

European Scrutiny Committee

Oral evidence: Negotiations with the European Union in respect of Gibraltar, HC 703

Wednesday 22 September 2021

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Members present: Sir William Cash (Chair); Jon Cruddas; Allan Dorans; Richard Drax; Margaret Ferrier; Mr Marcus Fysh; Mr David Jones; Anne Marie Morris; Greg Smith.

Questions 1 - 64

Witnesses

I: Wendy Morton MP, Minister for European Neighbourhood and the Americas, Foreign, Commonwealth and Development Office; Robbie Bulloch, Director, Gibraltar-EU Negotiations and Deputy Chief Negotiator, Foreign, Commonwealth and Development Office; and Andrew Dalgleish, Deputy Director, Gibraltar-EU Negotiations, Foreign, Commonwealth and Development Office.



Examination of witnesses

Witnesses: Wendy Morton, Robbie Bulloch and Andrew Dalgleish.

Q1 Chair: Good afternoon, Minister. Thank you for appearing to give evidence today. As I am sure you will agree, the status of Gibraltar as an overseas British territory is incredibly important to this country and goes back to the Treaty of Utrecht and other activities before that. The Rock and the people of Gibraltar have a unique cultural, economic and constitutional relationship with the United Kingdom. As Minister for Europe and the Americas, you are responsible for the maintenance and promotion of these ties. Like the UK, Gibraltar has left the European Union but it is not covered by the new UK-EU trade deal. Questions remain regarding the long-term rules on the Rock that will govern trade, the movement of people and cross-border road transport, to name just a few.

The background to this situation is complex and historical, and takes in Brexit, Spain's membership of the European Union and Gibraltar's unique status and pre-EU withdrawal arrangements. The way forward lies not just in our hands but with the Government of Gibraltar, the Spanish Government, the European Commission and the consent of the people of Gibraltar.

Ultimately, the UK Government are looking to agree a new treaty with the European Union in respect of Gibraltar. Today, we would like to gain a better understanding of how the situation has arisen; the differences between what the Government of Gibraltar, Spain and the EU want from the negotiations, and of course what the people of Gibraltar think about the situation; and what the potential implications for all concerned could be if a deal between the UK and EU is not reached. We do not want a sell-out.

Minister, before we start, for those watching at home would you be kind enough to introduce yourself? It would be helpful if your officials could do the same.

Wendy Morton: Thank you, Chair. I am Wendy Morton, Minister for Europe and the Americas.

Robbie Bulloch: My name is Robbie Bulloch and I am director for the EU negotiations unit in the Foreign, Commonwealth and Development office.

Andrew Dalgleish: I am Andrew Dalgleish, deputy director for Gibraltar negotiations in the Foreign, Commonwealth and Development office.

Q2 Chair: Who is at the rockface when it comes to day-to-day negotiations?

Robbie Bulloch: We have a system whereby our chief negotiator is Lindsay Appleby, our ambassador to the EU, and I am the deputy chief negotiator here.



Q3 **Chair:** Are you going there quite frequently, or every now and again, to have direct discussions about this?

Robbie Bulloch: Yes.

Q4 **Chair:** Okay. As long as we know that. Why was Gibraltar not included within the scope of the EU-UK trade and co-operation agreement?

Wendy Morton: Thank you for that question, Chair. It is a really important one. It was very much at the EU's insistence that Gibraltar was not included within the scope of the UK-EU TCA, which we concluded last year. What we have now is the framework agreed in December last year, which is very much a balanced outcome that best reflects the unique circumstances and context in Gibraltar, some of which you alluded to in your opening remarks.

Q5 **Chair:** That may be the case, but most people who advise us and most people who have watched this think that the framework agreement is vague, uncertain and does not add up to a row of beans in legal terms. I think Mr Picardo has indicated recently that it is not a document that can be regarded as the last word, or even a particularly good foundation stone for the last word. Against that background, your answer does not really deal with those questions. Could you please elaborate?

Wendy Morton: Absolutely. It is important to recognise that the framework, and where we are at, is very much a two-stage process. We agreed the framework, on which we worked very closely with the Chief Minister of the Government of Gibraltar. We reached agreement with Spain on the framework to form the basis of a UK-EU treaty regarding Gibraltar, which, in essence, is the next stage.

