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European Scrutiny Committee

Oral evidence: Retained EU law: the progress and mechanics of reform - HC 376

Wednesday 15 May 2024

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Watch the meeting

Members present: Sir William Cash (Chair); Brendan Clarke-Smith; Mr David Jones; Greg Smith; Sammy Wilson.

Questions 128-158

Witnesses

[I](#): Alex Thomas, Programme Director, Institute for Government and Dr James Vitali, Head of Political Economy, Policy Exchange.



Examination of witnesses

Witnesses: Alex Thomas, Policy Director, Institute for Government and Dr James Vitali, Head of Political Economy, Policy Exchange, gave evidence.

Chair: Good afternoon and thank you for appearing to give evidence, Alex Thomas and Dr James Vitali. Is that the right pronunciation?

Dr Vitali: Yes, that's correct.

Chair: Good. Today we will be considering the future of retained EU law—otherwise known as assimilated law, because the law has been changed to call it that. This is the final session of our current inquiry, and we will be focusing on how the reforms have been undertaken to date and how they should be undertaken moving forward. We will look in particular at the political and official-level structures that are required to ensure that reform is efficient and effective, and allows us to harness the full opportunities of Brexit. Before we get started, would you mind briefly introducing yourselves for those watching at home? We will start with Mr Thomas and then go to Dr Vitali.

Alex Thomas: Thank you for inviting us to appear. My name is Alex Thomas. I am a programme director at the Institute for Government. The IFG is a non-partisan think-tank that looks at how to make government more effective. I have been there for about four years, and I lead our work on the civil service and policymaking. Before that, I was a senior civil servant in the Cabinet Office, DEFRA and, briefly, the Department of Health.

Dr Vitali: Thank you very much for having me. I am head of political economy at the think-tank Policy Exchange. I cover a number of briefs there, from economics to housing, but I am also responsible for our re-engineering regulation programme.

Q128 **Chair:** Thank you very much. I shall ask the first question. The reform of this law, now known as assimilated law and otherwise known as EU retained law, involves nearly every Government Department, because it covers all functions of all Departments, as they have been affected by EU law as it was made since 1972. I will put that into context—it is a huge amount of law. Primary responsibility for this project now sits with the Department for Business and Trade, and it is a bit of mystery as to why it should be one Department, when all the other Departments are also affected and there are Cabinet Ministers for those Departments as well. Is it unusual not to have central co-ordination—including, by the way, expert legal advice and specialised understanding of these matters—from the Cabinet Office, which has overarching responsibility for co-ordination between Government Departments for a project of this nature and scale? What is your take on that general proposition? I will ask Alex Thomas to go first.



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Alex Thomas: I don't think it is unusual in general for a cross-cutting policy, or a policy that requires co-ordination across Government, to sit in an individual Department.

Q129 **Chair:** But is it wise?

Alex Thomas: I will come to that in a moment, if I may. There are obviously all sorts of Government policies, both substantive and co-ordinating, that sit in line Departments. If you put everything in the Cabinet Office or in the centre, it leads to confusion and incoherence in the Cabinet Office, as we have separately argued.

There are two fairly healthy caveats to that, which comes to your question on wisdom, Chair. One is that it reflects the political priorities of the Government of the day. You can take a view on whether retained or assimilated EU law should be a political priority of the Government of the day, but you can reasonably infer from the fact that it sits in a line Department that it is lower down the list of Government priorities than those things that sit at the centre.

Casting back to before the European Union referendum, there was a secretariat in the Cabinet Office—the European and Global Issues Secretariat—that was explicitly dedicated to the co-ordination of Government policy on Europe and global issues. Had that still been in existence, I would imagine that this sort of policy area is something that would have found itself in that bit of the Cabinet Office, because it is a classic cross-departmental exercise, which, as the Secretary of State for DBT admirably acknowledged, requires the authority of the Cabinet Office to crack heads and to get Secretaries of State engaged.

Q130 **Chair:** If I may butt in at this stage, there is a fundamental question, which is quite unusual in this context. The whole corpus or sphere of EU law was the law of this land until it was repealed under the withdrawal agreement Act and so on. As set out in the Retained EU Law (Revocation and Reform) Act 2023, the abolition of the entirety of that law, all its principles, the role of the European Court of Justice and everything that goes with it, takes you into much deeper roots and much deeper questions. The reason why it was important to get this right and to have a degree of central co-ordination—not necessarily direction, but ensuring that the focus of Government Departments had regard to this massive revolution that was taking place through the abolition of the supremacy of EU law, and putting that into effect—is that it takes the matter into another realm of importance. Would you not agree?

Alex Thomas: Which is a good argument for why it would be a priority for the Government and therefore be drawn into the centre of Government. I am not sure that you have made a qualitative argument for why it would be impossible to do that from DBT, but that is a good argument for its priority. Putting what you said in a slightly different way, if I were advising the Prime Minister or the Cabinet Secretary, one of the reasons why I would be keen for this to be a programme that was run from the centre is that, to your point, there are all sorts of quite profound consequences for



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Northern Ireland and for regulation across the piece, which you can only take a policy view on from the centre of Government.

Q131 **Chair:** You have to have consistency on that principle you have just enunciated.

Alex Thomas: Yes.

