. One is whether you need to rewrite all existing EU law, even those bits that we, of our own free volition, wish to keep, because it is doing things that we would anyway have done. Another example is the 1992 trade unions consolidation Act. That is primarily a consolidation of historic trade union Acts dating back over more than a century, which has some element of EU influence within it. Is it a useful exercise simply to rewrite that to take out the bits that may be EU-derived? I think—but, as I say, I am open to this Committee's view—that exercise would be unnecessarily cumbersome and would remove effort from dealing with the important freedoms that we wish to use.

On the other hand, there is your very valid point on how this is interpreted by the courts and how they look at retained EU law as against domestic law. As I said, it is very straightforward when the law is passed post our final departure from the EU. That is a simple measure to follow through on, but what about if it predates? How do you look at principles of EU law that have been absorbed into our law? We are looking in the Bill at a mechanism to deal with that, so it is under active consideration.

You will know Lord Denning's description of this. The EU law was a tide that came into the estuary and spread up into the rivers and streams. This is a tide that we are now turning back. We are pumping it out, so to



speak, and we need to get it back into the sea. That takes a bit of time, because it came through into all the rivulets of our legal system.

- Q33 **Chair:** If I may just make this observation in the form of a question, you mentioned Lord Denning, but there is Lord Diplock. There is a whole series of case law, where pre-eminent judges said that, in effect, if you were to employ the word “notwithstanding” in relation to any legislation, in terms of the sovereignty of Parliament, we would have an entitlement, even when we were in the EU, though it was never employed at that time. We could have done it for the Merchant Shipping Act. In fact, I suggested to the Solicitor-General when that Bill was going through in 1988 that we would not be able to achieve the objectives of the Merchant Shipping Act unless they put the word “notwithstanding” in it. They did not. It was struck down and that was the Factortame case.

What I am driving at is to ask you whether you agree that these pre-eminent judges, who said that, if you use the word “notwithstanding” in relation to EU legislation, now that we are out, in relation to EU retained law in particular, we will be able to achieve a statute book that is certain and, at the same time, able to represent the democratic decisions of the British people and their Government.

Mr Rees-Mogg: I will defer to you on this, naturally, but my view is that we would only now need to use a “notwithstanding” on any future legislation in relation to article 4 of the withdrawal treaty.

- Q34 **Chair:** The short answer to that is that you can use the word “notwithstanding” in any circumstances.

Mr Rees-Mogg: We do not need to.

Chair: You do not necessarily need to.

Mr Rees-Mogg: We do not need to, because if all the Bills that we are discussing today—our routine law—become Acts of Parliament, it does not matter whether they contradict EU law or not, except in a very narrow field in relation to article 4, which none of these Bills will, but assuming they do not.

The concern really is how you deal with the supremacy of EU law historically. There are particular concerns in relation to, for example, VAT, because we have a consistent and coherent VAT basis of law. If we suddenly said that we were unpicking how it had been established, that might be problematic, but the Treasury has a Finance Bill every year when it can change whatever it likes on VAT with complete freedom. Although the supremacy of EU law is a principle underpinning where we now are on VAT, it is not a long-running problem because, as we have just shown in the spring statement, the Chancellor can just change it, with no regard to EU law and, indeed, no debate on EU law.

- Q35 **Margaret Ferrier:** Minister, when and how do the Government intend to consult with the devolved Administrations on the specific content of the



Bill and future changes to the status of retained EU law?

Mr Rees-Mogg: As you probably know, there is very good official-level discussion between the Scottish Government and Her Majesty's Government. It gets a little more fractious at the political level, perhaps for understandable reasons. There is a regular exchange at official level on the whole range of Government policies and that works reasonably well.

Q36 **Margaret Ferrier:** Will that be continuing this week?

Mr Rees-Mogg: On the procurement Bill, rather than the retained EU law Bill, because that is at a further stage of development, there have been consistent and longstanding discussions with all the devolved Administrations. There has been slightly less with Scotland, because Scotland decided not to be part of the new procurement Bill, whereas Wales and Northern Ireland wanted to remain within it. Scotland has a devolved competence and has decided to use that, and, therefore, has not been involved in every discussion, because not every discussion has been relevant. As I said earlier, we may end up doing different things, but we will at least have proper discussions at an official level about the things that we are going to do.

Q37 **Margaret Ferrier:** If there were any concerns brought forward by the Scottish Government, for example, would they be taken on board and a way round looked for?

Mr Rees-Mogg: You and I have our different political views, but to make sure things administratively run well, and with the principle of a single, UK-wide Civil Service, which is important, official-level communications are very effective across Departments actually. As I say, once it gets politicised, it is the usual political exchange.

Q38 **Chair:** The Government said that they will "work with Parliament on how to frame" new powers to amend retained EU law by way of secondary legislation, to ensure "appropriate levels of parliamentary scrutiny". What do you mean by "working with Parliament" in this context and would you commit to consulting us as part of that process?