I hear what you are saying, but from my perspective it is important to understand that the framework represents a balanced outcome that takes into account the unique circumstances in Gibraltar. It covers the key issues for Gibraltar and the surrounding region, recognising what I see—rather like you, Chair—as the uniqueness of Gibraltar. In particular, it includes border fluidity for people and for goods as well. That was set out in December.

At the end of March, we had the UK-Gibraltar Joint Ministerial Council of which I am sure you are aware. A statement was then issued and agreed between the then Foreign Secretary and Chief Minister Picardo, which very much agreed a joint approach to the negotiations moving forward. Let me assure you that we are committed now to delivering a treaty that safeguards the UK's sovereignty of Gibraltar, but supports the prosperity of both Gibraltar and the surrounding region. As I am sure you would expect, we are working very closely with Gibraltar and Spain as well to move this forward.

Q6 **Chair:** What about the defence and security implications of Gibraltar?



Wendy Morton: I cannot go into all the details of the next stages. If there is something specific you have in mind I am happy to try to answer that. The main focus is very much on people and goods, but obviously we have an MOD presence on the Rock.

Q7 **Chair:** Exactly. Indeed, the tradition, not just the historical tradition but the actual reality of the proximity of Gibraltar to Africa and the questions of terrorism that might arise in relation to all that—border issues come into that too—is indicated by the history of Gibraltar, which we do not have time to go into today. You are telling us that the defence and security issues are being discussed, and that may be to some extent why some of the documents have not been made available in detail. As far as we are concerned, it is only a leak, which I believe has been endorsed by your Department, as it were.

Wendy Morton: I don't think that is quite what I am saying. I am trying to recognise the importance of our MOD presence on the Rock. The defence issues are very much outwith the framework and the mandate we are working on. I reiterate the point I made about sovereignty.

Q8 **Chair:** That was the point I was going to come back to.

Wendy Morton: Our position on sovereignty will remain; it is unchanged. We will not discuss or agree any proposals that compromise our sovereignty. I hope I have provided clarity.

Q9 **Chair:** The word "sovereignty" is understood. If that means what we think it means and know it means, for the present I think we can park the other issues because of the reality of the position.

Wendy Morton: On sovereignty I want to be absolutely clear—it is unchanged.

Chair: That is important.

Q10 **Richard Drax:** Good afternoon, Minister. Good afternoon, gentlemen. What is the scope of and legal basis for the interim arrangements being applied by Gibraltar and Spain since 1 January 2021 to ensure fluidity of goods and people at the land border? I would be grateful if you would consider within that question where the arrangements are published, how the arrangements are operating in practice and how sustainable they are in the longer term if the EU and the UK are unable to reach an agreement in respect of Gibraltar. Could they be brought to an abrupt end by either Spain or Gibraltar? That is a little bit for you to get your teeth stuck into.

Wendy Morton: There are a few questions there. Let me endeavour to get my teeth stuck into that.

One of the top priorities for us is ensuring the fluid movement of people across the Gibraltar-Spain land border. I was in Gibraltar about 10 days ago for National day and the day before. I met the Chief Minister and Deputy Chief Minister and went to the border to see what the flows were like on that particular day. We know that border fluidity underpins the



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shared prosperity and security of citizens and businesses in the region. I want the Committee to know that the UK and the Government of Gibraltar are committed to ensuring that this continues.

It is also important to recognise that the political framework was carefully constructed to make sure that it is delivering a model that fully respects the UK and Spanish positions on sovereignty. As to where the details are published, if the Chair doesn't mind I shall have to defer to one of my officials. Are all the details published?

Robbie Bulloch: The details are not published; it is an interim measure, with the understanding that we are moving towards a treaty that will put that on a sustainable footing. It is agreed between Spain and Gibraltar and the UK that the current arrangements continue, in the expectation that they will be put on to a more sustainable and indeed more fluid footing in the future.

Q11 **Richard Drax:** On your visit you found no objections, by either yourself or local people, to what is in place at the minute. Are you saying that it is working?

Wendy Morton: Bearing in mind that it is interim, on the day I was there it was quite busy, but probably not the busiest of days, for Covid and other reasons. What was in place was working on the day I was there, but they are interim arrangements.

Q12 **Richard Drax:** A cynic might say—I am not one—that it would work on the day you visited. Is there any feedback that sometimes there are delays, whether intentional or unintentional?