Q132 **Chair:** Between the Government Departments. You can't have one bit that partially abolishes supremacy of EU law and another one that doesn't.

Alex Thomas: And on the substance of it. Take some of the questions on Northern Ireland or some of the questions around the Government's overall approach to regulation. There was a reason why, back in the day when I was a fairly junior civil servant, the Better Regulation Executive sat in the Cabinet Office, because it reached into all different parts of Government. If it is the Committee's emerging view or fairly clear view that the retained EU law programme is one that reaches deep into cross-cutting policy issues, I agree that those are best managed from the Cabinet Office. I would say that is the case.

Q133 **Chair:** I will ask whether you agree with me on one further point, and do feel free to jump in, Dr Vitali. On retained EU law, effectively, there are statutory duties laid down to report. They have to be reported every six months, and we are coming up to another one in July. So far, as the Committee has made clear—it is an open secret—we are not satisfied with the progress, nor are we satisfied, on the face of it, from the evidence we have had, with the intention to do it fully and properly and comprehensively.

It also has impact in the context of whatever could end up in the Supreme Court on any of these matters. I will use as an example paragraph 144 of the Supreme Court's most recent judgment on the Rwanda Bill, in relation to the interpretation of statutes. Now, if you are going to repeal legislation, you have to do it properly and you have to do it in a manner that is expressed and unambiguous, because otherwise the Supreme Court will take a view that it can continue to interpret it. I will not go into all that case law but, fundamentally, Lord Reed said that it is the duty of the court to give effect to a statute, irrespective of another treaty or other provisions in law, providing the words that are used are unambiguous or clear. That is common ground for decades and generations.

To frame it as a question: we don't want to be in the position, do we, in which there is any doubt about that, when you are changing the body of law and creating a new statute book when there was a previous one governed by different principles? Could you comment on that, please, Dr Vitali?

Dr Vitali: If you'll forgive me, I was going to go back to the question that you set us off on, if that is okay. I wouldn't disagree with anything that has been said thus far. The only thing I would say is that you have already heard evidence that, broadly, the fact that this portfolio is in DBT is a



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historical accident. It travelled with Sir Jacob Rees-Mogg when he went over to the Department.

From a regulatory reform perspective, I think there are some problems with that. We have recommended in papers in the past that the responsibility for this agenda should be in the Cabinet Office, because we see broadly that there is a lot of divergence between how different Departments are approaching the regulatory reform agenda. The Treasury has carve-outs for areas which it is responsible for. The fact that it is placed in the Department for Business does obscure the fact that the regulatory reform agenda as a whole is not just about business. It is very important to the public sector, too, and to the provision of public services. I think Policy Exchange would stand by the recommendations we have made already that this should sit in the Cabinet Office.

Q134 Chair: Generally speaking, without inviting you to go into all the details, do you pretty much agree with my assessment, as I put it to you in the form of a rhetorical question, which is that basically this is really important and it is underestimated? It is a job that needs to be done as comprehensively and efficiently as possible to deliver.

I quote now from something you said, Dr Vitali: "The repatriation of regulatory sovereignty post-Brexit offers an immense opportunity for the UK. However, this is an opportunity that as of yet has gone unrealised...lawmakers urgently need to think more strategically about how Britain can enhance its regulatory framework to support the growth of the UK economy and deliver better outcomes for the public." You stand by that, I take it.

Dr Vitali: Yes, and maybe we will get an opportunity to talk more about that shortly. As Mr Thomas said, clearly this is a political question, too. Whether it is prioritised from the centre is a judgment that the Government of the day makes.

Alex Thomas: Briefly, and to your rhetorical question, I would make two points, both of which are broadly in support. One is that there is a job of co-ordination to be done. I have no doubt that officials in DBT are doing a perfectly decent job at recording, co-ordinating and getting the cross-Whitehall machinery to do the basics. On the machinery of government question, there is a decision about whether that should sit in the Cabinet Office and at the centre. On balance, I would say that it probably should. That would be my advice to a Prime Minister or a Cabinet Secretary, but it is a question of judgment and it is a practical question. You got into these questions, both in your rhetorical point, as you described it, and in some of your questioning of previous witnesses.

There absolutely does need to be, unequivocally, a controlling mind in Government taking policy decisions about these deeper-level policy questions, some of which you highlighted. Whether that is the Secretary of State for Business and Trade with a cross-Government remit, a Cabinet Office Minister or the Prime Minister himself is a reflection of political priorities, but the point you alight on is that there are fundamental



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questions of policy that need to be taken in a cross-Government way. If the Secretary of State for Business and Trade does not consider herself responsible for those questions, there is a gap, and that is a problem.

Q135 Chair: You have seen the questions I asked her, and I have also made it clear that it seems to be a good idea, if the system were to be changed—albeit late in the day—to have more co-ordination. I don't think I had any pushback from the Secretary of State when I put that point to her and in subsequent conversations with her as well.

In relation to the extent of the law, I will ask you again. As a matter of principle, if you were thinking about laws that ought to be integrated across Government Departments by co-ordination through the Cabinet Office, one of those sets of laws would be the chapters in the old EU law statute book on Home Office law and immigration law.

