

European Scrutiny Committee

Oral evidence: Government Northern Ireland Protocol negotiations, HC 1101

Tuesday 21 March 2023

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Members present: Sir William Cash (Chair); Mr John Baron; Geraint Davies; Richard Drax; Mr Marcus Fysh; Adam Holloway; Mr David Jones; Craig Mackinlay; Gavin Robinson; and Greg Smith.

Questions 48 to 125

Witnesses

I: Rt Hon. Chris Heaton-Harris MP, Secretary of State for Northern Ireland; Mark Davies, Director, Windsor Framework Taskforce, Cabinet Office; and Brendan Threlfall, Acting Director General, Cabinet Office.

Examination of witnesses

Witnesses: Chris Heaton-Harris, Mark Davies and Brendan Threlfall.

Q48 Chair: Thank you, Secretary of State, for appearing before the European Scrutiny Committee this afternoon. Today we will question you on the Government's Northern Ireland protocol negotiations and the Windsor framework.

I have to say that we all agree that the background to this session is far from ideal. First, the Prime Minister declined to appear before us to answer questions on the deal he negotiated and presented to the House only three weeks ago. Such is the importance of the Windsor framework that we felt it necessary to outline our initial concerns in the report, which is highly unusual.

Secondly, it has proven especially difficult to secure a Minister before us. We do appreciate your appearance today, Secretary of State, but it must be said that for matters of such political, legal and constitutional significance, it is incumbent on Government to be proactive in their engagement with Select Committees, and more generally the House, and in relation to our very specific Standing Orders. Effective scrutiny is the hallmark of good law and improves rather than hinders its achievement.

Thirdly, the timing and sequence of UK-EU level events have been an ongoing concern to us. As we warned in our report only last Tuesday, the withdrawal agreement Joint Committee will meet on Friday to agree the Windsor framework. That is only three days from our session now, and two from the Stormont brake Statutory Instrument debate, which is tomorrow.

We will consider the SI and its appropriateness later, but there appears to be no good reason for that artificial timeline, which sees the Government signing off a text published weeks ago, with no change. We were promised engagement but the Government have failed to deliver anything meaningful. This impromptu session and tomorrow's 90-minute debate and vote on approving an SI is all we will have had. It appears clear to us that the Government set their course weeks, if not months, ago and have done all they can to avoid being diverted from it.

The Windsor framework is a significant development in the UK's post-Brexit relationship with the EU. Its legal complexity speaks to this and there is a vast amount of paperwork, as you know, Secretary of State. Its provisions will impact the people and businesses of Northern Ireland and Great Britain. It is therefore deeply disappointing that we find ourselves here today.

On the content of today's session, we will cover the timing sequence and scrutiny of the Windsor framework and related matters; the framework itself, including the Stormont brake; applicable EU law in Northern



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Ireland; the European Court of Justice; VAT; state aid; red and green lanes; domestic policy; legal implications; and next steps.

Before we start, perhaps you would like to say a few words, Secretary of State, and perhaps you would also like to introduce yourselves, Mr Davies and Mr Threlfall. Thank you very much.

Chris Heaton-Harris: Thank you, Chair, and thank you for the invite. I completely understand what you have said about getting the Prime Minister before us, but he appears before a Committee of the House on a regular basis for a session on all sorts of things. However, when you contacted me at the weekend, as a long-standing former member of this Committee, I like to think that you felt that I was delighted to accept your invitation.

Q49 **Chair:** I was very glad, if I may say so, that you responded so rapidly.

Chris Heaton-Harris: I am genuinely happy to be before this Committee today. I know, as you say, that this was hastily arranged, and forgive me for not having as much time as you might possibly like to go through all these matters. However, I am joined by Mark Davies and Brendan Threlfall, so, like a football referee, I have Mitrovic and Silva either side of me. They are from the Cabinet Office and have been involved in the matter for a very long time.

My primary objective, as Secretary of State for Northern Ireland, is to get the Northern Ireland Executive and the Assembly up and running. The day-to-day application of the protocol, as it currently stands, has meant that that is not able to happen at this point for very good reason, which everybody on this Committee will know. The Windsor framework represents an important opportunity for a turning point for Northern Ireland. The framework protects the economic rights of the people of Northern Ireland and provides us with a basis to move forward together as one united country. It deals with the everyday issues that people and businesses in Northern Ireland had faced as a result of the operation of the protocol.

We have rewritten the protocol treaty and replaced it with a radical, legally binding new Windsor framework—something many said could not be done. The agreement removes the Irish sea border and restores the free flow of trade from GB to NI through a new green lane. It gives the people of Northern Ireland a veto over new laws that apply there, and protects Northern Ireland's place in our Union, through fixing practical problems, including on pets, parcels, medicines and ensuring that the UK's decisions on tax and spend benefit people and businesses in Northern Ireland as they do in Great Britain. It goes further than the July 2021 Command Paper and protocol Bill in crucial areas, restores that delicate balance inherent in the Belfast/Good Friday agreement and, importantly, brings stability for business.

The Committee will be aware that we have begun the process of domestic implementation of the framework, with the draft regulations giving effect



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to the Stormont brake, and I very much look forward to taking your questions and setting out why I believe these new arrangements will have delivered on what the Government set out to deliver and be the best outcome for Northern Ireland and the UK as a whole.

- Q50 **Chair:** Secretary of State, because you only have a shortish time with us, will you commit, with your army of officials, if I may put it that way, to answer any questions that we do not manage to cover in writing before tomorrow's vote, if we send them to you after the session has finished?

Chris Heaton-Harris: I will absolutely do my best. The Northern Ireland Office does not have an army of officials, but I am sure the Cabinet Office has some spare who can help.

Chair: I was thinking more about the whole grouping of the Government machine behind this. It has been going on for months.

Chris Heaton-Harris: I will endeavour to get you that reply.

- Q51 **Chair:** That is very kind; thank you. What is the Windsor framework? The public probably would like to hear that from you. Why should MPs support it when the UK has left the European Union, but the citizens of Northern Ireland are still being subjugated to EU law?

Chris Heaton-Harris: As I hope I said in my opening remarks, the Windsor framework involves a fundamental bunch of changes to the old protocol—one that many in this Committee voted for and I voted for—and establishes entirely new arrangements for internal UK trade in a deal that tries to identify the full range of issues that Northern Ireland has been coming under over the last two years.

As I said, there are some significant issues in the everyday delivery of public services to people in Northern Ireland that are being exacerbated by not having a functioning Executive or Assembly that is sitting. I know that the reason for this, as well articulated, is that the practical issues of the current protocol are causing great disturbance among one particular community—the Unionist community—at this point in time.

The Windsor framework is a way of trying to address those concerns among that community and all communities in Northern Ireland. I have met with every party leader in Northern Ireland on a number of occasions, and they all have certain issues with the current functioning of the Northern Ireland protocol. Some obviously want to see it maintained in a very similar state to the way it is now, but others want fundamental change.

Those practical issues were that, gradually, as the protocol got enacted—remember, it has not been completely enacted at this point—various goods started to disappear from the shelves of shops and supermarkets in Northern Ireland. GB companies were choosing, whether for good reason or bad, not to supply Northern Ireland with various goods because of issues with the Northern Ireland protocol. Various goods were almost proscribed by the current functioning of the protocol. For those of us



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based in GB, I do not need to demonstrate this, because if you listen to any advert for a good on commercial radio, it will invariably say at the end of it, in the financial small print: "This thing is not available in NI." Every day, Unionists were quite rightly questioning whether they were being pulled out of the orbit of the UK internal market and pulled into the orbit of the EU single market.