Wendy Morton: I am not aware of any, but borders can change, and situations can change, as we have often seen in the past. I am happy to go away and double-check if that would be helpful, but I am not aware of any problems. At the start of the year, I was asking for almost daily updates on the numbers going across the border, but we were then in a very different situation, not just because it was post Brexit but because of Covid.

Q13 **Richard Drax:** On the third part of the question, if we are not happy can we end this? If they are not happy can they end it? If so, what are the consequences?

Wendy Morton: At the moment, we have proposals on how the border would operate and we have interim arrangements. The key point is that it would then be reviewed.

Q14 **Richard Drax:** When?

Wendy Morton: I think it is at the end of the framework agreement. Or is it the end of the treaty? Sorry, I have to check. End of treaty.

Andrew Dalglish: If a treaty is adopted, it would be in place for a four-year implementation period, at the end of which the provisions would be



reviewed to check on whether or not they were working. This is predicated on the fact that a treaty would be agreed, which remains to be seen.

Q15 **Chair:** Could I ask a simple question about the Treaty of Utrecht? Is it still the operating treaty for the purposes of our relations, albeit it was in 1713?

Wendy Morton: Chair, you are really testing my history.

Q16 **Chair:** I am sure Mr Dalgleish will be able to answer that.

Wendy Morton: I have to defer to an official on that; otherwise, I will have to come back to you in writing.

Robbie Bulloch: That is correct. It governs the relationship between the UK and Gibraltar and it is unaffected by the treaty being proposed.

Q17 **Anne Marie Morris:** Minister, before I move to a specific question on the 2020 framework, at the outset you said that the reason Gibraltar was not included in the TCA was that that was the position of the EU, and they had insisted on it. Why did they insist on it? What was their problem about including it in the TCA?

Wendy Morton: That is an interesting question. I am not entirely certain. All I know is that they insisted that Gibraltar was not included within the scope of it. I must admit that I was not part of that round of negotiations, so you have floored me. I do not know whether I can come back to you and share something with you on that, but I am happy to—

Q18 **Chair:** Do either of your advisers know the answer to the question? It is quite an important one.

Robbie Bulloch: My understanding is that, given the particular complexities and unique situation of Gibraltar, it was felt at the time that it was best dealt with in a separate treaty.

Q19 **Anne Marie Morris:** That is a perfect world, but the reality is that a lot of complexity was dealt with. What I am trying to get to the bottom of is the specific problem they had. If we knew why they were reticent and reluctant then to have it as part of the TCA, we might have a clearer steer as to their negotiating position and where they think they might get to in the final negotiations, which are yet to be had, following the interim arrangements, the framework, and so on. That is what I am trying to get at. I would be grateful, Minister, if there is anything you can dig out.

Wendy Morton: You make a valid point.

Andrew Dalgleish: If I may pick up the point the Minister made at the beginning about the unique nature of Gibraltar, it was never part of the customs union with the European Union, so it makes it a difficult issue to engage with and sets it apart from the rest of the United Kingdom. It is not in a customs union with the United Kingdom either, so there was that level of complexity, which I am sure was a factor.



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Q20 **Anne Marie Morris:** I am sure it was. Difficult is the right word, but it certainly was not impossible, so I would still like to press you, Minister, to come back to the Committee with any evidence you can find as to the specific objection. Difficult, yes. Impossible, no. That is where I am coming from.

Wendy Morton: I am happy to do that.

Chair: We have a Division. We will suspend the session for 15 minutes and come back to Anne Marie immediately afterwards.

Sitting suspended for a Division in the House.

On resuming—

Chair: Anne Marie, would you like to ask the rest of your questions?

Q21 **Anne Marie Morris:** I would, but I am going to be very cheeky, Mr Chairman and, before I go to the 2020 framework, ask something else, just so that I am clear.

Mr Dalglish, you said, effectively, that this was a unique situation, and Gibraltar's exclusion from the TCA was for all sorts of reasons explicable. Were any other sovereign territories excluded? Was Jersey wrapped up, or are there others that we still have to have negotiations about? I am conscious that, if there are others that have equally complicated arrangements, what we negotiate for Gibraltar may set a precedent for those. What else is outstanding, if anything?

Andrew Dalglish: Different overseas territories and Crown dependencies have different relationships, so that is what I mean about the uniqueness of Gibraltar. For example, the immediate proximity to Spain and dependence on half its workforce coming from Spain and the European Union Schengen area made it a particularly knotty issue, but it is well noted that the relationship Gibraltar will enjoy with the European Union will be of interest to other overseas territories. We are very mindful of the fact that other overseas territories will be looking at that as well.

