

European Scrutiny Committee

Oral evidence: Regulating after Brexit, HC 125

Tuesday 6 June 2023

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Members present: Sir William Cash (Chair); Richard Drax; Margaret Ferrier; Mr David Jones; Craig Mackinlay; Gavin Robinson; Greg Smith.

Questions 166-247

Witnesses

I: Rt Hon. Kemi Badenoch MP, Secretary of State for Business and Trade; Chris Carr, Director, Brexit Opportunities Unit, Department for Business and Trade; Caleb Deeks, Director General for Competition, Markets and Regulatory Reform, Department for Business and Trade.

Examination of witnesses

Witnesses: Kemi Badenoch, Chris Carr and Caleb Deeks.

Q166 **Chair:** Good morning, Secretary of State, and thank you for appearing to give evidence today, even if it has taken a little time. As you will be aware, this Committee has been inquiring into retained EU law since the introduction of the European Union (Withdrawal) Act 2018. As you will also know, we reported ahead of the introduction of the Retained EU Law (Revocation and Reform) Bill. We have been looking forward to your appearance since February, and today we will question you on the Government's change in policy on retained EU law, the current shape of the Retained EU Law (Revocation and Reform) Bill and what it means for retained EU law moving forwards, and the Government's Brexit opportunities work.

For those watching at home, would you mind briefly explaining your ministerial responsibilities, including those relating to retained EU law and Brexit opportunities? You have two officials with you today, one of whom we have met before. It would be helpful, gentlemen, if you could also introduce yourselves and your responsibilities after the Secretary of State.

Kemi Badenoch: Thank you very much. On my ministerial responsibilities, as the Business and Trade Secretary, I have been handed responsibility for the retained EU law Bill that was previously in the Cabinet Office. My specific remit is the Bill, and ensuring its safe passage through the House, as well as retained EU law that falls within the



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responsibility of the Department for Business and Trade. The machinery of government change moved responsibilities around a bit, and the Trade Department is effectively now looking at this, but responsibility for finding laws to repeal sits with the individual Secretaries of State. That is the answer to the ministerial responsibility question. Did you want me to go into the schedule?

Q167 **Chair:** No, we will come to the questions in a second. Mr Carr, would you be kind enough to explain what you do?

Chris Carr: Yes, of course. Good morning, everyone. I am Chris Carr, the director of Brexit opportunities, now in the Department for Business and Trade. As the Secretary of State said, the choice of what to do with retained EU law belongs to the individual Departments. My team's role is to co-ordinate and challenge the thinking, and broadly to look at three areas of opportunity: the stock of regulations that are residual from EU membership, the flow of new regulations, and the operation of regulations—how they are enforced and implemented, and what impact they have on the business community. We work across Departments to make improvements in all those areas.

Q168 **Chair:** Thank you very much. Mr Deeks?

Caleb Deeks: I am Caleb Deeks, not Calum as the nameplate suggests. I am the director general for competition, markets and regulatory reform in the Department for Business and Trade. That covers responsibility for quite a lot of the retained EU law that the Department is responsible for in areas such as competition, labour markets, insolvency, corporate governance and product safety. As of this week, following changes in the Department resulting from the machinery of government changes, I am also responsible for the Brexit Opportunities Unit.

Q169 **Chair:** Thank you very much indeed. Of course, this business of EU retained law refers to laws that have been accumulating for well over 40—nearly 50—years, and it is therefore a massively important question to be resolved. During the passage of the Bill, the Government's policy changed from one in which retained EU law will be revoked unless specifically saved, to one where retained EU law is saved unless specifically revoked. Secretary of State, why did you change that approach?

Kemi Badenoch: I took on this responsibility in February, and I think, as a Secretary of State, it is really important to get under the skin of regulation, rather than just leave it to officials and follow whatever advice is given. I looked at the process, and at the intention of the Bill, and realised that the law of unintended consequences had reared its head: the purpose of the Bill was to remove legislation that we did not need, but the way the Bill was drafted and the sunset meant that all the work was being done to look for things that needed to be kept.

My view, especially as someone who voted leave, but also as an engineer looking at how to get the actual outcome, rather than just a linear analysis of what to do, was that given that we did not want to change the sunset—



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that was something I was very clear on—we should focus the attention on what needed to be reformed, and what we knew would be repealed anyway. We should then create a power to continue to repeal, so that we would not lose the opportunity to reform.

Officials had been beavering away and working out what things we wanted to keep, but I looked at the timeline and did not think that was a good use of their time. I made the decision to ask them to look at the option of a schedule, not just because of the way the time was being used, but because I feel transparency is key to legislate properly. What we were doing was too opaque. I had too many representations for my comfort from all sorts of businesses saying that they found the process to be creating uncertainty. As a new Business and Trade Secretary, I am sure you can imagine that I took that very seriously. I also looked at the thing that was most in jeopardy, which was the passage of the Bill, which was my main responsibility.

I cannot control what bits of policy other Secretaries of State wish to repeal, though I can certainly encourage them. In terms of making sure that the Bill passes and does what we want it to—its primary function is to end the supremacy of EU law, and interpretive effects in particular, as I think both sides of the House and both Houses have agreed—I think that we are in a good place, and I think it was the right decision.

Q170 Chair: On the question of legal uncertainty, would you not agree that it is more uncertain than anything else to find that pre-Brexit legislation is being interpreted by the courts in a different way, post-Brexit?

Kemi Badenoch: No, I don't think so. When I asked for an analysis of how many areas would have this sort of tension, they were few. Also, there is nothing wrong with having certain bits of legislation that came from the EU, because they were things that we would be doing anyway. Some of them flow from international obligations. The certainty issue was around not knowing what regulations had disappeared. That was the question that businesses were asking. It was in effect the unknown unknown: if things just fall away, how will we be able to keep track? This goes back to the transparency point.

Having a schedule shows what is happening. Also, for people who want to see significant repeal, it shows the scale of what is being done. Without a schedule, it is very easy to pretend that a lot of work is being done to repeal or revoke when actually nothing is being done. What the schedule has done is let everybody see the scale of work that is taking place. People can now tell what will be reformed and what will be kept. That enables us to push more where we think we need to, in order to remove those bits of legislation that are holding the UK back. At the end of the day, that is what it is all about.

The purpose of this process is not just to remove things from the statute book. It is to make the UK more competitive and ensure it is not held back by regulations that we do not need, and that 27 other countries decided on.



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Q171 **Chair:** Of course, the question of interpretation of law by the courts is very important. There are two different kinds of interpretation with regard to the question of EU law: there is the purposive approach, and then you have the other kind of decision, which is taken under common law arrangements, and that is very different. Although you answered the question in one way, it leaves open the question of the legal uncertainty that will come from having two different statute books interpreted differently by the courts. But let us leave that aside.

You mentioned the schedule. Are you referring to the schedule that is at the back of the Bill?

Kemi Badenoch: Yes, of regulations to be revoked.

Q172 **Chair:** You only have to look at those for a second to know that that is not particularly relevant, in terms of the volume and nature of the law, but we will come on to that in a second. What criteria did you use to identify the pieces of retained EU law that should be listed in the schedule and therefore revoked?