Mr Rees-Mogg: I cannot at the moment commit to consulting this Committee or any particular Committee, because I am currently talking to the business managers about the best ways of ensuring that this scrutiny is carried out. You know my views. Parliamentary scrutiny is fundamental. It was one of the great criticisms of the European Union. We have not left the European Union so that we can be run by an overmighty Executive. We have left the European Union so that our system of legislation can be subject to a proper parliamentary process. I cannot promise who the discussions will be with, but I can promise that we will make sure there is proper scrutiny within the retained EU law Bill.

Q39 **Chair:** Some of that will involve the procedures, for example, known as Henry VIII clauses and things of that kind. Then of course there is the



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question of affirmative resolutions and their application to the House of Lords, and all sorts of complications of that kind.

Mr Rees-Mogg: Absolutely, you are right. My starting point is that I do not like Henry VIII clauses. They are a sometimes necessary measure, but they should be used extraordinarily sparingly.

Chair: We will take note of that.

Q40 **Marco Longhi:** Minister, when you appeared before the Public Administration and Constitutional Affairs Committee on 22 March, you stated that the Government had identified so far just under 1,500 pieces of retained EU law. In their benefits of Brexit paper, published on 31 January 2022, the Government stated that they would make public a catalogue of retained EU law and also make accessible any changes to it. Could you perhaps give us some insight as to when and how this may happen?

Mr Rees-Mogg: Yes, because I am very keen to do that. You will be glad to know what an exciting life I lead, because I actually had the interactive version of this over Easter. The Chair of your Committee, an avowed papist, is looking at me askance, as if I should have been attending to my religious duties. They were not completely ignored. When I was not attending to my religious duties, I was looking at the interactive version of EU law.

I would like to make the interactive version available, because it is much more useful than simply giving you a catalogue. I cannot promise that, because it is simply a technologically complex thing to do, but I am very keen that that should be provided and should be provided around the time the Bill is published, ideally before, but we want to get as much information out as possible.

It is really fascinating. I am sorry; that makes me sound desperately sad, but you would be amazed what is in there, and how many regulations there are on the extraordinary details of how we make products that you would have thought that the market could have provided for itself. I think that, when people see it, they will realise quite how intrusive EU law is.

Q41 **Marco Longhi:** It may be some consolation that you are not alone in being so sad. At the same session, you appeared to reference both a retained EU law Bill, and a Brexit freedoms Bill. Are these the same piece of legislation and, if so, do your words indicate a change in scope or content of the Brexit freedoms Bill, compared to how it was described on 31 January?

Mr Rees-Mogg: They are one and the same. As I have touched on earlier, it is simply that Bills in the UK Parliament get given dry names. As I said, I rather like this. The Brexit freedom Bill is the popular name for the retained EU law Bill. They are the same and it is broadly the same scope. I do not want to hide this from you. Because the timescale is so tight, there will be some trade-offs between getting the Bill ready on time



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and having it as all-encompassing as one might have liked in an ideal world.

Having been a former business manager, I do not find this particularly difficult, because I was always saying to Bill managers, "How can you narrow the Bill to get it done on time?" We need to get the biggest benefits from this and we need to get them as soon as possible. Therefore, I am facing those choices. When those choices have been made, I am more than happy to come back to this Committee to explain why we made those decisions. As I say, I view this as the main Committee that will scrutinise me in the work I am doing on Brexit opportunities

Q42 **Chair:** We would not want to leave an elephant in the room, which is legislation that is compliant with the supremacy of EU law on the one hand and thereby, if that were to be the case, ending up with legislation that did not achieve the objective of returning to the British people the right to govern themselves through their own Parliament.

Mr Rees-Mogg: I am not in the least interested in whether the retained EU law Bill is compliant with EU law. It is completely irrelevant.

Q43 **Chair:** It is. The question is whether, within the framework of the legislation that you have come forward with, you will provide yourself with the means to get rid of all the retained law that would obstruct our ability to have the freedoms that your Bill otherwise would achieve.

Mr Rees-Mogg: Excluding primary legislation, I would expect the Bill to do exactly what you want. We are not going to lose the fundamental things. We may lose some of the additional attractive things. At the moment, I am in the phase of pushing for as much as we can possibly get written into the Bill.

Chair: I accept that because, for practical purposes, the Bill is not yet published. It is not in draft. We cannot see how it will actually work out. We will be happy to come back to this when we have an opportunity to see the text of the Bill itself.

Minister, thank you very much indeed for coming. It has been a very interesting session. I am very glad to have had the opportunity to renew our acquaintance. Only five or six years ago you were sitting at this table, talking to other Ministers, but here we are. Thank you very much for coming this afternoon.

Mr Rees-Mogg: It has been my pleasure. Thank you very much.