Q22 **Anne Marie Morris:** Which overseas territories are yet left to negotiate arrangements with?

Andrew Dalglish: I would have to take that away and look at whether any of them require this special kind of treaty relationship.

Q23 **Anne Marie Morris:** It would be very helpful if you could come back to the Committee and let us know. Thank you.

Finally moving to the 2020 framework, one of the challenges with all of this, for me, is the greyness of the current position, what the future position will be and, if I may, a lack of transparency and a lack of will to be transparent. I understand, Minister, that these are important matters. They are commercially sensitive and clearly there are matters of security at stake. None the less, this is a very important agreement. It seems to me one in which the British public, and not least parliamentarians, would



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be interested. In the case of parliamentarians, they are certainly entitled to that knowledge, so I am curious about this. When the 2020 framework was leaked, what was your thinking? Why had you not published it? How do we know whether what has been leaked is the totality of the actual 2020 framework or just something cobbled together as a patchwork so that we think it is the 2020 framework?

Wendy Morton: The first thing to remember is that it is a draft framework that we have put together and that has gone to the EU. I believe we have now shared a copy with the Committee.

Andrew Dalglish: That's right.

Wendy Morton: Is that right, Chair? Yes? Yes, so I am sure you will be able to go through the detail.

The framework has been put in place, and that is the first part. The next part is that the EU came forward with a mandate and we are now waiting to hear back from the Council to see where we move forward. I do not know whether there are any specific questions about the detail of the framework; I sense there might be, but I might have to defer for some technical assistance and come back to you.

I am happy to answer questions and to continue to engage with the Committee as we move forward, because I understand about transparency, and that you want to know as much as you possibly can, but obviously there are times when there are things we can share and things we cannot share because it is a negotiation.

Q24 **Anne Marie Morris:** That I understand, Minister. Is what we have what was leaked or is it the final version of the draft?

Wendy Morton: I have not seen what was leaked and compared it word for word with the actual. I am happy to come back on that. As I said, we have shared the framework with the Committee.

Q25 **Anne Marie Morris:** And that is the final draft?

Wendy Morton: That is the final draft. That is the draft we are working to.

Q26 **Anne Marie Morris:** That makes me much happier. To take you up on your very kind offer to keep us up to date with exactly what is happening going forward, and given that we recognise both the need for confidentiality and the commercial and security challenges, I hope you will feel able to share, at least with this Committee, the next iteration and the documentation produced by the parties so that although we are not quite as up to speed as you are, Minister, we are at least able to look at it, take a view and, if there are things we are concerned about, have the opportunity to raise them.

Wendy Morton: What I will do, through the Chair, is undertake to keep you updated as appropriate moving forward.



Chair: It is now getting on for 10 past 3. I know the Minister has to go by 20 to 4, so for practical purposes I ask people to bear that in mind and try to contain the number of supplementaries.

Q27 **Allan Dorans:** Good afternoon, Minister, gentlemen. What is the status of the framework? Is it comparable with the political declaration setting out the future relationship between the EU and the UK that accompanied the EU-UK withdrawal agreement?

Wendy Morton: Thank you for the question because it is useful for me to be able to set out how the mandate and the framework contrast with one other. As I have explained, the political framework constituted part one of the EU's two-phase process, which is about Gibraltar's future relationship. The draft mandate that came out on 20 July directly conflicts with that framework. We feel that it undermines the UK's sovereignty over Gibraltar and cannot form the basis of negotiations.

Perhaps I could set out a few of the areas that we feel very strongly about. It ignores the crucial role of Frontex in carrying out frontline Schengen checks on the territory of Gibraltar, and instead proposes that Spanish officials carry out those checks. It directly overrides the framework in proposing, for example, that Spain should issue visas for Gibraltar and that Spain should issue residence permits for Gibraltar; that Spain should make decisions on asylum claims made in Gibraltar; and that Spain should have law enforcement powers on the ground in Gibraltar. It is also significant that it over-interprets the framework in proposing wholesale application of EU law, and a governance framework that is totally disproportionate to the small scale of goods that flow between Gibraltar and the EU. As you will appreciate, the Commission's proposed mandate is now with the Council awaiting consideration.

Allan Dorans: Thank you, Minister.