Kemi Badenoch: The process was carried out by each Department, so it was not for me to decide what bits of regulation would go on to the schedule. Every Department owns its own policy area, so the Secretary of State for the Environment would decide which bits of regulation would be removed, and the same would apply to the Secretary of State for Transport and so on. What I was doing was an exercise in transparency: "Here is what has been identified." The criteria will stretch across a spectrum of things, such as redundancy. The port regulations, for example, were written for a different type of system and were not helpful for UK ports. That is an example of something that was removed because it was actively injuring UK businesses.

Q173 **Chair:** The ports services directive is one of a very small number that are regarded as being relevant in this context. In fact, there were 47 port employers against it. All the trade unions were against it, and the Government were against it, but they could not do anything about it at the time, because we were within the framework of the EU. Of course, it is now in the schedule, but that is an exception, as we will find out later, compared with the other provisions in that schedule.

Kemi Badenoch: To be clear, I don't disagree with you on that at all. Most of the things that have been put on are things that are redundant, rather than things that are holding us back.

Chair: Or junk.

Kemi Badenoch: But the point I am making is that if we leave the decision on what needs to be removed mainly to officials, there will almost always be a reason to keep something. One good reason to keep things is so that we can reform them later. If there are things that we do not like and we remove them from the legislation, but actually what we want to do is adjust them, we would have to start the primary legislation process from scratch, which there is no time to do, so there is a purpose to keeping some things that we want to change rather than just delete, and



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that is what I want the teams to focus on. If we created a binary process of just revoking or keeping, we would lose the opportunity for reform, which I think is one of the key points of having this Bill.

Q174 **Chair:** We will move on to that in future questions. Finally on my first question, do you agree that, in line with British legal traditions, for retained EU law that we keep or modify, we should adopt a common-law approach to legal interpretation?

Kemi Badenoch: That would be a personal opinion that you are asking for. I am not a lawyer, but I do think that, on the principles basis, yes, that is what we should do. As for what the actual outcome or impact of that would be, that is harder for me to say. That is where I would start from. Whether that is where I would end up, depending on the specific journey that would need to be taken on any particular bit of regulation, is a much tougher question.

Q175 **Mr Jones:** Secretary of State, the Bill completed its passage through the Commons in January, and it was unamended. As you have acknowledged, the method of identifying the element of EU law that should be removed or revoked did a 180° turn when the Bill arrived in the Lords. You have explained that you decided on a change of approach. When did you decide to make those amendments in the Lords?

Kemi Badenoch: This would have been—I am sorry, I don't have the exact dates—sometime in March, because there would have been about a month or six weeks of looking at everything that had been taking place. Also, the Lords Minister gave me his view of how things were looking and what kind of amendments the Lords would likely pass. Looking at some of the correspondence we'd had from all sorts of stakeholders about what they thought, I just did not think we were going to end up delivering what we said we would deliver.

You have to remember that the way I think about these things is probably different from lawyers. I am not a lawyer; I am an engineer. It is very easy to write things down and pretend that after we have legislated, everything will just work as has been written. In practice, that often does not happen. My view is that you should look at what is happening, not just what has been written down. I saw a process that was doing the opposite of what was intended. The retained EU law Bill became a process of retaining EU law. That is not what we wanted.

I do not agree that it is a 180° turn; I think it is a change in the process. We can have a debate about that, but we want to get rid of laws that we don't want, and there is a process of that. It is not a bonfire of regulations. We are not arsonists. I am certainly not an arsonist; I am a Conservative. I do not think a bonfire of regulations is what we wanted. We wanted reform and removal of things that we did not need. The change in process, which I think is a technical change, will deliver that. It is already creating a lot of impetus and momentum, in terms of showing people what has happened so far. Until I did this, no one knew what was happening; no one knew what was being revoked or reformed. We could have ended up



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in a situation where we were telling ourselves that there was a big bonfire of regulations, and no one would have known what had happened until after the sunset, and then people would see that some things were still there that we thought we had repealed. I was not going to let that happen on my watch.

Q176 **Mr Jones:** But isn't a bonfire of unnecessary regulations precisely what the Commons voted for?

Kemi Badenoch: I don't think so. I think what we voted for was getting rid of regulation that we do not need, and that is what is happening.

Q177 **Mr Jones:** Yes, but to that extent, what the Commons voted for was a bonfire of unnecessary regulations. It voted to get rid of all of those unnecessary regulations. You made the decision to change the approach fairly shortly after you were appointed to your position.

Kemi Badenoch: That is because I do not have control over the timetable. I had to make a quick decision. I continue to emphasise that this was my decision, and it took a lot of convincing to get the Prime Minister to come onboard. But the schedule has been voted in, and my new approach has also been voted in by the Commons and the Lords, so it has more support than the original status of the Bill did.

Q178 **Mr Jones:** You say that you took the advice of your Lords Minister; was he concerned that the Bill would get a rough ride in the Lords?

Kemi Badenoch: We are always concerned about Bills getting a rough ride in the Lords. Our concern was about the intention and outcome of the Bill being the same, rather than getting a Bill through and congratulating ourselves on passing legislation, and then finding that the legislation does not work. It has to work, and that is what I am focused on.

Q179 **Mr Jones:** But the attitude of the Lords was a concern of your Lords Minister?

Kemi Badenoch: The attitude of the Lords is always a concern, because the Lords can amend a Bill, they can take time, and they can slow it down. We have a sunset of the end of 2023, which is just six months from now. The Bill has not yet received Royal Assent. These are powers that need to be used in a few months. The Lords stopping the Bill from passing is a concern that is very real. We could have ended up with ping-pong, and the length of time taken would have meant that we could not use the powers at all. What would have been the point of that?

There may be agreement or disagreement about the status of the Lords, but what we have seen so far, in terms of amendments accepted and changes that we have made, shows only that we have respect for both Houses. As I said, the schedule was my idea. No one had talked about a schedule. I felt that it would help not just with ensuring a smooth passage in the Lords—we are not giving way to many of the amendments tabled there—but with delivering the intention of the Bill. We would not have ended up with a bonfire of regulations, as you say, and I do not think that would have been right anyway. People need to see what we are doing;



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they need clarity and transparency. We would have an elongated retained EU law process, and that is not what people voted for.

Q180 **Mr Jones:** But you have actually departed completely from the approach of your predecessor, haven't you?

Kemi Badenoch: I don't think I have departed completely; we are still ending interpretive effects by 2023. This was a Bill that was brought in in September under a different Prime Minister and a predecessor who was there for 44 days. I spent a lot longer than that looking at the Bill, and I did what I thought was the right thing to do in order to make sure that the Bill passed but delivered on its intentions. That is my job as Secretary of State. My job as Secretary of State is not just to do what my predecessor did; it is to do the right thing, and that is what I was doing.

Q181 **Mr Jones:** But the Bill in its original form met with the complete approbation of the House of Commons.

Kemi Badenoch: No, I don't think so, because the House of Commons—

Q182 **Mr Jones:** It did. It was unamended.

Kemi Badenoch: The House of Commons has voted in support of the amendments, so that is the status—

Q183 **Mr Jones:** No, let's go back to before it goes to the Lords. The Bill went through the House of Commons unamended, didn't it?

Kemi Badenoch: Are you suggesting that we should not make any changes to any—

Q184 **Mr Jones:** No, I'm just asking you a question, which I would be grateful if you answered.

Kemi Badenoch: I just answered it.

Q185 **Mr Jones:** No, you didn't.

Kemi Badenoch: I don't understand whether you are asking why any change should be made to any Bill at all. Is that the question you are asking?