Lots of businesses in Northern Ireland also wanted to maintain the access that they had to the European single market, and I have had letters from numerous Northern Ireland MPs asking how that could be maintained in the run-up to this process. One contacted me concerned about what the outcomes might be; would there be dual regulation in the future?

I had a letter from a Member of Parliament outlining that the Ulster Farmers' Union had raised issues around dual regulation, because it would have to run essentially two lines for each product that it was producing, massively increasing its costs. That MP wrote to me highlighting those concerns but equally highlighting that business's interest in maintaining its access to the European single market.

- Q52 **Chair:** You have made that point, and I am grateful to you. I do not want to cut you short, but on the other hand, we have a lot of questions to ask. I want to ask one more question. Section 38 of the European Union (Withdrawal Agreement) Act 2020 enables the Northern Ireland protocol to be overridden by the Northern Ireland Protocol Bill, so why have the Government stated that they are withdrawing it?

Chris Heaton-Harris: Because the legal basis for the Bill has fallen away with this negotiated settlement, as detailed by the legal statement that went alongside this.

Chair: There has been a lot of comment about this—

Chris Heaton-Harris: The basis of necessity, which was, as you know, being tested—

- Q53 **Chair:** It has been fairly well trashed by some statements made by the Government.

Chris Heaton-Harris: I think it is fair to say it was being tested rather than trashed. It was being tested by various lawyers and, indeed, the European Commission itself, but the basis of necessity has essentially been removed by the new—

- Q54 **Chair:** It did pass the House of Commons unamended, and it reached the House of Lords. At the moment, it is sitting there like the Mary Celeste in the House of Lords, marooned and becalmed. It is now stated in your papers that the Bill is going to be withdrawn, although you cannot withdraw it in the House of Lords as such.

Chris Heaton-Harris: It would not be withdrawn. As a former Government Chief Whip, I was pleased to be able to deliver an unamended Bill all the way through the House of Commons process, and I watched it as it gradually entered the very calm waters that it faced in the House of



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Lords. Obviously, Bills do not really get amended until they have gone beyond Committee stage in the House of Lords. I think it is fair to say that the Bill, while currently in pristine condition, possibly would not have come back from the House of Lords in that place, but that is what the Commons is there for—to sort that out. The basis for the Bill has essentially gone, because the basis of necessity has been removed.

Q55 Greg Smith: Good afternoon, Secretary of State. I would like to probe a little bit the definition of “sovereignty”. When making his statement on the Windsor framework on 27 February, the Prime Minister spoke of how it “safeguards sovereignty for the people of Northern Ireland.”

As a relatively simple soul, I define sovereignty as where my laws are set by the country that they cover, where the highest arbiter of those laws is national courts. We can see that even the concessions that clearly are in the Windsor framework are done through amendment to EU law, as opposed to any national law. Can you run us through what is meant by “safeguards sovereignty for the people of Northern Ireland”?

Chris Heaton-Harris: Thank you for spotting that there has been some positive movement. Some might judge it as not enough. When the Prime Minister introduced the Windsor framework, he did state that it was not perfect, but actually, I would say that from the point from which we came, this is a massive, massive improvement in how things will operate for Northern Ireland.

The Prime Minister also said, as I was making clear to the Chairman, that because of the land border that Northern Ireland has with Ireland itself, and because of us wanting to ensure that we protect our UK internal market, of the European Union wanting to protect its single market and of manufacturing businesses in Northern Ireland wanting to maintain their current access to the European single market, we spent a lot of time talking to and listening to various businesses and groups about how that can best be dealt with.

I will come to the sovereignty point in a second, but what this deal does is disapply hundreds of pages of EU law as they apply to Northern Ireland at this point. It is something like 67 different EU laws. I could make it a lot more pages if I increased the font. It strips away lots of that, but it does maintain some aspects—just under 3%, we reckon—of existing EU law as it applies through the Northern Ireland protocol at this current time. It maintains what we believe is the bare minimum required for free-flowing access to the European single market for manufactured goods in Northern Ireland.

The sovereignty point is that I have had lots and lots of comments from different people, over a long period of time, about where the current protocol has no actual democratic input at all—people in Northern Ireland not having any say over the laws that affect them and how they feed through the system. What we have done is introduce the Stormont brake, which I know we will come on to later. It effectively gives people in Northern Ireland a say over those remaining EU laws, new laws that come



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in, and current laws that are amended. It gives them a say over those and whether they should apply to Northern Ireland in the future. The ultimate act of sovereignty is that, in just over a year's time, the Northern Ireland Assembly, on a majority vote, could vote to reject the whole thing.

- Q56 **Greg Smith:** Coming back briefly on that point, because I am conscious of time and others will come on to the Stormont brake specifically later, is the clue not in the question? There is no UK legislation, or indeed anything that Stormont could pass, that enables any of the concessions that we are talking about here. It is EU law that has to be amended to allow for the green lanes and so on, and to allow for the Stormont brake, meaning that EU law continues to be sovereign over Northern Ireland.

Chris Heaton-Harris: With the greatest of respect, what we are doing in the House tomorrow is passing a piece of legislation to enact part of this deal. Doubtless there will be other future legislation—indeed, there will doubtless be things thrown from the Joint Committee and beyond—but there are agreements on both sides of this and, I would say, compromise on both sides.

- Q57 **Greg Smith:** Okay; colleagues will come on to that in more detail. May I ask a slightly different question about the statutory instrument on which we have a 90-minute debate and a vote tomorrow in the House of Commons? Going back to 27 February, when the Prime Minister announced the Windsor framework, he talked of Parliament having a say over the Windsor framework.

Tomorrow, we are looking at a very specific part of it: the Stormont brake. There is some speculation that tomorrow's vote is actually being considered as the whole say over the entire Windsor framework—a meaningful vote, if I can put it that way, on the whole deal. What is the Government's official position on the vote that we are being asked to take part in tomorrow?

Chris Heaton-Harris: It is the factual position that this is a vote on the SI that activates the Stormont brake. I believe Mr Davies wants to come in very briefly.

Mark Davies: On your previous question, it is probably important to clarify that several important elements of these changes are not made through changes to EU law. The Stormont brake is a change to the treaty itself, so we are using changes to the withdrawal agreement text. Similarly, the VAT and excise rule changes are done through changes to the treaty.

There are various elements of that kind, which are made through changes to the withdrawal agreement itself, not through changes to EU law. Obviously, elements of the customs green lane that we are talking about there are set out in a Joint Committee decision, which is part of the discussions that the Chair referenced on Friday at the Withdrawal Agreement Joint Committee.

- Q58 **Greg Smith:** My last question is: when will the House of Commons and



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Parliament have a say on the whole of the Windsor framework?

Chris Heaton-Harris: As we have said from the very start, from the 27th we are going to give people time and space—I would like to think this has been demonstrated by action—to consider everything that we are doing here. I think that this Stormont brake is important to have in place sooner rather than later, because there has been a lot of speculation about what it does and cannot do, and how it works and cannot work. This will codify it in black and white, so that people can actually see it for itself, as an important part of the democratic check that your question started out on.