Q28 **Jon Cruddas:** Good afternoon, everybody. My question goes to similar issues of transparency and greyness. You might have just answered it, Minister, so you might reiterate what you said. On 13 January 2021, the then Foreign Secretary said that the framework "creates the basis for a bespoke model for Gibraltar's future relationship with the EU that will permit an absence of physical checks at the land border with Spain, and therefore ensure fluidity of movement of people and goods between Gibraltar and the EU." I suppose that begs the question: what do you consider the key features of the framework that need to be protected in the coming negotiations with the EU? Basically, what are your red lines? I think you have just intimated some of them.

Wendy Morton: I think I have, but maybe I can take the opportunity to reinforce them. Obviously, sovereignty is a key red line, but, as I set out, the issue of Frontex is key. Moving on from the key issues I have already highlighted, we have encouraged the EU now to address what we see as the flaws in the draft mandate. We want to see them move quickly now



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with the process of adopting a mandate that reflects the UK-Spain framework that we have already agreed.

I believe that the UK has shown absolute pragmatism and flexibility in agreeing what we see as a balanced framework with Spain in a search for arrangements that work for both sides. I think we would all agree that it is in the interests of all parties to get moving and see some progress soon, and hopefully I have provided a bit more clarity on that.

Chair: As long as it is not pooled sovereignty, but I will pass on that one.

Q29 **Greg Smith:** Good afternoon, Minister, and gentlemen. Following what you just said about flexibility, pragmatism and some of the things we have seen in joint statements and documents relating to this, one such statement refers to reflecting “the unique character and limited scale of Gibraltar’s economy.” Can you give an assurance that there will not be a softening on whether Gibraltar’s future will be any more integrated with the European Union than Gibraltar was before the UK left the European Union?

Wendy Morton: We have been very clear on what our red lines are, what our position is and where we see the need for change in the EU mandate so that it is in line with the framework. I cannot really speculate, but we have been very clear about our position. I reflect on the way in which we have worked very closely with the Government of Gibraltar and with Spain to get to this point. We are now looking to the EU to see what flows from the Council.

Q30 **Greg Smith:** I appreciate that. Mindful of the time, if I can come back briefly, it is pretty binary whether Gibraltar could end up more integrated with the EU than it was beforehand. Are the Government willing to contemplate that—to go there?

Wendy Morton: What we are looking at is not so much that; we are looking at next steps and preparations, which would include a non-negotiated outcome—NNO—so that if we end up in a position we do not agree with we have the option to go down the NNO route. It is important that we try to make progress, but it is equally important that we make those preparations alongside as well.

Greg Smith: Thank you.

Q31 **Mr Fysh:** Minister, earlier you mentioned Frontex, which is the EU’s border and coastguard agency, and how important that is to your view of how the negotiations could successfully go. Exactly what role do you envisage for that agency in any new treaty with the EU, and how is that compatible with the Gibraltarian identity and UK sovereignty that were set out as important by the joint approach agreed by the Chief Minister and the Foreign Secretary?

Wendy Morton: The role of Frontex is an important one, not least because it ensures that the agreement is acceptable to both the UK and



Spain in sovereignty terms. Equally, it is important to recognise that both the UK Government and the Government of Gibraltar are clear that the operation of frontline external Schengen border checks on the territory of Gibraltar by Spanish officials would not be acceptable. It is important that we get that piece right when it comes to borders. As Andrew said in one of the earlier answers, there will be a review when it comes to border fluidity.

Q32 Mr Fysh: How does that relate to identity and sovereignty? What would be the relationship between Frontex and British officials or, I should rightly say, Gibraltarian officials in that context?

Wendy Morton: If you think back to the framework, the proposals set out how the border arrangements would operate. Based on that, it includes a role for Frontex but one that is acceptable to both the UK and Spain in sovereignty terms. I hope that gives you some of the reassurance that you are looking for, but Andrew might have a bit more technical detail.

Andrew Dalgleish: At a technical level, Gibraltarian officials will carry out Gibraltarian checks. The framework is very clear on that. They do not have the legal authority to deliver Schengen checks; that is what Frontex would do, and the two would co-operate and discuss when need arose, and there would be facilities in place, as foreseen in the framework, for that to happen.

Q33 Allan Dorans: Minister, do you accept that the removal of physical barriers at the land border to ensure the fluid movement of goods means that Gibraltar will have to apply or align with EU rules on customs and goods? To ensure that that alignment does not impose a disproportionate regulatory, legal or administrative burden on Gibraltar, what is your assessment of the number of EU laws that would need to apply in Gibraltar? Can you quantify that for us?