Q186 **Mr Jones:** What I am finding difficult to understand is that when a Bill passes through the House of Commons unamended and therefore clearly has the complete approbation of the House of Commons, you then change your approach completely. You do not tell the Commons that you are changing your approach. You do not have the courtesy to come before this Committee, so that this Committee can scrutinise the changes you are proposing. And then you come back to the Commons—the Bill having gone through the Lords—presenting the Commons, effectively, with a fait accompli. Don't you think that is disrespectful of the House of Commons?

Kemi Badenoch: First of all, I dispute several of the things that you have said. This was a Lords amendment; the change we would have had to make would always have been in the Lords. We rarely, if ever, give



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statements on changes to them in the Lords. Like I said, I do not believe this is a policy change. We are still delivering the Bill's intent.

Secondly, the first time I was asked to attend this Committee, I had just been appointed; I did not know anything about the Bill. What would have been the point of me coming here to say, "Oh, I don't know. I'm not sure yet"? I wanted to make sure that I understood what I would be talking about before I sat in front of the Committee. And each time I was asked—two or three times—I said I would come in front of the Committee as soon as we could find a mutually convenient time. You know that, as International Trade Secretary, I am often not in the country, so of course that made things difficult.

Also, something you are not saying is that we had private meetings, David. We had private meetings where we discussed this extensively, because I knew you had concerns. It is public knowledge that we had private meetings, when I thought I was having private and confidential meetings, because I was reading the contents in *The Daily Telegraph*. So, with respect, I would like to dispute quite a lot of what you have said.

You are also saying that the Commons voted for this without any dispute and the Lords changed it. This is parliamentary process. It is not the Lords who changed it, but the Lords did support the change that I made to the schedule, and the reason why I made the change to the schedule is that I could see that the intent of the Bill was not what was happening. What is the point of us as MPs voting through legislation which is not doing what we want it to do, just so we can say, "Well, we've passed this legislation"? Our job is to deliver for the people of this country, and what the people of the country want is reform that makes their lives better, not just us saying we have deleted things from the statute book. That is my approach. I think I have done the right thing. It is not my job just to do what any predecessor does. It is my job to look through legislation, make sure it is working and make sure it delivers for the people, and that is what I have done. The Commons voted in support of it. The Commons could have voted against the schedule; it did not.

Q187 Mr Jones: You were clearly concerned about the reception this Bill would have in the Lords. Did you ever give consideration to invoking the Parliament Act?

Kemi Badenoch: I did.

Q188 Mr Jones: And what was your decision?

Kemi Badenoch: The process for invoking the Parliament Act would have been longer than the date of the sunset of the schedule, so it would have been a complete waste of time. That is the first issue.

The second issue is that even letting the Parliament Act process go through—let's assume we could have done it in two weeks—would not have changed the material problem, which was that the Bill was not functioning as intended. Given the amount of effort that needed to be made in terms of retaining laws, whether we wanted to reform them or



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whether we wanted to keep them, the SI process that was being drafted, the amount of lawyers we would have needed and so on, I just don't think it is an efficient way of delivering the outcome that we want.

Q189 Mr Jones: As the Chairman has remarked, the contents of the schedule consist of measures that are largely junk. That's right, isn't it?

Kemi Badenoch: I think we should get rid of junk from the statute book.

Q190 Mr Jones: Absolutely. In fact, you have 1,400 pieces of junk that were found in the National Archives. Why did you not get rid of those?

Kemi Badenoch: I think those have all gone already. That is my understanding. One of the interesting things about the process is that the retained EU law revocation is happening in parallel with other bits of repeal and revocation. We have already removed about 900—nearly 1,000—pieces of REUL, which Departments did without waiting for this. We left the EU a while ago, and people did not wait for the REUL Bill to start removing regulations. Bills like the Digital Markets, Competition and Consumers Bill and the Financial Services and Markets Bill are also revoking legislation. Some of the revocation and reform we are doing is in other Bills.

What this is doing is showing the public what we are effectively revoking now. This would still be what we revoked at the end of the year. The list you are seeing is what you would have got in your bonfire. What I have done is make it very clear what is happening, so all the things that people think should be on there, from bendy bananas to the emissions trading scheme—somebody suggested that that should go. That is a much bigger project that Parliament should debate; that is not an SI-level revocation. Everyone can see what is not going, and then we can have a programme for reform, which is what we are doing.

Q191 Mr Jones: The most frequently cited reason for revocation given in your explanation of the schedule relates to inoperability, redundancy and irrelevance. Could you not have used the deficiencies power in section 8 of the European Union (Withdrawal) Act to remove that beforehand? It is 50% of the contents of the schedule.

Kemi Badenoch: The contents of the schedule are decided by other Secretaries of State. I cannot tell DEFRA or DFT which policies they should remove.

Q192 Mr Jones: I appreciate that. The point I am making is that there is a power under section 8 of the European Union (Withdrawal) Act to remove redundant pieces of legislation. Why has that not been used across the board in order to get rid of legislation such as this?

Kemi Badenoch: It is one of many powers that exist. Departments have some powers that they can use, but again, let us go back—

Q193 Mr Jones: Yes, but why was it not used in this case?

Kemi Badenoch: My understanding is that that power expired at the end of 2022. That is what I have been told. We cannot use an expired power.



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Q194 **Mr Jones:** But you have just indicated that officials had been working on redundant pieces of REUL for some considerable time.

Kemi Badenoch: In other Departments, but I cannot use a power that expired before I took on the job, which is the question you asked.

Q195 **Mr Jones:** Yes, but why was it not already used? That is the question I am asking.

Kemi Badenoch: I think that is probably a question for my predecessor.

Q196 **Greg Smith:** The Chairman indicated in his opening remarks that our analysis as a Committee of the schedule shows that, in fact, only five of the 587 pieces of legislation listed in the schedule have a substantive policy reason for their revocation. Two of those are in relation to ports, and others are on motor fuel and renewable transport fuels. Why do so few have a substantive policy reason? To bring some clarity to the answers you have given to the Chairman and Mr Jones, given that you have stated clearly that we want to make Britain more competitive, but you have equally gone on to say that this is not going to deliver, in your words, the bonfire of regulation and that you do not wish to be the arsonist on that bonfire of regulations—

Kemi Badenoch: I am not an arsonist; I am a Conservative.

Q197 **Greg Smith:** How is this schedule lightening the burden on business?

Kemi Badenoch: The schedule is showing you that there would not have been the bonfire that everyone was expecting, because these are the things that have been identified to be repealed. By making the process transparent, we can now show that there is still a lot of work to be done. That work was not being done under other predecessors beyond some of the things we have talked about—changes to the working time directive, TUPE and non-financial reporting that we have announced. There is good reform work coming, which we can talk about, but the schedule and the sunset are to make sure that we fast-track this process before it is too late. We did not want to change the deadline for ending interpretive effects, and we need to get the Bill through. The Bill has several functions: getting rid of interpretative effects and removing regulation we do not need.

In terms of the answer to your questions on competitiveness reform, a lot of the reform work has not been done because everyone is spending their time drafting the SIs to keep. That is not the intention of the Bill—this is the point I am making. The way the Bill was written was causing everyone to not focus on the things that will make us competitive. I completely agree with you: it wasn't working. The change means that we can now get this through and start focusing on the things that you want to see, which are the elements that will help improve competition. That is what the smarter regulation programme is about. It is showing people what is happening and making sure that businesses are engaged.