In the Rwanda judgment, the President of the Supreme Court specifically disallowed one of the claimants on the grounds that the immigration Act of 2020 had been engaged in the repeal of existing EU law. The claimant's claim was dismissed by the Court on the principle that it was clearly stated—this is the Supreme Court's most recent judgment on this issue—that the legislation had been repealed. His case was undermined and therefore his entire case was dismissed. We are talking about the Supreme Court's attitude to this as well—that is really the point I wanted to make. It is a good precedent, and it is a very recent one, so I invite you to comment briefly on that before we move on to Greg Smith.

Dr Vitali: I agree. When I was saying that there is a structural but also psychological effect from placing responsibility for our whole approach to the laws, regulations and directives that we inherited from the EU into the Department for Business and Trade, I meant that it is a siloing of something that is far more comprehensive for the way that government works in the UK. I am no expert on the Home Office and immigration, but I take your point entirely.

Chair: That is all I am saying.

Q136 Greg Smith: Good afternoon, gentlemen. You have neatly teased out a lot of the things I was going to ask you in your previous answers, but on top of the official centralisation—almost certainly within the Cabinet Office, which you have both said would be preferable for dealing with REUL—there is a gap in political oversight as well.

To quote the Secretary of State when she appeared before us, "The fact that I am the one who has to answer all the questions on retained EU law takes the pressure off other Ministers because they think it is someone else's problem." I am hesitating about how to put this, but do we actually need a single Secretary of State—or at least a Minister—to co-ordinate from the centre, or would it be better done as a Cabinet Committee, or would it be better structured from within No. 10?

Alex Thomas: On reading the Secretary of State's evidence to you, I agree that she was admirably candid, from the Committee's perspective, on that. If I was doing my former job of principal private secretary to the



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Cabinet Secretary and worrying about collective responsibility, I would have emitted a small groan, but it is a testament to the Committee's work that she was able to say that.

It is illustrative of a wider point in Government. As I said in answer to Sir William's questions, I do think it would be better co-ordinated from the Cabinet Office, but I feel less strongly about that than about the fact that somebody—some Minister—is responsible and accountable for taking those important policy questions.

There is no constitutional or practical reason why that could not be the Secretary of State for Business and Trade, other than that it is harder for her, as she acknowledged, to reach into all the other Departments in order to be able to crack through the policy questions relevant to those Departments. That is why I would put it in the centre.

We have, though, talked quite a lot about only doing at the centre what can only be done at the centre, so there is a risk, as I suggested earlier, that you overload the Cabinet Office with hundreds of different co-ordination jobs. But to Sir William's points, one of the reasons why the Cabinet Office exists is to do this form of co-ordination.

On whether it would be a Minister, wherever this role sits, you would need a Minister to be responsible for it, and then they would interpret their responsibilities according to their own judgment and conversations they may have with the Prime Minister and others. There would need to be, if it sat in the Cabinet Office, a Cabinet Office Minister.

You can read quite a lot into how a Government feel about an issue depending on the seniority and nature of the Minister they put in charge of those things. So if you really wanted to crack heads together across Whitehall, it would need to be a fairly senior Minister, and it would need to be someone who had the unequivocal authority of the Prime Minister to do that head cracking. Otherwise, the system does not respond to it.

On the question of whether it should be a Cabinet Committee, yes, that would be useful, but Cabinet Committees are only really useful in so far as they reflect the political dynamic, the prioritisation and the policy questions that are going on. That is fine, but if it was a Cabinet Committee that rarely met, it would not have that much use, other than in the kind of technical way.

My final thought on this is that I saw in the previous evidence quite a lot of discussion of tsars, and I could not resist getting on my hobby horse, which is that "tsar" is meaningless in Whitehall speak; that could be a Minister, an external figure or a very senior civil servant. I think that the question to examine in that is less, "Is it a Minister, is it a tsar or is it an official?", and rather to get under the skin of that and think about what their authority is over other Government Departments.

Q137 Greg Smith: We did hear from Department for Business and Trade officials in our evidence that there is allegedly this cross-departmental



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monthly meeting of officials, but it does not seem to have any actual structure. From your experience in the civil service, can you actually get anything done by bringing a group of people together on a fairly ad hoc monthly basis, with no actual structure to guide them?

Alex Thomas: You are inviting me to say no, but I will say, having sat on many such bodies in my time, that you can, but what you cannot do is resolve those fundamental policy questions. The impression I got from reading the evidence from that session was that this was a perfectly functional body—it is producing these six-monthly reports that you are scrutinising—but it is only designed to crunch the numbers, to co-ordinate, to hear reports back from Departments and to progress-chase on where they have got to on certain things.

As a committee of civil servants at that level, without political oversight, it would not be empowered to make those kind of policy trade-offs and decisions that go to the heart of some of the issues that the Committee has been exploring.

Q138 **Greg Smith:** James, do you have anything to add?

Dr Vitali: Sure. One of the other things that the Secretary of State talked about in her evidence session was the demand-led approach. This ties into your question because, as a way of gathering information, it seems perfectly fine to me; I don't think that is where the problem is. The problem is this: once you have that information, have you the structures in place to actually get some movement and pull the right levers? That is a separate point.

There are two other things I would say. Hypothetically, as a mental exercise, you could imagine a situation where the incentives for Departments were strong enough that you could have each of them competing against each other for delivery on regulatory reform. I don't think that is the case and I think that is because, broadly, this agenda is a deeply political one.