Wendy Morton: We need to remember that, when it comes to goods and customs, the provisions are proportionate to the size of Gibraltar's customs operations and its goods market. The EU's draft mandate on goods and customs represents a significant departure from the framework we had agreed. For example, the EU's draft mandate does not reflect our commitment to a bespoke solution that does not impose on Gibraltar a disproportionate legal and administrative burden, which is perhaps the point on which you are seeking some clarity. When we talk about the draft mandate approach being disproportionate, that is a good example of it not being in line with the political framework that we agreed with Spain earlier in the year.

I could not tell you the exact number of laws. I do not know whether I would be able to come back to you on that, but if you reflect on the fact that the EU exported €3.8 billion of goods to Gibraltar in 2020 and look at it the other way, which is that Gibraltar exported €160 million of goods to the EU in 2020, that starts to set out the picture in a little more detail.



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Chair: David Jones, would you be kind enough to ask questions 9 and 11 in succession to speed things up?

Q34 **Mr Jones:** Yes. Thank you, Chairman. Minister, you have indicated some of your objections to the EU's proposed negotiating mandate. Do you have any other principal objections to it?

Wendy Morton: Those were the main ones. I will ask my officials whether there are any others. Other than that, I am happy to write back with further clarity. I tried to set out the broad principles.

Robbie Bulloch: I think the Minister has set out the key objections. Part of the negotiation will be to go through it, but we would start on the basis of the political framework rather than the EU's mandate. Chapter by chapter we would go through and test all of the assumptions from the other side.

Q35 **Mr Jones:** How much progress has been made since July in the Council working group discussing the Commission's proposal?

Wendy Morton: As far as I am aware, we are waiting for the Council to come back.

Q36 **Mr Jones:** There has been no progress since then?

Wendy Morton: I cannot say there has been no progress, but I am waiting for them to come back. We have set out the mandate and we are now waiting for them. It is very hard for me to look beyond that until I know what they come back with.

Q37 **Mr Jones:** Clearly, the Government are seeking to secure changes to the negotiating mandate.

Wendy Morton: We have been absolutely clear that the mandate from the EU varies from the framework in the ways I set out, so we are seeking changes. Alongside that, we are working through, with the Government of Gibraltar, the NNO, should we find we need to go down that route. It is fair to say that the UK and Gibraltar Governments are working closely to make sure that we have robust plans in place and are well prepared in all eventualities, as I am sure you would expect and hope, and that includes finding ourselves in a no-deal situation.

Q38 **Mr Jones:** Do the Government intend to publish any counter-proposals?

Wendy Morton: The first thing is to see what the Council comes back with and move from there.

Q39 **Mr Jones:** When do you anticipate that will be?

Wendy Morton: Soon I hope. I am keen that we make some progress. I do not have an exact date yet. I cannot give a running commentary, but I am happy to continue to liaise with the Committee and, if I can keep you updated, I will do so.



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Q40 **Mr Jones:** What sort of indicative timescale do the Government have for concluding the treaty with the EU over Gibraltar?

Wendy Morton: We are keen to get on and do it.

Q41 **Mr Jones:** Yes, but you must have some sort of timescale in mind.

Wendy Morton: We know that the EU's internal processes are ongoing and that the proposed mandate is with the Council. We will continue to push for progress as much as we can. It is in the interests of all of us to keep moving forward.

Q42 **Mr Jones:** It is all very vague.

Wendy Morton: We are in a situation where we are waiting for the Council.

Q43 **Mr Jones:** How much EU law would the Commission's proposed negotiating mandate require Gibraltar to apply, and what role would the European Court of Justice have in its application?

Wendy Morton: I may need to ask for a little bit of technical assistance on how much law will be needed. Did you mention the CJEU?

Mr Jones: Yes.

Wendy Morton: Given the EU's draft mandate, I don't see any reason why the CJEU needs to be directly involved in the oversight or enforcement.

Q44 **Mr Jones:** I understand that, but the question was, how much EU law would the Commission's proposed negotiating mandate require Gibraltar to apply, and under its proposals what role would the ECJ have?

Wendy Morton: As you probably know, the political framework does not mention the CJEU at all, so that was our position regarding the CJEU.

Q45 **Mr Jones:** And the proposed mandate?