As a former Chief Whip, I know that there will be future opportunities in some of the things that Mark said and on future SIs. Parliament will always find a way, even if the Government does not allow it to have its say. I am generally not particularly worried about that.

- Q59 **Geraint Davies:** The European Union was adamant that it would not renegotiate the Northern Ireland protocol—quite reasonably, because that is signed in international law, which trumps both EU law and national law—so why do you think that they have agreed to make these fundamental changes? Do you think that is because it helps the peace process, the single market, inward investment or perhaps US investment? Why do you think that they changed their mind when they did not need to?

Chris Heaton-Harris: I think it does all those things that you detail, but I do not think that the European Union changed its mind because of that. The opening mandate that the European Union had when initially negotiating the protocol was to protect the Belfast/Good Friday agreement. When you see one of the key institutions from one of the strands of that agreement not functioning, you can ignore it for a certain period of time, but it was obvious that it was not functioning because of the way that the current protocol is working in Northern Ireland.

I would love to say that it was the fantastic negotiating skills of a team of brilliant negotiators on the UK side that persuaded the EU to make the treaty changes—it was, obviously—but I genuinely think it was because the 25th anniversary of the Belfast/Good Friday agreement was materialising on the horizon and there was understanding of actions. I always say that when the protocol was written and we all voted for the protocol—I know you did not, Mr Davies, but pretty much the rest of us did—

Geraint Davies: I am in favour of the protocol.

Chris Heaton-Harris: Sorry. I am just saying that I do not think that anyone envisaged the practical effects that the day-to-day operation of even the bit of the protocol that is now working has on the people of Northern Ireland, and certainly there was no understanding of what it would mean to the Unionist community. So, there is a general realisation of the importance of the peace and stability brought about by the agreement.



- Q60 Geraint Davies:** On that point, do you think that enough is being done to persuade all political parties, in particular the DUP? What is in it for them? From where I am sitting, it seems to me that there is a lot in it for the DUP in terms of inward investment, jobs, peace and the United States putting more money in.

British companies, perhaps moving to Northern Ireland, were finding it difficult to trade into the single market, with 50% trading less or not at all. So, there are a lot of economic and stability benefits in Northern Ireland for the DUP, but have you put enough effort into talking to the DUP about selling the benefits that have been negotiated with the consent of the EU?

Chris Heaton-Harris: I try never—I have always done this, throughout my political career—to second-guess what other political parties might be doing, because I am not necessarily wired in that way—

Geraint Davies: But how would you sell it to the DUP?

Chris Heaton-Harris: I think the Windsor framework, as it has come to the fore, with the Stormont brake enacted and indeed some of the other things that we needed to do. The Democratic Unionist party had seven key tests by which it was testing what the Government were trying to achieve. Lots of them are covered, I would say, by what we have done in the Windsor framework, but some are more fundamental than that.

There is the Act of Union piece that is fundamental to any Unionist and, potentially, a concern as to constitutional arrangements in the future. I truly believe, hand on heart, that this deal will bring more prosperity to Northern Ireland, and I think that when you have more prosperity, nations are highly unlikely to want to change their constitutional setup. In fact, I could semi-quote or paraphrase the leader of the Democratic Unionist party: everybody wants prosperity for Northern Ireland. If we get the prosperity piece right, that helps guarantee the Union for decades—generations—to come.

- Q61 Geraint Davies:** Do you agree this hardwires Northern Ireland into the United Kingdom economically? If there is more inward investment, we will get the tax and we are not going to give up Northern Ireland as part of the United Kingdom in any hurry, so don't you think that is a strong argument for the DUP to consider?

Chris Heaton-Harris: I believe that is the case, and I believe we will be trying to help codify some of that as well.

- Q62 Chair:** Moving on, many of us see that the whole of the Windsor framework is being rushed, without sufficient consultation—the facts speak for themselves. The Government announced yesterday that the UK-EU Withdrawal Agreement Joint Committee will meet on Friday to sign off the Windsor framework. That will be after Members debate a draft statutory instrument on the Stormont brake tomorrow, which, aside from this session, will be the House's only formal opportunity to engage with the Government on the deal. Will you agree that the Windsor framework



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comes into effect in the WAJC on Friday? That is the first question.

Chris Heaton-Harris: Elements of it do.

Q63 **Chair:** So why does the Windsor framework have to be agreed on Friday?

Chris Heaton-Harris: Elements of it are part of the deal. There is a whole host of sequencing of different events. But it is the 10th meeting, I believe, of the Joint Committee. This is not a new thing; it is just an evolution of the Joint Committee and what it does.

Q64 **Chair:** It is a pretty big step in the evolution, I should say. What is the rationale for the timing of the SI vote tomorrow, followed by the WAJC on Friday?

Chris Heaton-Harris: I think I detailed the rationale for the SI timing, and I honestly don't know why the Joint Committee is sitting on Friday, but the Joint Committee is sitting on Friday.

Q65 **Chair:** Some would argue very strongly that this is rushing the process, when you announced the deal nearly a month ago after at least four months of secret discussions with the EU. We were not aware of what was going to happen until we saw the papers immediately before the Prime Minister's statement.

Chris Heaton-Harris: I am not going to apologise for people conducting negotiations in confidential situations, because that is what businesses do and that is what we should be doing as a Government. Now, having published everything on whatever it was—27 March—I would like to think that we are giving people the time and the space to critically go through all aspects of this.

Q66 **Craig Mackinlay:** On the Stormont brake, you have said in your preamble this afternoon that it allows a veto for the people of Northern Ireland. Let us expand on that a little. It applies only in some quite limited areas. It can come into play only if there is amended or replacement EU law, so not all the old stuff, as it were. It does not apply on issues relating to state aid, VAT, excise, most of the customs code, trade, defence or the electricity market.

So I think we have to accept that that broad use of the word "veto" is perhaps a little expansive compared with the truth—it has fairly narrow use. And there is a test that has to be met. I will quote it: it is that an issue has a "significant impact specific to everyday life" in Northern Ireland in a way that is liable to persist. A couple of questions arise out of that. Who interprets the word "significant" is an interesting point. Perhaps you would like to start by refreshing your thoughts on the use of the words "a wide-ranging veto"; and who decides what is significant or not?

Chris Heaton-Harris: MLAs decide; 30 MLAs would decide what is significant. There is a veto at the end of this process, in the Joint Committee.

Q67 **Craig Mackinlay:** Okay, but you do accept that it has fairly narrow scope



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across those areas that are specifically excluded, and that it only applies to new or amended EU law?

Chris Heaton-Harris: You are quite right that it does not apply to the existing body of EU law—although, as I have said, lots of that is disapplied—but to the 3% of EU law that still flows through the system. There is the bare minimum for access to the European single market. For new laws or amended laws in that space, it does apply. Mark, would you like to slip in and—

Q68 **Craig Mackinlay:** We are still waiting for this list of the laws that will not apply and the 3% that will, aren't we? We are completely in the dark about those. It would have been helpful to know that for tomorrow, I would have thought.

Mark Davies: I think it is worthwhile saying that it applies to the very significant majority of things that are in annex 2 of the existing protocol and what will be the Windsor framework. That includes a significant amount of the rules that you are referencing. It does not cover some of the ones that you are talking about, but in some of those areas we have other mechanisms, so there are other forums for discussion. It is just important to note that the scope of this applies to the very significant majority of goods rules, and those are the areas where we are likely to see those kinds of impacts in practice. That is the reason for how the brake is defined.