At the end of the day, it is not civil servants and officials who should be deciding what makes us more competitive; it is the people at the coalface.



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It is business, and it is MPs who speak to their constituents who have the intelligence there. In the way the Bill was written, all those stakeholders were not part of that process. It was just officials. What officials do is look at the regulations they use and assume they need to be kept. You need people who are working in industry to help make those decisions, and that is what I want us to focus on once the Bill gets Royal Assent.

Q198 Greg Smith: Can I come back to an answer you gave earlier about some of the representation from business that you took seriously and cited as a reason why you brought the amendments in the Lords to change the Bill so much? What sort of businesses were those? I am trying to understand what the vested interests were in keeping some of this regulation. Are we talking about the umbrella organisations of business, the CBI and so on, or are we talking about small and medium-sized enterprises?

Kemi Badenoch: It was small and medium-sized enterprises. It was people who felt that this was just another way of them having to spend money on lawyers to work out what it was we had done; that is exactly what we did not want to do. It was industries like manufacturing and life sciences.

I need to balance that with the potential for new businesses coming in. What we know is that incumbents are more likely to want to protect the status quo because they are already used to it. Removing regulation and reform actually helps new businesses, probably some that do not even exist yet, and the people who have just decided not to do something because they think the regulatory space is too difficult. What is interesting is that people weren't saying, "Please keep this regulation, please keep that regulation." No one was saying that. What they were complaining about was, "We don't understand what you are doing. Why are you having a bonfire? Why can't you just be transparent and show us what's happening?" I think that was a reasonable request.

Q199 Richard Drax: Secretary of State, good morning. Just a quick point, you mentioned respect for both Houses as part of your thinking. Dare I say that the House of Lords shows no respect for the House of Commons over the EU issue, as you well know? It has done everything it can to stop it. I don't think that is respectful, do you?

Kemi Badenoch: I will not say anything disparaging about our noble Lords and peers. You will know that I was in the 2017-19 Parliament, a hung Parliament, and what a difficult time it was for all concerned. As someone who voted leave, I think the most important thing that we need to do is deliver for the people. They asked us to do something that was quite difficult, but we—certainly many camps of us—promoted this project as one that would make their lives better. I think the Lords often have some reasonable requests. Sometimes some of the requests are not reasonable, but we need to look at what the end goal is, and the quickest way of getting to where we need to get to.

With every Bill, sometimes we need to make concessions. Sometimes we absolutely should not because that completely removes the intent or



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purpose of the Bill. The schedule was not something that the Lords asked for—certainly not specifically. Where they had reasonable requests, such as on transparency and scrutiny, I felt that this was something that would address those concerns, which were also Commons concerns, without giving away the Bill to people who were just trying to destroy it, rather than make it better.

There are many peers on both sides of the House who make legislation better, and I really want them to do that on all the things I am working on, not just this legislation. My primary concern is to ensure that what we do is right for the people out there. It is very easy for us to get into internal conversations about what the Lords did and parliamentary procedure, but out there it just sounds like navel gazing. I was trying to make sure we get this done quickly and still deliver the purpose of it.

Q200 Richard Drax: Did the Conservative peers agree with your change in tack? Interestingly, I had supper with eight of them last Monday—the night of the vote. They were very confused, and some were very angry at what was going on.

Kemi Badenoch: Many, many Conservative peers did agree; others had reservations, which was expected, given that the changes came about after Easter. There just wasn't as much time as I would have liked to make the case. We got collective agreement for this only about a day or two before it went to the Lords. We had lots of internal battles, even in Cabinet. I was trying to push some Departments, and other Departments wanted me to go further. If you get collective agreement only a couple of days before the amendment is put down, it is very hard to do the groundwork that I would have been able to do had I picked this up in September. The time is short. It is May 2023, and this Bill's powers expire in December. Making sure we have something that has Royal Assent so that we can use the powers is my primary concern.

Q201 Richard Drax: Whenever I see or hear the EU, I smell a stitch-up; it is in my DNA, I think. You have been asked this before, but I will ask you again—maybe you have had time to think about it. Were the changes to the retained EU law Bill part of the deal to secure the Windsor accord?

Kemi Badenoch: No, not at all. Honestly, it was one official, one spad and me sitting down, thinking, "How can we do this?" The Windsor framework had nothing to do with it; I wasn't involved in the Windsor framework. It is a question that Greg, I think, asked in the Commons. What I would say, Richard, is that, yes, sometimes it can be conspiracy—we are politicians, and we all conspire in one way or another—but on this you just have to trust me. I know what I have seen, and I want this thing done as well as it possibly can be given the time that we have. It did not have anything to do with the Windsor framework.

Q202 Richard Drax: You mentioned delivering to the people. Would you agree that the United Kingdom has still not left the EU?

Kemi Badenoch: I would completely disagree with that. The United Kingdom has left the EU, and by making the perfect the enemy of the



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good we are at risk of talking down the significant thing that we have achieved. We stood on a manifesto to get Brexit done. Brexit meant leaving the European Union, which we did. If we keep telling people that we haven't really left and there is still some other stuff that needs doing, we are not putting the blame on officials or Ministers—

Q203 **Richard Drax:** Sorry, you missed my point. Do you agree that Northern Ireland is still under the jurisdiction of the ECJ and European law—yes or no?

Kemi Badenoch: You know just as well as I do what the Windsor framework was about. This is not my remit. We can have personal opinions. You and I can have a drink, Richard, and discuss whether we think it is all the UK or only GB; that is subject to interpretation. I have powers that I have been given in order to make things happen. The Windsor framework was not something that I had any power over.

Q204 **Richard Drax:** Sorry to interrupt you again, but I am just making the point—

Kemi Badenoch: I don't want to go outside my own responsibilities—

Q205 **Richard Drax:** We can have a debate later, you and I, about that, but I just want to make this point. This shows where the mistrust still exists. I take your word of honour, but you can see why this level of mistrust is still around. This bonfire, which isn't going to take place—

Kemi Badenoch: It wouldn't have anyway.

Q206 **Richard Drax:** It will still leave us at the mercy of many EU laws. The Government have included a power to remove pieces of REUL from the schedule, with the result that they will not be revoked. Why do you need that power?

Kemi Badenoch: Sorry, which power?

Q207 **Richard Drax:** You have included a power to remove pieces of REUL from the schedule.

Kemi Badenoch: Yes.

Q208 **Richard Drax:** With the result that they will not be revoked. Why do you need the power?

Kemi Badenoch: Just in case some sort of mistake had been made somewhere, and just to reassure. Also, did it not have the power to add as well to the schedule?

Caleb Deeks: We can't add to the schedule, but we can repeal on an ongoing basis—

Kemi Badenoch: We can revoke. It was just for reassurance that if something had gone completely wrong we had not jeopardised the Bill—if there was something that went into the Bill that we had to take out for whatever reason, if a mistake had been made. I do not think that any have, so it is not a power that I expect to use. I did not want us to lose all



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of the Bill because of an error on the schedule, and that is why it is there, but it is not a power that I am anticipating that we use because, as Greg said, these are the low-hanging fruit. Quite frankly, if people want to take things off, or if we are losing votes where we are forced to use that power, it shows that the Bill, as it is, is in more jeopardy than any of us realise, but I do not think that that will be an issue.