Wendy Morton: I would need to check on that to be absolutely certain.

Q46 **Mr Jones:** Does it contain any role for the ECJ? Maybe one of your officials could assist us with that.

Robbie Bulloch: The short answer is too much. That's why we are looking to—

Q47 **Mr Jones:** Surely, any role is too much.

Andrew Dalglish: The amount of law is a disproportionate amount. It might be put that way.

Chair: Could I intervene? I am informed that that is dealt with in paragraphs 62 to 64, so it is already anticipated. David, that may help to answer your question, or prompt the Minister to reply.



- Q48 **Mr Jones:** Perhaps one of the witnesses would like to expand on that.
Robbie Bulloch: On Andrew's point, we do not think that the Commission's mandate is at all proportionate and, therefore, do not accept it as drafted, and the way we would seek to negotiate would be on the basis of the framework.
- Q49 **Mr Jones:** Are the Government willing to countenance any role for the European Court of Justice as far as Gibraltar is concerned?
Wendy Morton: We set it out very clearly in the framework. The political framework does not mention the CJEU at all, and we see no reason why it should be directly involved. We have very much stated our position.
- Q50 **Mr Jones:** Would you regard that as a red line?
Wendy Morton: We stated our position; we were very clear.
- Q51 **Mr Jones:** I understand that, but are you willing to resile from that position or amend that position, or is that a red line as far as you are concerned?
Wendy Morton: We were clear. Let me come back definitively to you on that, but it is safe to say that we were very clear in our opening position that we did not see why the CJEU should be involved.
- Q52 **Mr Jones:** Thank you. The Commission says that EU state aid rules, labour and social standards and environmental and climate standards should serve as a "reference point" for Gibraltar. What do you think that means?
Wendy Morton: Can I come back to you on that one? I know this is an area you are particularly interested in, so, if the Chair is happy, I will come back to you on that.
- Q53 **Mr Jones:** Thank you. That is very kind. Gibraltar airport has been the subject of dispute for very many years. Do you have any specific concerns about the Commission's proposed approach to the airport?
Wendy Morton: On the airport, we have been very clear that we will not accept any agreement that prejudices our position on sovereignty. We have also been clear that the wider agreement cannot be contingent on our reaching an agreement on aviation or the airport.
- Q54 **Mr Jones:** There is no change as far as the airport is concerned.
Wendy Morton: That is the position.
- Q55 **Margaret Ferrier:** Minister, you may have answered this question previously, but how closely aligned are the positions of the UK and Gibraltar Governments on the whole issue? What is Spain's position? We know there have been territorial claims over Gibraltar before. Is Spain looking at this as an opportunity?
If we look back at the referendum in Gibraltar in 2002, the question was,



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"Do you approve of the principle that Britain and Spain should share sovereignty over Gibraltar?" There was a landslide majority of no; 98.97% voted to remain British. However, they also voted overwhelmingly to remain, so in a way they want the best of both worlds. What is Spain's position in all of this? Does Spain agree that the Commission's proposed mandate cannot form a basis for negotiations?

Wendy Morton: On the point about the closeness of the UK and Gibraltar, which I think was the starting point of your question, as I explained earlier this afternoon, we are working very closely on this issue with the Government of Gibraltar and have been for some time. I was in Gibraltar earlier this month. The previous Foreign Secretary was in Gibraltar earlier in the year. I cannot now remember whether it was in March or May. It was at the time of the JMC in March. I was there as well. We work very closely, rightly so. It is also important that we work closely with Spain on this because it is in all our interests to make progress soon.

One of the questions asked this afternoon was about speed and the sense of a timeline. Until a separate treaty enters into force, the UK, Spain and Gibraltar have agreed to ensure that there is minimum disruption on the border following the end of the transition period. I noted that my Spanish counterpart, Deputy Foreign Minister González-Barba Pera, very recently restated the Frontex point as well. I hope that gives you a sense that we are working together to resolve this, move forward and, hopefully, get a treaty that is in all our interests, but obviously subject to negotiations, given that the mandate before us is very different from the framework we agreed at the beginning of the year.

Q56 **Margaret Ferrier:** There is no danger whatsoever to sovereignty in what is being put forward by the Commission at the moment?

Wendy Morton: I have been very clear on our position when it comes to sovereignty—very clear.