Brendan Threlfall: If I could just add to that, Mark, I do not think you mentioned the customs code. It does apply to the entire EU customs code. It is actually listed there, so the customs code is legal, so the brake bites on any amendments and replacements to that, where the conditions are met.

Q69 **Craig Mackinlay:** Let us put our minds forward a bit. Will you be able to confirm to me, Secretary of State, that the Retained EU Law (Revocation and Reform) Bill is still on track to make its passage through this place?

Chris Heaton-Harris: It was last time I checked. Yes.

Q70 **Craig Mackinlay:** Good; okay. Let us put our minds forward a bit. If and when this place agrees the Retained EU Law (Revocation and Reform Bill, and we then—

Chris Heaton-Harris: Apologies; can we say "when"?

Craig Mackinlay: When—good. We will then have the opportunity to do things that are right for a global trading nation that the UK always should be. What that does mean, however, is that 48 years' worth of accumulated EU law can be investigated, changed, amended, discarded—whatever we might please.

Obviously, Secretaries of State have a lot of powers within that process, and there is no problem with that. But that Retained EU law (Revocation and Reform) Bill, all those years' worth, will not apply to Northern Ireland. We will not be able to use that legislation to disapply stuff to



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Northern Ireland because we have a set-in-stone date, which is departure day for us. We have not had to apply the last three years' worth of the new corpus of law that has come out of the EU.

Northern Ireland has had to have that 48 years' worth, plus the last three years, and yet its only ability through the Stormont brake is to perhaps, after this quite circuitous route of the application of that brake—let us be very clear—actually prevent future law on trade matters applying to it. Does the retained EU law Bill make an even bigger gap—a glaring gap—between GB and NI, because we can disapply the last 48 years' worth of EU law and they cannot?

Chris Heaton-Harris: I am afraid that I am going to push back quite hard on how you describe the Stormont brake. It is not circuitous, but a very straightforward way that elected Members of the Legislative Assembly, sitting in Stormont—yes, there is a clarification there, because Stormont must go back for that to come into effect—

Q71 **Richard Drax:** Forgive me for interrupting, but how likely are they to change EU law when—

Chris Heaton-Harris: I am afraid you probably need to have someone else in this seat—oh, how likely are MLAs to do that?

Q72 **Richard Drax:** It will be handed across to Northern Ireland to decide whether they invoke this. What are the chances, realistically, of that ever happening?

Chris Heaton-Harris: I don't know; you will have to ask the Members of the Legislative Assembly, but doesn't that go back to the point that Mr Smith was making—that that is about sovereignty? If Members of the Legislative Assembly choose to use their sovereignty, they absolutely can. Thirty Members of the Legislative Assembly from two political parties—they could be from one tradition or others, or none—can activate the brake. Then, essentially a process starts that disapplies EU law and could be vetoed in the Joint Committee.

Q73 **Chair:** Forgive me, Secretary of State. You have just mentioned the sovereignty of Northern Ireland, which is a real problem, because Northern Ireland does not have sovereignty. It is Westminster that has the sovereignty.

Chris Heaton-Harris: Which is why it is Westminster that would enact the veto. It would be the UK Government that would enact the veto in the Joint Committee.

Chair: Maybe Craig will come back in on that now.

Q74 **Craig Mackinlay:** A point came up that was quite interesting just last Friday. It was on the Hunting Trophies (Import Prohibition) Bill, a private Member's Bill that is widely supported across the House by all parties. It is certainly something that many of us would support and say that it should apply across the United Kingdom.

The right hon. Member for East Antrim asked the Minister, the Member



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for Copeland, about why the Bill will not apply in Northern Ireland. That is a pretty small bit of legislation that is hugely totemic and supported by this House—and, I assume, supported by most people in Northern Ireland—yet because of the ongoing attachment to the single market rules and trade rules under the EU, it cannot apply in Northern Ireland. Tell me, in all honesty, does that sound like sovereignty? Does that sound like this Parliament acting on behalf of all the peoples of the Union of the United Kingdom?

Chris Heaton-Harris: I completely understand the point you are making on this issue, and you are right that this should be able to apply to the whole of the United Kingdom. But the law as it stands, which the vast majority of the people in this room voted for, means that that is not the case.

Q75 **Craig Mackinlay:** Will the Windsor framework solve that?

Chris Heaton-Harris: The Windsor framework goes to solve new EU law differentiation, and we would have to change various things in the United Kingdom Internal Market Act and other places for unfettered trade to become a reality from NI to GB. But I don't think it does solve this particular individual issue, because it will be part of those 3% of EU laws—the bare necessity—that applied for access to the single market. But if there was an EU law that was to change in this space, the Stormont brake could come into effect. That is the honest answer.

Q76 **Craig Mackinlay:** But that individual case of a small bit of law, totemic as it is—doesn't that highlight the difficulties of when we have the Retained EU Law (Revocation and Reform) Bill, which, increasingly, might change some of these matters? To me, that shows how the REUL will not apply to Northern Ireland in the way that we may wish.

Chris Heaton-Harris: Actually, it is a new Bill that is not in law yet. My illustrious colleagues in DEFRA are looking at how they can make this apply in Northern Ireland going forward.

I did not answer your point—forgive me—about the retained EU law Bill. I don't think it is the case as you suggest, because I have had plenty of submissions advising me how difficult it would be for the Northern Ireland civil service to go through the body of retained EU law without an Executive up and functioning, and without Ministers there to do that. Either they are doing a body of work for no good reason, or the retained EU law Bill will apply.

Brendan Threlfall: I just want to add that, on the retained EU law Bill, it is important to note that that obviously applies to the whole body of retained EU law that is in UK law. That includes, for example, a vast number of rules that will apply in Northern Ireland, on everything from immigration to financial services, procurement, data and how we regulate artificial intelligence.

We could go on and we can set that out in more detail, but all the changes to retained EU law will apply, either UK-wide if it is a reserved or excepted



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function, or, if it is in a devolved space, Ministers here will legislate for England and then it will be up to the devolved Administrations.

Chair: I would like to move on now, because we have here a member of the Committee from Northern Ireland who is a Member of the United Kingdom Parliament, which does have sovereignty. I would be very grateful, Mr Robinson, if you would be kind enough to ask the next question.

Q77 **Gavin Robinson:** Thank you, Mr Chairman. Good afternoon to you and your colleagues, Secretary of State.

Secretary of State, before this evidence session, you were quoted publicly as saying that the Stormont brake would give Members of the legislative Assembly the final say on the application of EU law. This afternoon you have suggested that Members of the legislative Assembly have a veto on the application of new or amending EU law. Do you accept that that is not the case?

Chris Heaton-Harris: No, because of the way we are codifying what a Minister has to do in the Joint Committee. I think that the process is pretty much straightforward. There's a commitment that the Government cannot agree to the application of a rule in the Joint Committee unless it has a vote in the Assembly on a cross-community agreement, or it doesn't impose a new regulatory border within the United Kingdom, or exceptional circumstances. I know people have looked at "exceptional circumstances" and thought, "What could they be?" They could be something like foot and mouth, or some sort of plant disease.

Q78 **Gavin Robinson:** Secretary of State, I am across the detail of the Stormont brake. Would it not be more honest to say that there are exceptional circumstances in which the Government can exercise their vote irrespective of the view of elected representatives in the Northern Ireland Assembly? That is what article 18 provides on the Stormont brake, and it gives UK Government Ministers their choice as to whether they exercise a veto or not. Would that not be a more honest assessment than suggesting that the Stormont brake is more than what it is?