Q209 Greg Smith: The Bill now requires the Government to publish regular reports setting out their plans to reform retained EU law. A commitment was given on the Floor of the House that a regular report to this Committee on the progress and plans that the Government are making on retained EU law would also be made. Getting into some of the detail, what is the plan and timetable that you propose for substantive reform of retained EU law that is not revoked by new clause 1 and the schedule? Within that, do you have a list of the retained EU law that you intend to keep in perpetuity?

Kemi Badenoch: I am not sure if I am looking at perpetuity; I am looking at what can be reformed. Chris has spent more time looking at the detail of that. Would you go into some of the things that we are doing?

Chris Carr: Certainly. We are working with Departments on their plans for reform of their retained EU law. They have currently identified things that they want to put on the schedule and get rid of straightaway, things that they want to keep for further review, possibly including consultation, which they can then use the revoke-and-replace power to revoke or reform by June 2026, when it expires. There is essentially a three-year programme of reform, and the Secretary of State is working with No. 10 on a series of announcements about that that will come.

Kemi Badenoch: There is a smarter regulation programme, which was announced with a DExEU colleague when we were talking about the schedule in the first place. There are things on labour markets, for example, and the changes to working time regulations. A lot of it is about just removing bureaucracy. That is the thing that business talks about. "Why do we have to do all these things that aren't making a difference in terms of us being productive? They are just a drag and they cost a lot of money." It is about removing a lot of bureaucracy. Because of the system that we have, we often have to consult on these things before we get to what the actual policy will look like.

On the DEFRA side, we are removing things like the wine labelling, which should be quite significant in terms of reducing costs. Non-financial reporting is something that falls within my Department. Again, it is about removing reporting requirements that are just a burden on business but not actually delivering things. We have future ambitions as well. What I wanted to see was continuous, constant, "This has gone, and it's going to make your life better in this way. That has gone, or been reformed, and this is how it will make things better." There is a comms opportunity that we lose if things just disappear. There is no way of letting people know how well we have—



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Q210 **Greg Smith:** I am very pleased to hear about stuff like wine labelling and so on that is going to go. That is great. Clearly, within this process, though, there is going to be some retained EU law that the Government, whether it is your own Department or the other Departments in Government, wish to keep. Some of that might be right to keep.

Kemi Badenoch: Some of that will be right to keep.

Q211 **Greg Smith:** The question is, how do we as a Committee and the House of Commons at large scrutinise the reasons why it is right to keep it? What is the timetable for coming to those conclusions and for how this Committee, and the wider House of Commons if necessary, will be able to scrutinise the reasons why we are keeping those specific pieces of retained EU law on our own statute book?

Kemi Badenoch: You were going to come in on that point, Caleb, and then I will go on to the substance.

Caleb Deeks: I was just going to build on what you were saying and try to bring the future path of reform to life a little bit. You mentioned some of the areas of labour market regulation that we are looking at. Prior to the introduction of a schedule, teams within my area would have been working on preserving legislation on things such as maternity rights, which I think there is quite a lot of consensus on and indeed there are long-standing Government commitments to retain. That would have been dominating their activity over the coming months. Instead, they have now been able to pivot to reforming some areas of labour market regulation—not taking away rights, but streamlining and making things easier for businesses.

You mentioned the working time directive and reporting, but we are also looking at simplifying holiday pay, for example. We have a complicated regime that we had inherited from the EU, with two different types of leave, different ways of calculating pay and so on. We are consulting businesses on how to make that easier for them to use and how to allow more businesses to use a thing called rolled-up holiday pay, which is particularly good for the 4.5 million workers who are on irregular contracts, for example. We are looking at TUPE as well and the consultation arrangements that businesses have to go through there.

In each of those cases, we cannot just repeal the regulation in its entirety now, because there are things that we are committed to keeping, but the time that we have allows teams in my area to talk to businesses and work out what will be most effective for them in those areas. That reform will come through during the coming months. Likewise, on non-financial reporting, there is a huge accumulation of requirements on businesses, many of them from the EU. We are now in a position where we have a call for evidence out until August; businesses and shareholders can come to us with what is useful and what can we strip back. That is under way, and that is where our resource is now firmly focused.

Kemi Badenoch: On the point you are making, Greg, about how we know why something will stay or go, this is one of the reasons why I was very happy to sign the amendment that quite a lot of members of this



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Committee had put forward, because it gives us an opportunity to do that. I want everybody to see what we are doing so that we can make that part of the reporting measures. It is just a reminder that, if we had not done this, you would not have been looking at things SI by SI, so you could have two broadly similar regulations—one kept, one removed—and the “why” would have disappeared because different people were sitting on different SI Committees.

Now we can look at everything holistically. We can spot things that do not necessarily make sense because one Department is doing something one way and another Department is doing things another way. I can try as much as possible to corral each of the Departments that needs to get rid of its regulation. But what I would find very helpful in supporting me in doing that is this Committee doing some of that writing to Secretaries of State and asking them that very question. I do not have any levers over them, except being charming and asking them to be nice and get rid of things that they do not need. Having as many people on board doing that—whether Committees, individual parliamentarians or whoever—would be helpful. Now you can see it.

Q212 Greg Smith: I accept that, Secretary of State. Can I just return for one more go at this point around what government, in its most generic sense, decides to keep? There will be retained EU law, the substance of which, while it has to be changed to a common law footing, the Government will wish to keep. When will this Committee start to get lists, for lack of a better phrase, of those pieces of retained EU law, with the Government’s reasoning as to why they wish to keep them, so that we as a Committee can scrutinise the reasoning for why it is being kept and ensure that there is a good reason for it to be kept?

Kemi Badenoch: The work I am looking at is reform. We could end up boiling the ocean again. There are many reasons to keep thousands of regulations, and we could have a process for debating each one that we are keeping. That is partly what I tried to avoid with the SI process. I think it is what we want to change, rather than what we want to keep. That is the way to deliver what we want for people. What is it that people out there are asking for? They want things that will make their lives better.

Anyone can look at any regulation—the dashboard is public—and say why are you keeping that, and we can answer it. I cannot speak for other Departments, but I will speak for my own. If you want us to go through a process of looking at everything, we can do that, but the minute we start doing that, then that is a resource that is not being used for reform. I could probably do that fairly quickly. We have done it with the schedule—why we are removing certain things—but let us consider the actual outcome that we want.

I am not allergic to EU law; some things are good and some things are no good. The hassle of changing some things means having a big debate, which we probably do not want to have, certainly at this point in the parliamentary cycle. Do you want us to have all of that in a spreadsheet?



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That is a question that you would probably want to ask as well. Is it helpful putting out our entire thinking on every single thing in a political debate, or should we focus on what it is that we are trying to do, which is reform? I leave that as an open question.

Greg Smith: Understood. Thank you.

Chair: Just before I call Mr Mackinlay, let me say that we have not had a public discussion about this so far. It is pretty late in the day, if I may say, given the fact that you have been asked to appear before the Committee at least five times.

Kemi Badenoch: Three of those times were at the same time.