People see regulation as the thing that sits between them and quite substantial risks, in whatever part of their life. That case for why regulatory reform is important needs to be made from the centre, and that speaks to the point that the Secretary of State was making. She was saying that she was covering for other Ministers by coming and taking questions when they weren't required to.

Q139 **Brendan Clarke-Smith:** The Government seem to be measuring the success of retained EU law reform based on how many of the laws they have actually dealt with—revoked or reformed. Do you think that that is the most appropriate way of measuring it, or is there a more substantive measurable outcome that we should be looking at? Alex, do you want to start with this one?

Alex Thomas: Yes, a "never mind the quality, feel the weight" kind of thing. It is obviously interesting to see how the statute book is changing. The numbers are relevant. It is worth tracking them, not least to hold



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Departments accountable for the things that they said they would do, in general terms. But I don't think it tells us very much about the policy questions that we have been talking about or the relative importance of different pieces of legislative change.

As the Committee heard previously, you could have a single line of something that was of profound importance to all our lives in this country but that barely registers on a sort of heat map or chart that you have been scrutinising; and then you could have a thousand changes that are largely irrelevant. But you don't need me to tell you that; you have explored that already.

As to whether there is a better way, I find it hard to suggest anything other than the judgment of Ministers, Parliament and parliamentary Committees. You can obviously disaggregate the different areas and the different sorts of changes that are being made. I have not looked at the six-monthly reports in huge detail, but from flicking through them, I think you could reasonably ask for a bit more quality disaggregation and filtering of that and a bit more information. But in the end, it will be a judgment based on the consequences of individual bits of legislation.

Q140 Brendan Clarke-Smith: When this was originally flipped over rather than it all going in one go, the sheer capacity of it, the quantity of it, was outlined, and therefore I think it would be a reasonable expectation that more attention would be paid to that. James, what is your perspective? Is it the same as Alex's, would you say?

Dr Vitali: Broadly speaking. I think an objectively better way to have measured this would have been to make, at the start, a qualitative assessment of the regulatory reforms that would have the most bang for buck. You would say, "These particular ones have an impact of this size on the economy, and these ones, these single-line repeals, have less of an impact," and then you would have targeted them, but that relies on a whole load of things being in place.

One is the impact assessment system. Research has come out recently about the quality of that and the fact that incentives to do it well the first time and get a good reading on the scale of the impact of individual pieces of regulation are not there. That hampers the work of a Government who are looking to work out how to deliver good outcomes. The "Better Regulation Framework" is about taking an outcomes-orientated approach, but you can really only do that if you have a good sense of the scale or the cost of each individual regulation that you are looking to repeal.

Q141 Chair: On that question, I don't know whether the general public know this yet, but I am given to believe—there was a report in the press yesterday—that there is going to be a White Paper tomorrow and, furthermore, that it is going to claim that there are 500 more laws, the quality of which we do not yet know. That is the real question, which you have both answered.

The other question I would like to throw into the equation is about the problem of the co-ordination of our statute book. This goes back to my



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earlier question. I have a great deal of concern about having two statute books. The abolition of the supremacy of EU law as a matter of principle doesn't alter the words that are used. The words that are used in a given law are quite often the result of consensus in the case of EU law, which goes back to 1972. There might then have been serious differences between the Government and the other member states, but for the sake of not wanting a row, they agreed that they would adopt a provision that otherwise would have been lost by majority vote; everyone knew before they went in the room what was going to happen. So the consensus was really very artificial, and it was not necessarily in British interests at all. A lot of this law is not what we wanted necessarily or at all, and therefore that raises a question.

If you are left with a whole body of law on your statute book that has been translated by the draftsmen into what appeared to be UK law but was actually EU law, you may have one lot of that law being interpreted according to the principles of EU law because the wording takes you in that direction, even though the notion of the supremacy of that law has been abolished.

The actual content of the law is not what we would have wanted, and you are then of course in a very difficult situation. You can't have two different books of statutes; you must have one so that your Supreme Court and all your other courts can adjudicate on the same footing. Would you like to comment on that proposition? I will go first to Alex, with your great experience.

Alex Thomas: I certainly don't want to hold myself up to this Committee as an expert on EU law or anything else; it is more the process and systems of Government. First, I just want to slightly react to some of the language that you used there. We need to recognise what goes into a consensus on EU laws. I know this isn't the point of the Committee, but in my experience the UK did normally get its way, and where things were traded off, they were traded off for other national interests. I know that is a side point to the point you are actually making.

I suppose the UK Government would argue that there is one statute book now, even if it is held in different places and arrived at through different means. It will be for the courts and successive Governments to pick their way through that. I can see the consequences of different laws having been arrived at through different processes, and then incorporated into the statute book. That may very well create problems of interpretation and so on.

My expectation is that where that creates a major problem or a big flashpoint, Government Ministers and the UK Parliament, exercising its sovereignty, will address those inconsistencies. I suppose problems might arise with the slightly more under-the-bonnet, grinding-of-gears things that never quite get political or policy attention, but of course it is a novel situation.

Dr Vitali: I don't have much to add except to say, on that last point, that it shows a slight tension between the retained EU law agenda and the

regulatory reform or law reform agenda. If you had an outcomes approach, you would focus on the ones that Mr Thomas described as flashpoints, whereas if you wanted to transform the law comprehensively and translate it into a type of law that is more appropriate for the UK, that is a separate point, and it might be in tension with an outcomes approach.