Chris Heaton-Harris: I would hate to disagree with the hon. Gentleman—

Q79 **Gavin Robinson:** Perhaps it would be helpful if you could outline what you believe exceptional circumstances therefore deliver to the UK Government Minister who would be in the Joint Committee. They can exercise that power without recourse to or taking account of the views of Assembly Members. Is that not correct?

Chris Heaton-Harris: But there will be a binding statutory obligation in domestic law on Ministers to trigger the brake when these conditions are met. It would be unlawful for Ministers to refuse to notify the European Union that the brake is being triggered, because they are concerned about whatever it might be—potential EU remedial measures—under article 13(4) of the framework.



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Q80 Gavin Robinson: Secretary of State, both those aspects are right. They are there in the Stormont brake. But that does not lead anyone to conclude that it offers Members of the legislative Assembly a final say, or indeed that they have a veto. Would you accept that?

Chris Heaton-Harris: The actions of the Members of the legislative Assembly directly lead to the veto.

Q81 Gavin Robinson: Can directly lead, but they do not hold the veto.

Chris Heaton-Harris: Can directly lead to the veto.

Q82 Gavin Robinson: Secretary of State, you have indicated that you would need to see the restoration of the institutions at Stormont for the Stormont brake to apply. Which section of the SI indicates that?

Mark Davies: I think that is made clear in an international law text that we have agreed, in terms of the conditions. That was part of the operation of the brake—it was agreed as part of it—and that is an important reflection for us about how it should operate, as in it is putting power in the hands of the elected institutions in Stormont. That is an international law condition around the use of the brake.

It is also reflected in the fact that the Government can make a notification under the SI only where the conditions in both article 13(3a) and the unilateral declaration are met, and one of the conditions of the unilateral declaration is that the institutions are functioning. It flows through that provision.

Q83 Gavin Robinson: We know there are volatilities within the institutions in Northern Ireland. Are there circumstances in which the brake can be used when Stormont is not sitting?

Mark Davies: Yes. It cannot begin to operate until the institutions are back and running. Thereafter, if the Members seeking to use the brake are looking to operate the institutions in good faith—I think the text sets out conditions like seeking to nominate Ministers and support the normal operation of the Assembly—then it could be used. Those are conditions that are in the text of the Joint Committee decision and then that flows through into the SI as well.

Q84 Gavin Robinson: Secretary of State, you know that this SI is entitled the Windsor Framework (Democratic Scrutiny) Regulations. I think you have already accepted that there is more to the threat of divergence in Northern Ireland than just EU divergence. There is UK divergence.

Yet, through this evidence session, we understand that tomorrow's vote is the vote prior to the adoption of the Windsor framework on Friday. So can you give a sense to this Committee of what else we should expect on the operation and interoperability of law in Northern Ireland, and how elected representatives from Northern Ireland can guard against future divergence in whichever direction it may come?

Chris Heaton-Harris: What Mr Robinson is articulating is that a lot of the provisions in the United Kingdom Internal Market Act 2020 were not



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applicable in the Northern Ireland context, because of the operation of the protocol. We would need to look at that, I believe through—let me check that I am being factually correct—

Brendan Threlfall: I think the Prime Minister committed to saying that we would strengthen the provisions. There is a backstory here: in 2020, the Government removed some clauses from the then UK Internal Market Bill, on Northern Ireland businesses' access to their most important market in the rest of the UK, irrespective of any differences across the United Kingdom.

The Prime Minister has now committed to restoring similar clauses to the UK Internal Market Act, which we can do, and can do now in compliance with international law. We have also set out other measures in the UK Government's Command Paper, including using and strengthening the role of the Office for the Internal Market, which is already there and has a statutory role, to monitor the risks of divergence within the UK and to ensure that the UK internal market functions in a smooth way.

Chris Heaton-Harris: I have one further point that I know is important to Mr Robinson, and rightly so. The Government legal position published alongside the Windsor framework documents on 27 February states: "The Windsor Framework addresses the Government's position as set out in the July 2021 Command Paper. It respects the Act of Union and the Belfast/Good Friday agreement and deals with the everyday issues people and businesses in Northern Ireland had faced as a result of the operation of the Protocol", in—it goes on to say—"protecting the economic rights of the people of Northern Ireland and ensuring just and equal treatment for the identity, ethos and aspirations of both communities." That is a lot of words, but I think it is an important statement when it comes to the Union moving forwards.

Q85 **Gavin Robinson:** It is an important statement, Secretary of State, that is right, but in the last preceding number of months, the Government have argued in the UK Supreme Court and before that in the Belfast High Court and the Court of Appeal that article VI has been impliedly repealed. Are you constitutionally and legislatively satisfied that article VI of the Acts of Union is no longer impliedly repealed and, if so, will you share that advice?

Chris Heaton-Harris: The legal advice says that the Windsor framework respects the Acts of Union—

Q86 **Gavin Robinson:** That is quite a different thing, Secretary of State. Do you have legal advice on whether article VI of the Acts of Union remains impliedly repealed or not? You know what the equal footing provisions are, and you know that while you can argue categorically that there is progress through the Windsor framework, you cannot categorically say that people in Northern Ireland—for all these issues raised thus far on divergence, different legislative frameworks, the requirements for the movement of goods that we will come on to, and all the rest—have equal footing.



Chris Heaton-Harris: I can only refer to—because it is the correct place to refer to—the Government’s legal position, which was published alongside these documents. But as Mr Robinson knows, more work is afoot to ensure that clarifications can be made in both law and other ways as we move forward to put this issue where it should be—to bed.

Q87 **Gavin Robinson:** I have one final question in this section; I know that Mr Jones and Mr Fysh want to come in. Secretary of State, a provision in paragraph 14 on the validity of notification precludes a Minister from considering remedial action by the EU as a reason for not accepting the validity of notification.

You will have heard people say previously that a Minister would never exercise a veto for fear of retaliatory action. At least on the notification and the validity of that notification, that is explicitly ruled out in the SI. Why does it not feature in paragraph 18 of the schedule to the SI on the exercise of a vote in the Joint Committee?

Chris Heaton-Harris: I don’t know the answer to that question.

Mark Davies: As the Secretary of State set out, what we have provided there is a very significant set of safeguards at each stage. The duty on the Government, as you made clear, in paragraph 14 is there to ensure that irrelevant factors are not considered in whether or not the brake is triggered.

If MLAs make a valid notification to the Government, the Government is bound to notify. That is enshrined; that is a powerful safeguard. There is also a very powerful safeguard in terms of what happens when the UK Government makes decisions at the Joint Committee, which, as the Chair made clear, are matters ultimately of international affairs within the sovereignty of the Government and of Parliament. There, we have imposed one of the strongest constraints that I think we have done on the UK’s powers in that regard, and we think that reflects the appropriate balance of how and in what circumstances Ministers should be constrained.

That means that Ministers are precluded from agreeing to a rule where there isn’t a cross-community vote in favour; as the Secretary of State made clear, they are precluded. They can do that only where—these are factors they need to set out to Parliament; they are accountable to Parliament for so doing—they think it doesn’t impose regulatory borders or they consider there are exceptional circumstances. That reflects the fact that, as the Secretary of State made clear, there may be exceptional circumstances that would merit the adoption of the rule. We consider we have provided the right balance of strong safeguards and respecting the ultimate role of the UK Government.