Chair: Let us move on. I am just making the point that we have not had this discussion yet, and it is now beginning to emerge, so, hopefully, this exchange will be productive. My amendment, which the Government did accept, was tabled this morning. It is slightly changed, but not in substance, and it is a step in the right direction. It does mean that there will be a list, and that it will be done on a periodic timetable. Then we will be able to judge what is on the list, because the Government will put forward their proposals as part of their plans. We will also then be able to observe what is not on the list and we, as a Committee, will be asking questions no doubt about why they are not on the list. I now want to move on to Mr Mackinlay.

Q213 **Craig Mackinlay:** I just want to pick up on a couple of things. Mr Drax highlighted the reasons why we are where we are, and you have explained it very fully. This was your plan. You looked at where we were and at the difficulties involved. Just to be clear, you picked up the reins of this Department in early February. It would seem that not an awful lot had been done. There were likely to be problems in the Lords. You had doubts that what had been proposed by your predecessor could actually be delivered. So you are telling the Committee that you had no influence from anybody else, and most certainly not from the Prime Minister as part of the Windsor framework arrangements?

Kemi Badenoch: Definitely not.

Q214 **Craig Mackinlay:** I just want to be clear: this has nothing to do with the Windsor framework?

Kemi Badenoch: The first time I told him this, he said, "No, we are not doing that".

Richard Drax: Yes, because he promised to deliver this.

Kemi Badenoch: And I said that I need to do this, otherwise I do not think it will work. I said that I would go through a process of talking to the other Secretaries of State and getting more official advice. I am not sure about Chris and Caleb, but I think officials were surprised that I had put the schedule forward, because it was not something that anyone had proposed. There was no pressure. This was me. He did not want to do it,



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which is why I have been very up front here. I answered the urgent question—I did not send a junior Minister to do it. We had the private meetings. I know that we have not discussed it in public, but we have discussed it privately. I have spoken to many people about this, because I wanted to get a sense of how Parliament was feeling about the Bill, and the general feeling was that if I did not think it would work, people trusted that I would do what I could to make it work and that is where we are.

Q215 Craig Mackinlay: Okay. Obviously a fair bit of work was done before you were in post, including going into the National Archives, to find all this retained EU law—the much talked about 1,400—and all the rest of it. We have also had the Brexit Opportunities Unit in place for some time. Mr Carr, how big was the team involved in finding and ferreting out all this old REUL stuff, wherever it may have been hiding all these years?

Chris Carr: The team I inherited last spring, which had started the review of retained EU law in the autumn of 2021, had about a dozen people working on retained EU law at that point.

Q216 Craig Mackinlay: This is finding it?

Chris Carr: That's right, but it is important to note that they were not working alone. They were working with several dozen colleagues, across all Departments, to find retained EU law. If I recall correctly, the original headline figure is that they found about 2,000 pieces in that initial review. We then had several iterations of updating the dashboard. The 1,400 pieces from the National Archives were not all of one sort—some of them were not REUL and were later found to be related to European instruments but did not technically fit the definition of REUL. Others were REUL but inoperable, and others are still operable but were orphaned by machinery of Government changes. The 1,400 are now included in the nearly 5,000 on the dashboard and, as the Secretary of State said, more than 1,100 of them have been repealed or reformed already.

That work is still continuing, so my team is now nearly 60. Until the Secretary of State made this change, we had been working frantically with Departments on a large SI programme to preserve needed pieces of European law. That has now changed, and the focus has shifted from preservation to reform. We are now working flat out on the smarter regulation programme of announcements that I mentioned earlier.

Q217 Craig Mackinlay: Was the Brexit Opportunities Unit a separate unit with its own team?

Chris Carr: No. The team doing the initial REUL review in the autumn of 2021 was part of the Brexit Opportunities Unit, which was also doing work on AI, wine, novel foods and other potential areas for reform.

Q218 Craig Mackinlay: So it was the same team of a dozen people?

Chris Carr: When I inherited it, it was about 35. It is now about 60.

Q219 Craig Mackinlay: Secretary of State, a lot of work has been done and we have identified 4,000 or 5,000, some of which have already gone under



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regulatory reform orders. I assume that would be the Regulatory Reform Act 2001 or the Legislative and Regulatory Reform Act 2006, which come to much the same thing—I do not know why we needed two Acts to do similar stuff. Given that a lot of work has been done over an 18-month period, what policy areas are you prioritising or asking your team to look at, saying which ones will, in your words, deliver for the people of Britain and show the benefits of Brexit, and all the rest of it?

Kemi Badenoch: The principles I am starting from are, what can we do to reduce the burden on business? Commitments have been made by my predecessors on workers' rights and environmental regulations, so there are constraints already—I am coming into a constrained environment. How can we make life easier and less complicated for people? The things we have been talking about, such as TUPE and the reporting areas, are where we have focused.

There are some things, which I will not mention here, that other Departments can do, but they have made commitments—I am thinking of the Department for Energy Security and Net Zero and the Department for Transport—that are in tension with what I am trying to do. We also have the work of making sure we are all joined up, which is why getting collective agreement on this took a bit of time and needed to happen before we could move forward. Those are the principles.

We are also talking about smarter regulation. I do not use the word "deregulation" because I think others have toxified it and made it sound like we are removing safety nets and taking things away from people, when what we are actually doing is making regulation better and smarter. Sometimes that means getting rid of it, and sometimes it means changing it so that it can be better.

We are also thinking more holistically about how we do that. Some of this stuff is about looking at what regulators are doing and how they are working, which is not yet a fully formed area, so I cannot go into the detail. There is some regulator work that needs attention, and that can form part of it. It is not directly related to repeal, but repealing changes the culture and the mindset. Too often, there is no reason why we cannot do something—vaccines are an example—but, because we are used to doing things in a particular way, no one tries to think differently. Now there is a big push, with smarter regulation and getting rid of EU law, it is a good time to look at regulators, too.

Q220 **Craig Mackinlay:** I am personally of a mindset that we should say that old common-law values and merchantable quality was a perfectly reasonable way of running British affairs, and it is now being copied by some of the most dynamic economies around the world. By the sound of things, we do not seem to be quite that ambitious. I fed into you and your team that there will be 30 or 40 years of Council of Ministers' decisions, and the Chair will always say the same script about the preamble to the decision making: "We don't really know what the discussions were because there's no *Hansard*, as it were." But there will be notes and records kicking around in Departments that say, "Yeah, with



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a sucking of teeth and a bit of an “Um” and an “Ah”, we’re just going to go along with this because we want to be seen as good Europeans.” I don’t know whether anyone in your Department has prepared this, but there must be a list of issues that we were really objectionable to—issues that we knew we were objectionable to but the deal had been done. You know how the things worked in Europe.

Kemi Badenoch: I did look at this and it turned out that most things that we objected to were budgets, which just did not come into scope. There was very little in terms of policy that either there was not a lobby for that we agreed with or that we had put forward ourselves. The budgets were the main area where there was disagreement.

Q221 **Craig Mackinlay:** This is personnel appointments as well, I suppose.

Kemi Badenoch: Yes, exactly. We made quite a lot of representations around those things; that is not where the big wins will be found. I take your point that we are not doing the very simple one-line regulation. If we can do that in some places, I think we will. I just think that the world has moved on a lot from how we used to regulate, and we have to deal with the world that we have, not the world as it used to be. Some of that means a lot more codification for whatever reason, but we do not need to gold plate. Half the problems we have are not the regulations but how we interpret them, which is why you go back to what the regulators are doing. We overcompensate for so many things. I think the culture change and mindset change will make a big difference.