Q142 **Chair:** Barnaby Reynolds has argued, as you know, in the work that he has produced—it is quite extensive and somewhat magisterial—that having a common law book is incredibly important. So common law is central to this. Do you have a view on that?

Dr Vitali: I would agree, but I am trying to suggest that maybe that has an ideological bent to it, which has a different set of imperatives to the regulatory reform agenda.

Chair: Okay. David Jones has some questions.

Q143 **Mr David Jones:** Alex, you are the co-author of a report by the IfG entitled “Power with purpose”. That report recommends clear priority setting at the centre of Government, with each priority being “accompanied by measurable outcomes, and a lead secretary of state, alongside other contributing, responsible secretaries of state”. It also talks about the need to “monitor performance against priorities to hold ministers and civil servants to account for delivery, and to maintain a shared information picture across the centre and departments from which performance analysis could be drawn.” I was going to ask you how the Government’s exercise in reform of assimilated EU law measured up against that model, but I think I can infer what you are going to say.

What recommendations or findings from your report do you think are relevant to our consideration in this Committee of how reform of EU law could be improved?

Alex Thomas: Thank you for the reference to the report, Mr Jones. To answer the question that you did not ask me, it reveals a sense of what the Government’s priorities are, because the fact that retained or assimilated law sits in DBT means there is not a strong presence at the centre. That is the inference you can clearly draw from that.

Q144 **Mr David Jones:** You make the point that there should be clear priority setting at the centre, and you have repeated that in your evidence today.

Alex Thomas: Yes, indeed. There is a sense in which this is about policy ends, but it is also about policy means. If a Government were coming in and setting priorities, would I expect them to put the process of retained EU law absolutely front and centre? No, I would expect them to put the policy questions, whether it was regulatory reform or questions around immigration, as Sir William was referring to earlier, or whatever. But you need to hold the mechanisms for those priorities at the centre, which the current Government are not doing.

On other points from the report, you mentioned measurement and evaluation. Clearly, there is an evaluation mechanism associated with this subject area. From the work that the Committee has done, you have



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highlighted important gaps in that process of evaluation, so that is one further lesson I would take.

Another one is about the role of the Treasury. There is a danger, when inside Government or talking about Government, to blame everything on the Treasury and sort of use it as the bogeyman outside the room. One of the points we make is that in the absence of setting a clear strategy from the centre, the Treasury's set of priorities can often take over.

Spending reviews de facto set Government priorities through a spending review, for example. On a process that has such potential importance for the economy and for policy across the spending decisions and across a range of Departments, there is an interesting question about how far the Treasury is embedded in the process, and I suspect "not very much" would be the answer.

Q145 **Mr David Jones:** There is a very major gap.

Alex Thomas: Yes. And one of the main thrusts of the work that we did around the centre of Government was the importance of basically harnessing the power of the Treasury to get stuff done. We came out against splitting the Treasury for various reasons that are probably a bit off subject, but it is essential that the Treasury is embedded in any major programme that the Government adopts, and there seems to be something of a gap here.

I also think—this goes to the priority setting, I suppose—there is value in translating the political, manifesto or whatever objectives of a Government into a meaningful programme for government. That, on one level, is stating the obvious, but Governments too rarely take the time at the start of their Administration—whether that is a change of Prime Minister or of party—to apply their priorities properly to the craft of governing, whether that is setting out the legislative programme or how they design systems and structures. That goes to some of the points that we have been talking about this afternoon. I will stop talking about that report, because I can go on too long.

Q146 **Mr David Jones:** James, do you want to add anything? It is not your paper, so feel free to criticise.

Dr Vitali: Yes, it is free advertising! On the evaluation and measurement point, I feel we are an international outlier in some respects, because we—this comes back to the point again—do not know the nature of the beast we are trying to tackle. Lots of other countries have a fairly regular inventory of their stock of regulation, wherever it comes from, so long as it applies. I think Germany has one called OnDEA or something like that, with the impact assessment on the website and the estimated net cost. It seems strange that the UK does not have an equivalent. We have this dashboard, which is fairly useful, but it does not give much granularity to the costs and the impacts of individual regulations, and therefore it is difficult to measure and evaluate, given that lack of granularity.

Q147 **Mr David Jones:** Is there not a further problem in that bits of retained



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EU law, assimilated law, keep flopping out?

Dr Vitali: That is true, and of course for a number of regulations that derived from the EU and applied in the UK, there was not even an impact assessment in the first place. Impact assessments were given for directives, but not for regulations, and they are coming out from the back of the sofa as we go through this process.

Mr David Jones: That simply complicates matters.

Q148 **Chair:** To wind up on that side of things, are you saying in a nutshell that you can see a case—with the appropriate authority of the Prime Minister, to go back to Alex's point, because ultimately, because of the co-ordination thing, you need that full authority from the centre as well—to have a dedicated, retained EU law Minister, on the basis that through that process, with the assistance of the Cabinet Office for co-ordination and the authority of the Prime Minister, we can achieve both consistency and the outcome, which is the objectives that are needed to promote the kind of things that James has put forward in his own way, in his own report? In other words, if it is a big enough subject to deal with, let us do it properly and use the resources that are needed. We may even need to have some external advice, as in the case of Hogan Lovells, who have been brought in at £4 million a crack to advise on those questions. I just wanted to finish that subject off by asking you that question about the dedicated, retained EU law person to run it.