Q88 **Gavin Robinson:** So it doesn’t feature as a stand-alone consideration when exercising the vote in the Joint Committee but, for the importance of parliamentary interpretation and, potentially, subsequent legal interpretation, may I ask you, Secretary of State, whether you are satisfied that the threat of remedial action from the European Union would not constitute an exceptional circumstance?



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Chris Heaton-Harris: Yes.

Q89 **Gavin Robinson:** Do your officials concur?

Mark Davies: I am not seeking to provide definitional elements here as to what it means. It is set out in the SI, and the House will obviously have that—

Q90 **Gavin Robinson:** This is part of the scrutiny; that is why we are asking.

Mark Davies: It is set out that in the event that there are exceptional circumstances, Ministers need to account for that to Parliament. That's what the SI—

Chris Heaton-Harris: It is codified that Ministers must not—

Q91 **Gavin Robinson:** And you have accepted, Secretary of State, that the threat of remedial action from the European Union is not an exceptional circumstance within the confines of paragraph 18.

Chris Heaton-Harris: I can't believe it could be.

Chair: Well, the proof of the pudding is going to be in the eating, isn't it? Now I will hand over to Marcus Fysh.

Q92 **Mr Fysh:** I have a set of questions about the operation of the Stormont brake, but on that remedial measures issue, I am interested in this question: how and to what extent are the remedial measures that the EU might take restricted—other than through what we were just discussing—versus what was there in the NIP?

Chris Heaton-Harris: First, they have to be proportionate. Secondly, they have to apply to, essentially, Northern Ireland-EU trade and not UK-EU trade. And there is a whole host of other areas of clarification that I can write to you and give.

Brendan Threlfall: I think it is an important point that sometimes the word before "remedial measures" in the treaty gets dropped; they have to be "appropriate". Proportionality would hang off that. Obviously, the UK itself would have the right to challenge that through normal independent, international arbitration.

On the alternative scenario that you talked about, I think the problem there—and it would have to be proportionate to the relevant rule that had been vetoed, which obviously becomes, by its nature, much more restrictive. I think there is a challenge with the alternative scenario, particularly because of the interlinkages between the trade and co-operation agreement and the withdrawal agreement, where there are cross-retaliatory provisions between the two separate treaties. That meant that breaches of the withdrawal agreement, which the veto under article 13(4) is not—it's an envisaged veto and, now, strengthened significantly by the brake.

Breaches would give the EU the ability to take much broader retaliatory measures across the whole swathe of UK-EU trade, as the Secretary of



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State set out—basically, all this trade—which would affect Northern Ireland businesses and businesses across the UK, whereas article 13(4), appropriate remedial measures, is a much tighter, context-specific, scenario-specific situation. As the UK, we have our own rights to challenge that if it is done in a disproportionate way.

Chris Heaton-Harris: Just one extra point. There is a contrast here between the Windsor framework and the Northern Ireland Protocol Bill because that Bill would have given the EU the ability to levy tariffs on all trade.

Q93 Mr Fysh: The Command Paper says that the Stormont brake is not subject to the oversight of the European Court of Justice and that any dispute would be resolved through arbitration, applying international law. Are you confident that there are no circumstances in which the ECJ would be involved?

What, for example, would happen if the arbitration panel considered that the dispute involved a question of EU law—say, whether a replacement EU Act's being significantly different from the one it replaced was a matter of EU law? To what extent is the fact of the quantum of harm to Northern Ireland and Northern Ireland trade having been identified by 30 MLAs prior to that within scope of the arbitration panel to look at overriding such questions of EU law significance?

Chris Heaton-Harris: That is why it goes to the arbitration panel and not to European judges. The whole point—please correct me if I am wrong—is that this is all under strand 1-type territory of the Belfast/Good Friday agreement. This is a domestic addition that we are enacting—it is down to us to enact this. It has been accepted by the European Union as a process.

To me, if something got to the arbitration panel, that would be an interesting demonstration that this had actually worked. It would mean that we would have gone through the process: the brake would have been applied and the measure would have been put aside by the Joint Committee. Then the EU would have said that that was just not correct. That would be a pretty good demonstration that the brake does what it says on the tin. And I think it would do what it says on the tin because it is a new democratic safeguard inserted at the heart of the treaty.

I have not used many quotes yet today, but there is one from one of Michel Barnier's top advisers, who said that the brake "does amount to a clear veto possibility for the UK government, directive-by-directive, at the behest of a minority in the Northern Ireland Assembly." The arbitration mechanism does not have to reflect ECJ—

Q94 Chair: To go back to what Marcus Fysh asked just now, you are stating that there are no circumstances in which the Court of Justice would be involved. Are you confirming that?

Chris Heaton-Harris: I believe so.

Mark Davies: The condition, for instance, that Mr Fysh discusses is an objective condition set out in article 13(3a). That is not covered by the



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ECJ's jurisdictions; that should be a judgment of fact for the arbitration panel to reach. Our view is that there is no role for the ECJ in the operation of the Stormont brake, either during it or during any process of the EU challenging it. The EU in its own materials has acknowledged the point that it isn't a matter for the ECJ so that is the basis on which we are operating and that is certainly our view.

Q95 **Chair:** That is your view. The question that I put to you is whether it is of interest to you if people put forward another proposition: that the Court of Justice would be involved in certain circumstances?

Mark Davies: That would not be the Government's view. We do not consider that it does that.

Q96 **Chair:** I have heard what you have said. Let us move on to the next question.

Q97 **Mr Fysh:** My final question is about NI manufacturing and what it can or cannot do to GB standards. As I see it, at the moment the Windsor framework essentially proposes that NI manufacturing remains under the auspices of EU law and standards for manufacturing. That is what you referred to before, Secretary of State, as something that Northern Ireland businesses wanted. But I wonder about the extent to which the Government is committed to looking at the evolution of that position.

If, for example, the green lane process shows that there are robust mechanisms to ensure that the EU can be confident that goods are not moving into its territory, Northern Ireland businesses might be able in future to have the option to manufacture to UK standards and law and therefore participate properly in the internal market supply chains back and forth from GB. That could let them take advantage of future trade deals we might do with the CPTPP or the US. How committed are the Government to evolving this in future and really championing Northern Ireland manufacturing in that way?

Chris Heaton-Harris: I know that you are an expert on these matters, Mr Fysh, and we have had many a conversation about this in the past. The one thing I would say about the manufacturing standards piece is that most of those—all of them, pretty much—that have standards are international standards that both the EU and the UK subscribe to. I believe that out of 3,600-odd of these international standards, we have diverged in 11 of them in recent times. But both the UK and the European Union have agreed in the TCA to follow international standards. We are talking about slightly different things.

Q98 **Mr Fysh:** That is slightly different from what I was asking about. At the moment, goods have to take account of different rules of origin when they are passing back and forth into GB and out to Northern Ireland. They are potentially subject to customs controls of one kind or another and, as a result, cannot quite participate yet. Maybe there is scope in the future, and I would like to hear the Government commit to that, because I think that is going to be important for the future of the UK—the Union—and for Northern Ireland.



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Brendan Threlfall: On the rules of origin piece, it is important to explain that one of the advantages of the green lane and the way it will operate under the Joint Committee agreement within the Windsor framework is that, for these GB-NI green lane movements, the rules of origin will not matter. There is not any looking behind that.