Q222 **Chair:** Actually, the way the system functions is that the Council of Ministers makes the decisions behind closed doors by majority vote of the other countries—without a transcript, as Mr Mackinlay pointed out. I have been on this Committee since 1985, and I therefore have some knowledge of how the system operates, and I can only say that most of it was done by consensus because they knew that they would not actually be able to vote against anyway—we were promised a veto in 1971 and that was whittled away to non-existence—so for practical purposes the suggestion that there is nothing much wrong with the way in which the European Union arrived at its decisions and the quality of the laws that were passed flies in the face of the fact that we had no option, we could not exercise a veto, and therefore there was a consensus arrangement that permeated the law making right the way through from 1973 to the present day.

Kemi Badenoch: I do not disagree with that at all. It is just that using the point you have made as a basis is difficult, because the records are not there, so I cannot—

Q223 **Chair:** Well, they are. Excuse me, Secretary of State, but we in the European Scrutiny Committee have the records that go back to 1973.

Kemi Badenoch: Of the deliberations?

Chair: No.

Kemi Badenoch: That’s what I mean.



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Chair: We have the explanatory memoranda, which have been supplied all the way through that entire period—from 1973, I emphasise. They are all there in our archives and we can make them available. That brings me to the next question, but I would like Mr Mackinlay to finish his first.

Q224 **Craig Mackinlay:** What might we be able to expect before the end of the year to get some really clear wins? You have laid out the areas you are looking at. Which ones might we be able to expect to come back and be laid before this Committee—obviously, working with Mr Carr’s Department—and say, “This is the next batch. This is why we are doing it. These are a great idea,” so that we can give you our comments on whether we, hopefully, agree?

Kemi Badenoch: There is a plan and I have seen it. How much can we say without spoiling the griddle? Some of these are lovely announcements that we want to make at some point in the future—all before December. There will be about four or five moments of things that we are doing, where we can say, “And here’s a new batch.” We have done one batch already, and there will be some coming before recess and next term as well.

What I would say is that the time to find things is now. We can continue to revoke, but finding them now is absolutely key. I can ask all the fresh young graduates, “What should we repeal?”, but they just do not have the work knowledge to be able to do that. It has to be businesses, whether it is representative organisations or new entrants in particular—those people who are really novel and really radical—and constituency MPs from across the aisles. We are the ones who are going to do this, and then we can tell officials what we want to do. We cannot just ask them to go and do it.

One of the things that really bothered me was this looking like officials were not doing anything, which was not fair. They were doing what they felt was the right thing to do, and I looked at it and decided that this was not the way to do it, so let’s change the approach and deliver the intent.

I know we have run over time, but there is one more thing I would like to say to the Committee. The easiest thing for me to have done would have been just to sit back and do absolutely nothing. Instead of all of the hassle, all of the debates, trying to convince people and using up political capital with the Prime Minister, I could have done absolutely nothing and just let the Bill coast. Quite a few people do that. That would have been the wrong thing to do, and I hope that the evidence I have given in this session will show that I took the difficult decision, but it was the right one.

Q225 **Chair:** I would like to ask another question on this. Will you instruct Mr Carr and his team to consult the Committee on how this work can best be achieved? We have the records, we would be happy to talk to you, and if you would be good enough to make an arrangement with us that would be very helpful.

Kemi Badenoch: Yes.

Chair: Mr Drax would like to ask a question, and so would Mr Jones and



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Mr Robinson.

Q226 **Richard Drax:** Just one tiny question, Secretary of State. What if the Lords vote through further changes? What will you do?

Kemi Badenoch: My view is that we need to deliver what we said we were going to deliver. It is okay if there are changes that in some way make things better, but some of the most unhelpful things from the perspective we have been speaking from were from Conservative peers. Many of the amendments that would have really tanked this Bill were from Conservative peers, so it is not necessarily a party political area.

Richard Drax: Sorry, some of the—

Kemi Badenoch: Some of the hostile amendments to the Bill were from Conservatives.

Richard Drax: In the House of Lords.

Kemi Badenoch: Yes. I was just following up on the point that you were making.

Richard Drax: No change there.

Kemi Badenoch: So my personal view is that we have made a substantive change in approach, which should deal with the things that the Lords complained about which I felt were reasonable—transparency, clarity and so on. Now we need to focus on reform.

Q227 **Richard Drax:** So you will stand your ground.

Kemi Badenoch: I will. I will be standing my ground. We have now gone through the first stage of ping-pong. I think there is a risk that the Bill falls if the Lords keep coming back on things that we have voted down, and I think this is the point you were making about respecting the Commons. We have talked about not using the Parliament Act and that the Lords should see that as us being respectful, and I would like to see some reciprocity there. We are doing the engagement, and Lord Callanan has been doing a really good job in engaging with Lords as a Conservative voice.

Chair: As you said, keeping the Government's feet to the fire.

Q228 **Mr Jones:** Just briefly, I was slightly disappointed in the answer you gave to Mr Mackinlay when he extolled the virtues of the common law. The common law is a huge asset of this country, and more and more jurisdictions across the world are actually adopting it, because it is easy to understand, it is predictable and it is fast. Your response to him was that there will be a continued need for codification. Is your approach going to be that you will not be sweeping away this foreign law that inhabits our own system, but that you will be retaining a lot more than maybe members of this Committee would like?

Kemi Badenoch: No, I do not think that is what I said at all. I said that, in terms of regulating, the world we live in often means that codification is



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required. In the digital realm, it is very hard to use common law; it is not 1970 any more. I am an engineer by background; tech is where I used to work. You do need some codification and you do need some standards. This was not a debate about common or Napoleonic law; it is about how we can get certain things to work, and that is what I mean.

Q229 **Mr Jones:** You acknowledge the strength of the common law.

Kemi Badenoch: I think I did much earlier in the session when I agreed with the Chair, so yes.

Chair: Mr Robinson, please.

Q230 **Gavin Robinson:** Good afternoon, Secretary of State. There are three things from me. At the start of the session in response to Mr Jones, and then more latterly, you indicated that when you were appointed as Secretary of State you were the person who would make the decisions and you were not there just to follow what had previously been agreed. Yet in response to Mr Mackinlay, you lamented that you were operating in a constrained environment and that commitments had been given in respect of employment rights and other issues. Which is it? Do you agree with the constrained environment in which you work, or do you lament it?

Kemi Badenoch: Both. Where I think that the intent of a Bill is not going to be seen, I think I can operate around those constraints, but where the constraints are there to help the passage of the Bill—I think that is why Jacob made those reservations—then we should do so. There is no hard and fast rule; it is about—

Q231 **Gavin Robinson:** So you agree with the commitments given.

Kemi Badenoch: Well, I think we would need to start looking in detail at which regulation it is that we want to remove. In terms of what we are trying to achieve, getting this legislation on the statute book and repealing is critical. You have seen with some of the Lords amendments on environmental regulations—we saw this with loads of EU legislation—that we can end up arguing about policy rather than the principle of what we are trying to deliver. Then, it is, “Should this Bill deal with sewage?”, “Should this Bill deal with animal welfare or puppy farming?” and all those sorts of things. Actually, in terms of delivering what we said we were going to deliver and removing things that we think are holding the UK back, we are in the right place. We can continue to revoke, but let us then have those arguments on a case-by-case basis.