Q57 **Mr Fysh:** To what extent have any disagreements between the EU and the UK over the Northern Ireland protocol impinged on the positions or approaches taken by either side in respect of Gibraltar?

Wendy Morton: We have been very clear that the Northern Ireland issue is very different and separate from the Gibraltar issue. It is important that we remember that and reiterate it. They are very, very separate.

The other thing to remember is that, when it comes to Gibraltar, together with the Spanish we have found a balance for an agreement that works, bearing in mind that often there are delicate questions that we need to navigate through, so a treaty must maintain that balance. The Gibraltar issue is separate from the Northern Ireland issue—very different.

Q58 **Chair:** I have a simple question on that. Anne Marie Morris asked about other overseas territories. We have come back over and over again to the question of sovereignty. If you take the position of Gibraltar or Northern Ireland as matters of sovereignty, as well as the overseas territories



question, I am a little puzzled and perhaps a little disturbed that you say there is no difference. No matter which way you go on it, on the question of relinquishment of sovereignty, I have mentioned the objections that I have personally to pooled sovereignty as an example of where things can go badly wrong. Can you just clarify this? Are you saying that as between Northern Ireland sovereignty and Gibraltar sovereignty there is or is not any direct constitutional difference?

Wendy Morton: What I am saying is that in terms of these agreements Gibraltar is a separate issue from Northern Ireland. The constitutional relationship with the UK is also different. I sense that maybe this is where you are coming from, Chair. That was what I was trying to convey in my answer.

Q59 **Chair:** May I just remind you of section 38 of the European Union (Withdrawal Agreement) Act? It quite clearly states that, notwithstanding the withdrawal agreement and therefore also the protocol in relation to Northern Ireland, the United Kingdom retains the right to make its own laws and act in a completely sovereign way and override the Northern Ireland agreement and protocol. For practical purposes, the question is the one I have already put to you. Where do you distinguish between the sovereignty of Northern Ireland in terms of constitutional arrangements and the constitutional arrangements for the overseas territories and Gibraltar?

Wendy Morton: When I say that the constitutional relationship with the UK is different, one example is the customs and immigration border. There has always been a customs and immigration border between the UK and Gibraltar, for example. Also, Gibraltar, unlike the UK, has never been part of the EU customs territory or the single market for goods.

Chair: Okay. Jon Cruddas, I think you wanted to ask a question about political consent.

Q60 **Jon Cruddas:** Given the sense of ambiguity that sits on top of a lot of this, what about the consent of the people? What do we know about what Gibraltarians feel about how things are playing out? Do you have any access to polling, Minister? Are you tracking any concerns? Can you give us any information or sense about their feelings on how things are progressing, or not?

Wendy Morton: Personally, if I am honest, I have not seen any sense of it; I am not sure whether we have any, but I am pretty certain that the Chief Minister of Gibraltar will absolutely have an understanding of what Gibraltarians are feeling. As I said, I was there for a couple of days around National day. That was a specific event, but there was certainly a very positive feel on the Rock. Maybe you can or cannot translate that through to this particular issue, but I am pretty certain that the Chief Minister would have a good handle on that.

Q61 **Chair:** When will you be seeing him?



Wendy Morton: I will have to ask him next time I see him.

Q62 **Chair:** Thank you. If the mandate proposed by the European Commission remains unchanged, will the Government refuse to enter into negotiations with the EU? Related to that, the UK did not walk away from its future relationship negotiations with the EU. Should it now do so if it considers that the terms on offer in respect of Gibraltar are unacceptable?

Wendy Morton: On the first point, we have been absolutely clear that the mandate is very different from the framework. We are waiting for the Council to come back, so I will not try to pre-empt it or speculate. However, alongside the work we have been doing, and thinking about what next and the preparations, as I said in one of my earlier answers, while it is in all our interests to make progress, we are continuing to make preparations for an NNO situation or scenario should we find that is where we are. The UK will stand fully behind Gibraltar, its people and its economy in any scenario. I want that to be absolutely clear.

Q63 **Chair:** No-deal planning is in progress. That is implicit in what you have just said.

Wendy Morton: We hope that we get to where we want to be, but we are working very closely on making sure we have plans in place for all eventualities, including no deal.

Q64 **Chair:** We have just reached 3.40. My last question is, will you appear before us again if necessary to provide an update on the progress of the negotiations?

Wendy Morton: How could I refuse? Of course I will.

Chair: Thank you very much indeed, and I hope we have not kept you too long.