Obviously, you have to be initially authorised, be in the trusted trader scheme and show that your good is for final consumption, sale and use in Northern Ireland, but it does not matter that the good may have originally come from the rest of the world into GB. For example, to claim tariff-free status when going from Holyhead to Dublin, you would need to have your rules of origin certificate, and it would depend on the rules of origin as to whether you could claim that. That will not be relevant for the operation of the green lane scheme between GB and Northern Ireland.

Q99 **Mr Fysh:** Sure, but you put your finger on it when you said that the green lane is only open to things that are destined for final consumption in NI, rather than then being available for incorporation into a supply chain that goes back into GB for re-export. There is a processing function in Northern Ireland, but they cannot take advantage of the green lane yet. I hope that can change in the future; I don't know what you think.

Brendan Threlfall: Because we manage within the Windsor framework, which expands even for processing where the good is being transformed in Northern Ireland, there are still the provisions now in the Windsor framework that deal with those scenarios as well—for example, in food processing.

Chair: Okay, let us move on. David Jones has the next question.

Q100 **Mr Jones:** You will recall, Secretary of State, that the Command Paper said that the Windsor framework would reduce—or rather, narrow—the range of EU rules applicable in Northern Ireland to less than 3% overall by the EU's own calculations. When the Prime Minister made his statement to the House on 27 February, I asked him to kindly provide a list of those rules so that the House could assess the impact. The Prime Minister replied that he was happy to look at that, and then went on to say that he thought the list already existed.

We have not seen the list, despite the Committee having twice requested it. I also tabled a written question requesting that list and did not receive it; I got the obfuscation that is sadly so common when one asks a written question. The question was not to your Department; it was to the Foreign, Commonwealth and Development Office.

Chris Heaton-Harris: You should always ask my Department.

Q101 **Mr Jones:** Is there such a list?

Chris Heaton-Harris: On the claim, we erred on the side of caution in how we sought to calculate the effect of the changes, but it generally is not as simple as having one list, because some rules are disapplied for the green lane in support of internal UK trade, and some rules apply to the red lane, but it is clear in the text that there are swathes of areas where EU



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rules do not apply to internal UK trade, and that safeguards Northern Ireland's place in our Union.

UK food and drink safety rules apply on agrifood and the retail trade. UK-wide licensing of medicines is done by UK authorities. We are allowing plants to move on the basis of a UK-wide plant passport scheme; removing burdensome customs bureaucracy, including on all declarations for all consumer parcel movements; enabling zero rates on VAT for heat pumps and solar panels; and delivering on our alcohol duty changes across the whole UK, and so protecting unfettered access. On food and drink, the agreement disapplies 65 core regulations through annex 1 of the SPS legal text—

Q102 **Mr Jones:** Can we have the list?

Chris Heaton-Harris: As I say, it is not as simple as having one list, but I will send you a very long list of areas.

Q103 **Mr Jones:** That is what we asked for. The expression used is rather curious: the agreement "narrows the range of EU rules". The framework does not say that the agreement reduces the number of EU rules. Then the framework refers to "3% overall"—3% of what?

Chris Heaton-Harris: The overall gamut of EU law that applied through the Northern Ireland protocol.

Q104 **Mr Jones:** In other words, 97% of EU law is being swept away. Is that right?

Chris Heaton-Harris: It is being disapplied.

Q105 **Mr Jones:** So we are left with 3%, which is obviously a small proportion. You will kindly provide us with a list of that, or at least let us have an explanation.

Also, there is reference in the framework to "1,700 pages of EU law". You conceded that that was an unusual expression, because that depends on the size of the font.

Chris Heaton-Harris: I am sure we can make it a lot more pages, if you want.

Q106 **Mr Jones:** Again, I have asked for details on that and I have not had them. Is there any difficulty in providing those?

Chris Heaton-Harris: I do not think so, is the simple answer. It is a lot of paper.

Q107 **Mr Jones:** I didn't want the pages. I just wanted a list of what they were.

Chris Heaton-Harris: Fair enough. If I may, I will give one brief example. Annex 1 of the SPS legal text disapplies the 65 core EU regulations, and implementing Acts that flow from them. That covers over 1,000 pages of food safety and consumer protection rules on issues including marketing standards for items from sardines to wine; food supplements and additives; vitamins and minerals in food, as well as



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nutrition and health claims; GMOs and precision breeding; the production of wine, honey and natural mineral waters; and the production of organic products. Then there is a whole piece about certification and a whole piece about prohibitions, but I will happily—

Q108 **Mr Jones:** You are clearly reading from something, so it is there.

Chris Heaton-Harris: Yes; I will send you what I have. If you do not mind, I would rather not send you the 1,000 pages of food rules.

Q109 **Mr Jones:** I do not need those. What was the difficulty with providing the list when we asked for it—twice?

Chris Heaton-Harris: I have absolutely no idea.

Q110 **Mr Jones:** One other point: Mr Smith raised the issue of Parliament having its say; the Prime Minister promised on 27 February that it would. Will there be the sort of debate that everybody assumed there would be? In other words, will there be a full day's debate on the Floor of the House, in which Members can discuss the whole issue of the framework?

Chris Heaton-Harris: I honestly do not know. That is for the Prime Minister and parliamentary business managers, but I very much hope so.

Q111 **Mr Jones:** It will be rather late in the day, because there is the grand signing on Friday with Mr Šefčovič present, isn't there?

Chris Heaton-Harris: There will be the Joint Committee on Friday, with Mr Šefčovič present.

Q112 **Mr Jones:** Yes, so by that stage the bird will have flown, really, won't it?

Chris Heaton-Harris: No. As I said, I know from my time as Chief Whip that Parliament always manages to find a way to have its say.

Q113 **Mr Jones:** There is not a huge amount of time, is there, if this is happening on Friday?

Chris Heaton-Harris: This is part of the process that we are going through now.

Q114 **Mr Jones:** Just for clarification—just to repeat—the vote tomorrow on the SI is not intended to imply Parliament's approval of the Windsor framework as a whole. Is that right?

Chris Heaton-Harris: No, it is not intended; it is a vote on a statutory instrument. I will say in my speech that it is a vote on a statutory instrument on the Stormont brake. I think you can say that it is a vote on the Windsor framework as it affects people. I think people are taking it as such; whether it is or not is all in the eyes of the beholder, I suppose.

Mr Jones: Well, what does the Government intend it to be?

Chris Heaton-Harris: My intention is that it is a vote on the SI.

Q115 **Mr Jones:** It's a discrete vote on one element of the framework, and not the framework as a whole. Is that right?



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Chris Heaton-Harris: I am told that No. 10 has said it is.

Brendan Threlfall: I think the position is that the debate and instrument are on the Stormont brake, but obviously we would not be able to proceed with the Joint Committee on Friday if the House did not approve it. It was important that we had a moment in the House in advance of the Joint Committee, which obviously formally changes the treaty. It is not actually strictly necessary to do that, because Parliament has already given Ministers the power to change the treaty within the Joint Committee, and chose to do that as part of the European Union (Withdrawal Agreement) Act 2020.

Mr Jones: I appreciate that, but Parliament has been promised that it will have its say.

Brendan Threlfall: I think, as Downing Street has set out, it will be a say. It was not possible to move forward with the Joint Committee on the Friday without the House's approval on Stormont brake because it is a central change to the treaty, and there will be a series of other domestic instruments coming down the track that will implement various aspects of the framework.