Alex Thomas: There is absolutely no question. You need a Minister to be responsible for this; otherwise it is floating unmoored from policy and political ministerial oversight. The question whether you need a dedicated Minister is about ministerial bandwidth and the support that they have. On this subject, I suppose I am more interested in the authority and central backing of that Minister than in whether they are dedicated and they solely spend their time on this.

Q149 **Chair:** I suspect that if the Minister is given the job by the Prime Minister, the two things—

Alex Thomas: One reflects the other, yes.

Q150 **Sammy Wilson:** Before we go into the main question I want to ask you this. On the evidence we have been given so far from our past sessions, this issue has been shuffled around four different Departments. There is no central control through the Cabinet Office. The Minister told us she was unable to control the agenda of other Departments and is depending on other Departments to see through the programme. That depended on that Minister's agenda, and she had no control over that. I think she mentioned that there had been three Departments with no change at all. There had been very few changes even in the Departments that had the capacity to deal with them. Even her own Department is sat between three people. When I asked about a dedicated Minister, her answer was that not many people want the job. This is important for Northern Ireland, actually. Does it strike you as an agenda that this Government is even serious about?



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Alex Thomas: I think it goes back to what I said previously about how the revealed behaviour reflects the priorities of the Government. I think if you asked the Prime Minister, or any of the senior Ministers in the Government, whether they were serious about this agenda they would say yes, but the actions around the organisation of the Departments you have set out there suggest that it is not as much of a priority.

The argument that often comes out, which does have merit, is that on subjects like this, you want it to be mainstreams—to use that dreadful word—or embedded in the day-to-day policy of Departments. There absolutely is merit to that—that DEFRA and the Secretary of State in DEFRA are responsible for identifying the benefits and dealing with the risks of a programme like that. You would not actually want the Secretary of State for Business and Trade getting deeply into the detail of an environmental policy that was not relevant to her brief. That is fine. It is right that the Home Office is on top of the immigration law consequences, but the gap is in those things that can only be determined cross-departmentally.

To use a phrase that I think I used earlier, there clearly is no controlling mind actively taking a view on some of these cross-cutting questions. To the extent that there is, that is the Secretary of State for Business and Trade, and one of the reasons her evidence to your Committee was so striking was that she was pretty clear that she didn't consider herself to be that controlling mind.

Q151 **Sammy Wilson:** What she did say, though, was that it seemed to be driven in a demand-led approach. What are the pros and cons of doing it on that basis?

Alex Thomas: The pros are that issues are emerging that are genuinely of concern to businesses or lobby groups and pressure groups of whatever form. It goes back to some of the debates around the original form of the retained EU law legislation—you are not setting arbitrary deadlines for change for something to happen, because the Government have set out a particular objective.

From my perspective, the cons are clearly that the Government are there to govern, and if all you are doing is reacting to the almost certainly incoherent demands of competing groups, you are not actually setting an objective and a set of priorities about how to do it. Clearly, both operate in our system. For the thing to work, both need to happen. If you want to make progress on a policy programme or area, then you cannot be completely demand-led. The Government must put themselves on the front foot.

Dr Vitali: On the pro side, there is the obvious point that if you don't have a good grip, because your ability to assess the impact of particular rules is impaired, having market participants or something like that to feed into Government is really important. It might only be anecdotal evidence about the impact on a particular business, but that is still useful. Policy Exchange has recommended elsewhere that feedback loops can be really useful, but



I entirely agree: the point of regulation is that it needs to balance a number of competing imperatives such as consumer protection, growth, competition and innovation. My concern is that doing that balancing is being outsourced to people who don't have the competency nor the elected mandate to do that. A demand-led approach is very good for trying to get a sense of where the issue is pinching, but in terms of carving a regulatory framework that is the best for the British economy and for the British people post-Brexit, that has to be done by politicians. It cannot be done by regulators and nor can it be done by market participants.

Q152 **Sammy Wilson:** I wasn't on the Committee when the Minister gave evidence, but when I read that evidence it gave me some concern. That is because in the Safeguarding the Union deal, which the Government did with my party leader at that stage, one of the commitments made, and indeed there have been regulations that have gone through the House, is that Ministers would be obliged, when looking at any change in regulation, to first of all make an assessment as to whether it would lead to regulatory divergence between Northern Ireland and GB, to report to the House and then to make a decision. It did not mean that if there was regulatory divergence, they could not overrule that, but they had to do that to make a decision. The implication, of course, was that if there was going to be serious regulatory divergence, the change shouldn't be made.

Is there a danger, if this is demand-led, that the Minister has already been convinced by circumstances, or lobby groups, or pressures within the Department, or officials bringing this to his attention, so that by the time a decision is made to change regulations, the argument is won—that whether it is regulatory divergence or not within the United Kingdom, the Minister has been convinced that the change is necessary? Or am I misinterpreting that, and is there still the opportunity to back down if it is demand-led?

Dr Vitali: Northern Ireland is really interesting because it represents one of those points where regulation, which can be quite technical and dusty, does become a flashpoint and political.