Q232 **Gavin Robinson:** In February, there was a report by the Delegated Powers and Regulatory Reform Committee where the Government indicated that any substantive change to this Bill would be advanced through primary legislation, rather than secondary legislation, and not use secondary powers. Does that remain your position?

Kemi Badenoch: I am not sure that I have seen this. Can you repeat the question?

Q233 **Gavin Robinson:** Yes. The Delegated Powers and Regulatory Reform



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Committee conducted an inquiry into this Bill, and they published a report in February. As part of that report, the Government indicated to that Committee that any substantive changes to this Bill when it is an Act would be brought forward by primary rather than secondary legislation.

Kemi Badenoch: I will let you answer that, Chris, because—

Gavin Robinson: That is even though there is a power contained within it that would allow you to proceed via secondary legislation to amend it. What is the position?

Chris Carr: If I understand the question correctly, the commitment has been given not to change the REUL Act, when it is an Act—

Q234 **Gavin Robinson:** By secondary legislation.

Chris Carr: That is right. I think that was a previous Secretary of State's commitment.

Q235 **Gavin Robinson:** So the question is: is that still your position?

Kemi Badenoch: I can have another look, but I would have to write to you on that. I do not like speaking about things that I have not seen.

Q236 **Gavin Robinson:** Could I ask you to write to the Committee about that, and, separately and subsequently to that, to indicate what areas you feel would be captured—what would be significant or sufficient enough to be included—in primary legislation rather than secondary legislation?

Secretary of State, you have mentioned—and, indeed, majored on on a number of occasions in this session—the need for, your quest for and your belief in transparency around this process. I scratch my head when I hear the sort of cavalier approach, if you will, to the Union in all its parts and to the implication of Brexit for the Union. But, I can see nowhere in the schedule, or indeed in any efforts for transparency, what process has been engaged with to discern the impact that legislation revoked by the schedule would have on the UK internal market.

Kemi Badenoch: I think we have gone through quite an extensive process on that. A lot of work has been done on consulting with devolved Administrations. I think that we have looked at how we can make sure that we respect the devolved powers and how to make sure that, where they really feel they need to preserve some legislation, they are able to do so.

Q237 **Gavin Robinson:** That is quite a separate thing, Secretary of State, because engaging with the devolved Administrations and so on is par for the course, and it is the ordinary machinery of government. We are talking about legislation where the first cut of this Bill—clause 1, subsection (4), article 1, sub-article 4—excluded provisions that applied to Northern Ireland. You have now introduced a schedule that specifically indicates which laws are being revoked. You have told us in this session that you are not responsible for the content of that schedule, but aspects of the schedule came from sponsoring Departments. I am asking what process and assessment has been conducted in light of the commitments



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given under the United Kingdom Internal Market Act 2020 and the role of the Office for the Internal Market. Although you have majored on transparency, I am struggling to see that those assessments have been conducted or that I, as a Northern Ireland representative in this United Kingdom Parliament, have any sense that our Government is seized as to whether the revocation of the Acts concerned will impact on our ability to trade within our own country.

Kemi Badenoch: In terms of how it interacts with UKIM, this is one of the things that I would have expected representations on from the devolved Administrations or, rather, the Secretaries of State for Scotland, Wales and Northern Ireland. This is not an issue that they have raised with me. I know that it has been considered, because I have a note about how the UKIM Act's framework would continue to protect businesses. This is something that was looked at. We can send you a longer note in terms of our thinking. It has not been mentioned, because it has not been asked about, but it is something that was considered.

Q238 **Gavin Robinson:** Secretary of State, you are an empowered person or a relevant authority under the UKIM Act—nobody else. This is your Bill. You have taken the titles of pieces of legislation and placed them in your schedule, and I am asking whether you have specifically satisfied yourself that there have been considerations for each aspect of that schedule and an assessment of its impact on the UK internal market, as per the Act.

Kemi Badenoch: Well, yes, because I think that is one of the reasons why certain things are not on the schedule.

Q239 **Gavin Robinson:** So you can specifically say that there are aspects not on that schedule because of their impact on the UK Internal Market Act.

Kemi Badenoch: I think that that is something that we can say.

Q240 **Gavin Robinson:** And is that something you could write to us specifically about?

Kemi Badenoch: We can have a look.

Q241 **Gavin Robinson:** In the interests of transparency, are we able to see assessments, based on every aspect of the schedule, of its impact on the internal market?

Kemi Badenoch: We have certainly given a reason for why everything on the schedule is there. I think that that can probably be inferred from looking at it.

Q242 **Gavin Robinson:** It cannot be inferred, because it is not transparent and it does not tell me, the people I represent or anybody who has an interest in the integrity of this country whether that process has been conducted and what the outcome of that process is.

Kemi Badenoch: What I would say is that the schedule is still better than just having the regulations fall away because no one looked at them at all. This schedule is still an improvement on the specific problem that you are



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outlining. This is better in terms of the impact on the internal market. We can look at what more information can be provided.

Q243 **Gavin Robinson:** I am not arguing that it is worse. I am just arguing that, albeit that you have suggested that this is to improve transparency and you are saying it does, it gives no comfort whatsoever to someone like me who does not just agree that we got Brexit done, so I would be very keen to get as much information on that as possible to the Committee and the Chairman in writing. If we need to follow up, I am sure we shall.

Kemi Badenoch: Right, thank you. I really must go. I have been told that I am now late for my next meeting. I was told that this session would finish at 12.15 pm.

Q244 **Chair:** Before you go, Secretary of State, we have waited a very long time for you to come. We have been waiting since 24 February—

Kemi Badenoch: If I may, Chair, you have waited a long time so that I could answer the questions. I would not want to come in front of this Committee and say, "I don't know. I will write to you."

Q245 **Chair:** There is a question that I want to ask you, because it relates to the proposal we put to you about having a tsar to help to speed up the process and make it really effective in terms of European scrutiny, and also to make sure that the person who is doing it is fully acquainted with European scrutiny and law making. We have been into that just now. I just want to ask you a very simple question: would you be good enough to appoint a retained EU law tsar to help the process? We were discussing that, as Mr Carr and you both agreed to consult the Committee. The need to co-ordinate, which you have already said presents you with certain problems regarding other Departments, could be helped by having proper consultation with us. Also, having an EU law tsar, who is a kind of commander-in-chief, could help to make the process work. Would you agree to that? Do you think it is a good idea?

Kemi Badenoch: We can certainly have an individual who does that. We will probably quibble about who that should be and exactly what their powers are, but in principle it is not something that I am against.

Q246 **Chair:** As long as they understand the process and how it was all devised under the EU regime, that would be a step in the right direction.

Kemi Badenoch: Would you like to be the tsar?

Q247 **Chair:** I think some people would say I am the tsar of this Committee, but that is another story. We will continue with this process.

Finally, you hired a law firm to go through the questions—Hogan Lovells, I think. What were the terms of reference that you gave them to do that? We do not know much about what they are doing—

Kemi Badenoch: We can write to you on that.

Chair: Could you? The terms of reference would be very helpful, because



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£4 million of taxpayers' money is being employed. We want to be sure that that is something that will be constructive and helpful on the right terms of reference. Thank you very much indeed.

With that we can conclude this session. Some of it has been very illuminating and some not quite so much, but we shall look at the report when we prepare it. Thank you for coming.

Kemi Badenoch: Thank you, Chair.