Q116 **Mr Jones:** I appreciate that, but just for clarification, are you telling this Committee that Downing Street intends that the vote tomorrow shall be Parliament's say, effectively, on the Windsor framework as whole?

Chris Heaton-Harris: I think it's Parliament's say on the statutory instrument as set out for the Stormont brake.

Mr Jones: What does Downing Street say?

Brendan Threlfall: As I say, it is a debate and vote on the statutory instrument, but as No. 10 has said, that will be taken as an overall say on the Windsor framework itself, because without that, it would be impossible for us to move forward with the—

Q117 **Mr Jones:** Forgive me; that is Downing Street's intention. So Parliament having its say will comprise 90 minutes' debate on a single statutory instrument, and No. 10 will be saying that that is approval of the Windsor framework as a whole. Do I understand that correctly?

Brendan Threlfall: I think it's important to say that that will not be the final moment of parliamentary scrutiny and that, as we have set out, there will be an extensive programme. Parliament has already given Ministers powers in relation to the Joint Committee. That was set out in a point of ratification in primary legislation. The debate tomorrow is bringing forward an instrument to make sure that there is a moment before we have the Joint Committee on Friday, and there will be lots of—we are planning on legislating for, hopefully, VAT cuts that can take effect very quickly after the Joint Committee. There will be a separate piece of legislation on those, so there will be quite an extensive series of opportunities for scrutiny and votes on those issues.

Q118 **Mr Jones:** Secretary of State, you said that Parliament usually finds its



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way to have its say. Put it this way: the Government are not volunteering Government time to have the full debate that everybody anticipated there would be on the framework, and which we were given to believe would be the case when the Prime Minister made his statement on 27 September.

Chris Heaton-Harris: The Stormont brake is an integral part—it is a new, novel procedure—of what we are trying to achieve in the Windsor framework. I guess that Parliament does always find its way to express its views.

I would like to think that the Stormont brake is something that is genuinely worth voting for, because essentially not voting for it is, by implication, voting for the continuation of automatic alignment of EU laws without a say for the people of Northern Ireland. It is an important part that will be discussed again on Friday at the Joint Committee, which is why, I believe, it has been tabled for this time.

Chair: We have two questions left. I think Mr Robinson wanted to ask a follow-up on that.

Q119 **Gavin Robinson:** Just very quickly, Chair, to clarify an answer given to Mr Jones. Secretary of State, you were asked 3% of what. You indicated that it was 3% of the laws that applied under the Northern Ireland protocol, suggesting that 97% of the laws under the Northern Ireland protocol have been disapplied. That cannot be right, can it?

Chris Heaton-Harris: Well, the common agricultural policy—

Gavin Robinson: Are you sure it is not 3% of EU law?

Chris Heaton-Harris: Overall.

Gavin Robinson: Overall—nothing to do with the Northern Ireland protocol.

Chris Heaton-Harris: Through the Northern Ireland protocol.

Chair: Mr Drax wanted to ask a quick question.

Q120 **Richard Drax:** Secretary of State, you kept saying we all voted for this, as if we are all in this together and it is all our fault that we are in this situation. Can I just remind you—would you not agree?—that the protocol was based on the fact that we would then negotiate “with best endeavour” to find a way forward?

The United Kingdom has for years, since the Brexit debate, used every single tool in the box to try and move forward. Now, after negotiation behind closed doors, we are even more trapped—or, Northern Ireland is, and the United Kingdom—in the EU than we were before. Whatever you say, the Northern Ireland protocol is still in place, slightly amended. That is the truth of the matter.

Chris Heaton-Harris: The Northern Ireland protocol is still in place, and will be amended, and is being amended by the Windsor framework.



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Richard Drax: Slightly.

Chris Heaton-Harris: I would say fundamentally.

Richard Drax: You would.

Chris Heaton-Harris: I would.

Richard Drax: Others would disagree.

Chair: Mr Baron has arrived. I am very glad to ask him if he would like to ask a question.

Q121 **Mr Baron:** That is kind of you, Chair. My apologies to everybody—I have been participating in the Budget debate as a member of the Treasury Committee.

I may be in a minority when I say this, but I support the Windsor framework. We do have to be pragmatic as Brexiteers—do we not?—in moving the whole debate forward. We have got the access now to trade that binds the United Kingdom.

Can I put this suggestion to you? While Brexit was always something more than just about trade—it was about sovereignty, controlling our immigration, free trade agreements and all the rest of it—Northern Ireland, if we get the Windsor framework through, could stand at the cusp of a double good whammy, in the sense that it will have access to the UK market as well as the EU single market. That could attract a lot of inward investment, couldn't it? You may have touched on that point—I don't know—but is that not a potential opportunity that we should not underestimate?

Chris Heaton-Harris: I did mention this earlier in this session—genuinely, hand on heart, I do believe that this will lead to greater prosperity in Northern Ireland, which strengthens Northern Ireland's place in the Union.

Chair: As I said earlier, the proof of the pudding is going to be in the eating on that one.

Q122 **Adam Holloway:** Does this solve or potentially exacerbate community divisions? Is a further bite of the cherry available after this? Or is this it?

Chris Heaton-Harris: Actually, I would like to think that what the Windsor framework has done is to set a new tone in the relationship between the United Kingdom, having left the European Union, and the European Union itself. There are elements—someone previously asked about the grace period currently in place for veterinary medicines; we need to negotiate that—

Q123 **Adam Holloway:** Sorry, but what about power sharing and community relations?

Chris Heaton-Harris: I was answering the second part of your question first; please forgive me. Based on that better setting in the EU-UK



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relationship, I think that lots more can be done between us that is positive for us both and positive for Northern Ireland.

On power sharing, as I said at the very beginning, and it is absolutely the case, my primary objective as Secretary of State is to get the Northern Ireland Executive and Assembly up and running, because that is integral for good democratic practice and for delivery of public services in Northern Ireland, and I do believe that this Windsor framework eliminates all the negative aspects of the protocol as it currently stands and would have come in as the periods of time—grace periods—are being eliminated. That meant that one section or one community in Northern Ireland felt so aggrieved that its politicians felt they had to leave the strand 1 institution. I do believe that this goes some way to solving that issue.

Q124 **Adam Holloway:** It clearly has in some way, but you still have the DUP not there. It hasn't solved anything.

Chris Heaton-Harris: The leader of the DUP, what he said yesterday was that he talked about the progress that has been made. I believe we have made a great deal of progress. It is now down to the political leaders and parties in Northern Ireland to look at this, which is why we are giving people the time and the space to examine what it does.

Q125 **Chair:** Could I just ask Gavin Robinson if he would like to comment on that?

Chris Heaton-Harris: Gavin, if you want to swap seats, I've got a couple of questions.

Gavin Robinson: I would be very happy to assume the Secretary of State's seat, if that is what people so wish; otherwise, I am not giving evidence to the Committee.

Adam Holloway: The question was whether or not this will help to restore power sharing.

Gavin Robinson: It is not for me to answer a question like that in this session, save to say this: tomorrow we are presented with a singular proposition on the Stormont brake, which now manifests into a global choice on the Windsor framework, which does not and is not honouring the commitments to give time and space to assess the totality of issues associated with what the Government have provided.

Chair: I think that on that point I have to complete today's session. Thank you very much for coming, Secretary of State. No doubt we will be carrying on this discussion into the indefinite future.