I suppose my answer to your question is that that does not seem to me to be a structural problem; it's a political one. If the Minister is concerned about the health of the internal market or concerned about the Union and they prioritise that, then there shouldn't be a problem.

I suppose that the only structural dimension to this is—this came up in the evidence session with the Secretary of State—that she frequently felt quite reluctant to comment on things that she felt were reserved matters or devolved matters. That would not be such a problem for someone housed in the Cabinet Office, because the person who is responsible for the Union is the Prime Minister. That would probably be the only structural dimension to the question that you pose, but really it is about political priorities.



Alex Thomas: I agree with that. I would also say that is not something that is confined to this subject, or to any of the different aspects of the questions that you asked. It is very common. Actually, one of the pros of the demand-led system is that Ministers are exposed to all sorts of ideas and are persuaded of the merits of things. Yes, most civil servants can advise, but in the end it is Parliament's job to put the stops on something if that is the view of Parliament.

The particularly interesting point in this subject matter is some of the powers that the Government have taken under the retained EU law legislation potentially to make certain changes without full legislative consideration. So, you are taking me in the direction of the concerns around the pretty sweeping secondary powers that the Government took there. I am not an expert on those at all, but I would say that the more Governments do that, the more that scrutiny suffers, and the more likely you are to end up with poor policy decisions put into statute.

Q153 **Sammy Wilson:** Are there other policy areas, apart from the programme on retained EU law, where this demand-led approach is apparent?

Alex Thomas: I think you could say that it is apparent across almost any policy area, and particularly in any area where the Government as a whole or an individual Secretary of State does not have a particularly strong forward agenda.

I think of some of the areas where I was responsible when I was a director for animal and plant health in DEFRA. Michael Gove, and then Theresa Villiers and George Eustice, had clear objectives on, say, animal welfare, but in those parts of the animal welfare debate where the Government did not have a clear perspective, things were just sort of coming in. So, you can pick almost any area, I suppose.

Dr Vitali: May I give one example, Chair? A really good one is nutrient neutrality. Broadly, I think that was demand-led. It was something that the housing sector itself has been flashing lights about and saying to the Government, "Look, this is a real problem." Hundreds of thousands of homes are being held up by this inherited piece of regulation. However, it speaks to the point we have both been making. The reason why reform of that particular regulation did not go through had nothing to do with the structures; it was the political process and the failure of the Government to communicate over a sufficiently long period of time what the benefits of that reform would be, and what the balancing was to be done between risk and delivering houses. It just shows that it really was a political, rather than a structural, issue.

Q154 **Chair:** The last question I will put follows on directly from what Sammy has been saying. I think I can say without fear of contradiction that this Committee is very concerned about the situation in Northern Ireland and has been from the inception of the whole problem, and I do not think there is any chance of that changing. We have been hearing evidence that the reform of retained EU law should promote the health, competitiveness and productivity of the UK internal market and that,



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actually, the Northern Ireland dimension is immensely important in the context of the United Kingdom. What potential is there for the reform of retained EU law to cause divergence within the UK internal market and will the common frameworks be an adequate tool to manage that divergence?

Alex Thomas: I approach the subject with humility, not being a deep expert on any of those areas. Clearly, the UK internal market is of fundamental importance to the Northern Ireland questions and across the whole of the country. Yes, I do think the process that we are engaged in on translating retained EU law has the potential to create difficulties, tensions, flashpoints and divergent regulatory systems across the UK. That is because we are making a series of changes through that programme. But that is no different to other regulatory divergence or policy decisions that the different Administrations across the UK might take, although perhaps particularly exacerbated by the political decision of—as I know you have discussed—the Scottish Government to stick to EU law and a political imperative for the current UK Government to find opportunities to diverge from that retained EU law. So, again, as is the theme, it is the politics rather than the mechanics.

On common frameworks—again, I approach this with some humility as not an expert—it seems to me to be a perfectly reasonable model, but as ever, it requires some pretty serious political investment and senior official investment to make these things work because they can very easily fall into abeyance. The nature of the frameworks is fine. I know there have been parliamentary reports suggesting missed opportunities and so on, which I would agree with. There is a perfectly reasonable administrative structure there—although no doubt it can be improved—but it comes back to the politics and how far divergence is pushed through that.

Dr Vitali: I wouldn't disagree with anything that has been said. I am not sure that I have loads that is original to offer. Just two points: first, if you want to institutionalise Union considerations into this process, it would be more easily done in the Cabinet Office where the Prime Minister sits as well. I have entirely forgotten the second point I was going to make, which is probably helpful to the Committee.

Q155 **Chair:** That's fine. In the context of what I said at the beginning about the evidence that we have received, in that the reform of retained EU law should promote the health, competitiveness and productivity of the UK internal market, in which we also observe very strongly that Northern Ireland is subject to EU laws in relation to single market legislation, we find that pretty astonishing. I do not think any member of the Committee would disagree with what I have said.

That said, this is about the economy of the United Kingdom where it really matters. Would you agree or disagree that the object is to serve the interests of real businesses, including small and medium-sized businesses, which take up 85% of the British economy in terms of productivity and activities, and also the customers themselves? We are talking about the entirety of the British people engaged in the commercial activities of small



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and medium-sized businesses and bigger businesses as well. All these things are affected by the laws that they are governed by. Therefore, if the object is to promote the health, competitiveness and productivity of the UK internal market, we want that to be as good as possible. It sounds almost ridiculous to ask the question, but the real question is: does the retention, or the failure to eliminate—the consistency point that witnesses have been making to us for the last several months—amount to the fact that the UK internal market does need to be improved and to have regulatory arrangements that are helpful? And to go back to James's original point, at the beginning of the session, when you were talking about the importance, the purpose, of doing this, are we going to see that as a result of the changes that will be made in the next report, which will be coming out quite soon—the White Paper? Do you have any anticipation as to what that will contain? David would like to come in as well.

Mr David Jones: There is just one point I want to make. Looking at it from the outside, as you are, do you perceive any time pressures at play in this exercise that we are discussing this afternoon, or are things just drifting along? If that is the case, would it be helpful if time pressures were introduced?

Alex Thomas: There were a couple of points there. To Sir William's point, I take no view on the benefits of regulatory consistency. The tidy-minded former bureaucrat that I would like to think I was would like consistency, but I also recognise the benefits of different rules in different parts of the country, so I will stay on the fence on that. But do businesses and everybody else in the country deserve a well-managed process and a statute book that is understandable and explicable? Yes, of course.

On the time pressure point, I suppose I'm a bit Goldilocks. I was very pleased when the Government decided to remove the deadline for all retained EU law dropping, because I fully subscribe to the Secretary of State's argument that that meant that the civil service and Ministers were engaged in a frantic damage-limitation exercise rather than focusing on the regulations or other laws that the Government wanted to change. The quid pro quo of that is that they do then set out clearly what they want to change and get on with it, if that is what they want to do. It is a perfectly legitimate position to say, "Let's just keep all these things as they are." But given they said what they said, Government need a bit of urgency, but you also need the time to consider and reflect so that you don't make silly mistakes. You have heard that 2026 is the aspiration for this programme to finish. It's quite hard to tell from the outside, but that feels reasonable, although slightly on the slow side.

Q156 **Mr David Jones:** I have two points there. One is that it does seem to me, from my perspective, rather slow, but secondly, it is an aspiration and not a deadline, and is it not the case that in the absence of deadlines, drift inevitably creeps in?

Alex Thomas: Other things tend to take priority; that is how I would put it. I would be very surprised if there was any conscious desire or attempt, particularly on the part of the DBT officials, to drift, but of course, if you



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have a hard deadline on one thing and a softer deadline on another, I know which I would prioritise.

Q157 **Mr David Jones:** That is exacerbated, is it not, by the absence of a dedicated Minister solely focused on completing this exercise?

Alex Thomas: Yes.

Dr Vitali: If I may, on the time pressure point, you simply can't time-pressure a Government into changing their political priorities. If it is a political priority, they will invest in it and frontload it. Actually, I think we have seen the reverse effect. Sometimes if Government Departments feel like a sunset clause is going to force them to do something by some point, they would much rather delay it and not really delve into the detail.

On the political opportunity point that the Chair raised, I want to submit one thing for the Committee to consider. There is probably going to be a tension, and it is already evident, between the better regulation agenda and the Brexit opportunities agenda, because they are measured by different yardsticks. The Brexit opportunities agenda is about the quantum of regulations that we can translate—reform, repeal, whatever—but the better regulation project is something different. It is not necessarily more comprehensive, but it is about improving the way our regulators work in the future and making sure that delivers better outcomes for businesses and British citizens.

If there is a question of priority, there will be a trade-off between focusing on the number of European-originating regulations or focusing on the ones where we will get the most bang for our buck in the economy. That is not to say that it shouldn't be a priority; it definitely should be. In the fiscal environment we have, there is not much cash to spend on Government priorities, and regulatory reform is one of the really important policy levers that can be pulled to stimulate productivity growth.

Q158 **Mr David Jones:** Again, would not a dedicated Minister be in a better position to manage the tensions that you have just described?

Dr Vitali: Certainly. None of this is a comment about personalities. I think the Department for Business and Trade is doing a good job. It is just that where it sits and not being in the Cabinet Office has some implications. It has to spend political capital getting movement in other parts of the Government, which the Prime Minister, for example, or the Cabinet Office might not have to do.

Alex Thomas: I have one more brief point, which is mildly off topic so forgive me, but I couldn't resist the opportunity. We published a report last week about the scrutiny of regulators. I think that Parliament as a whole could spend a sliver more time focusing on the scrutiny of regulators as well as the scrutiny of regulation and how regulations are applied. I am abusing the platform to plug that.

Chair: No, you are not, actually; I think you are saying something important. To bring us to a conclusion, I don't see a real difference



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between better regulation on the one hand and having a statute book that operates according to the principles of a better economy and a more accountable democracy on the other. I don't see a problem there, but what David Jones was saying about having a dedicated Minister does make sense for that reason.

In a nutshell, we are grateful to you for coming this afternoon. It has been very interesting. We will be reporting, but of course we will have to wait for what the Government say themselves tomorrow in the White Paper on how many laws they are going to get rid of, and whether it will be about quantum or quality. That will be a key question. Thank you very much for coming today.

Alex Thomas: A pleasure. Thank you for having us.