



HOUSE OF COMMONS

Procedure Committee

Oral evidence: Delegated powers in the “Great Repeal Bill”, HC 1010

Wednesday 1 March 2017

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[Watch the meeting](#)

Members present: Mr Charles Walker (Chair); Bob Blackman; Mr Christopher Chope; James Duddridge; Patricia Gibson; Patrick Grady; Sir Edward Leigh; Mr David Nuttall.

Questions 1-23

Witnesses

I: Professor Michael Dougan, Professor of European Law, and Dr Mike Gordon, Senior Lecturer in Law, University of Liverpool, and Professor Catherine Barnard, Professor of European Union Law, University of Cambridge.

Written evidence from witnesses:

- [Professor Michael Dougan](#)

Examination of witnesses

Witnesses: Professor Michael Dougan, Dr Mike Gordon and Professor Catherine Barnard.

Q1 **Chair:** Thank you for your patience. We are starting a little later than planned. Please briefly introduce yourselves, starting with Professor Barnard, and make any opening comments that you think we might find useful.

Professor Catherine Barnard: My name is Catherine Barnard. I am professor of EU law and employment at the University of Cambridge. I am funded by the ESRC programme, UK in a Changing Europe, which requires all of its participants to be non-partisan when we talk about matters to do with the European Union.

Chair: What is the ESRC?

Professor Catherine Barnard: It is the Economic and Social Research Council. It has a programme called UK in a Changing Europe. Part of that programme is for research activities, and the other part of the programme is to do public engagement work. We do quite a lot of that, whether it is talking in town halls, talking to schools or talking to the press. The intention is that we offer an informed but non-partisan view on the European Union. We do not take a view on whether remain or leave was the better option.

Professor Michael Dougan: Hello. My name is Michael Dougan. I am the head of the Liverpool Law School at the University of Liverpool. I am also the professor of European law at the University of Liverpool.

Dr Mike Gordon: I am Dr Mike Gordon, a senior lecturer in law at the University of Liverpool, and I am a specialist in UK constitutional law.

Q2 **Chair:** I am going to ask a general question that I would like each of you to answer. How difficult does this need to be? Can it be relatively straightforward or does it have to be extraordinarily complicated, with people burning the midnight oil?

Professor Catherine Barnard: At one level, the Act itself can be reasonably straightforward, but the devil is in the detail. The devil will be in what goes in the schedules, and more importantly in practice will be how broad the secondary powers are in the Act. That is where it gets complicated. As far as the secondary powers are concerned, some quite important decisions will have to be made about the level of scrutiny that Parliament wants to retain over the exercise of those secondary powers. Those secondary powers will also have to be drafted to cover a range of eventualities. Those eventualities include, first, giving effect to EU law into the UK system and, secondly, making provision for the amendment of any of those rules as we see fit.



HOUSE OF COMMONS

In respect of the EU acquis—the jargon term for the whole body of EU law—some of that acquis will not be relevant to the UK anymore, so there will need to be provision for that. So there will be a sort of freezing and also a provision for unfreezing. Thirdly, there needs to be a provision—this will be the more complicated one—for what is going to happen in respect of any deal that is entered into, but the drafting of the Great Repeal Bill will precede any deal, so it will not be clear what the clauses might need to look like, and those clauses need to offer a range of options. Fourthly, there will need to be consideration of any devolution issues that might arise.

Professor Michael Dougan: I agree with the general thrust of Catherine's analysis. The Act itself does not necessarily have to be enormously complicated, but the amount of work that will go on behind the scenes is absolutely bound to be. I will elaborate a little on what Catherine said. The Committee has received my written evidence, which sets out some of the key challenges that need to be addressed in the context of this process, but I will just say something about what I think is probably the fundamental issue that needs to be addressed in the Act itself. The idea of preserving legal certainty and legal continuity, which lies behind the Great Repeal Bill, means that the retention, incorporation and adaptation of EU law has to take into account the particularities of EU law, particularly for a member state that is leaving and will be a country applying EU law but that is no longer a member of the EU. That is a relatively unusual situation to be in.

The particularities mean there is a clear dividing line between the purely technical and the policy. There will be an enormous amount of decisions that will straddle technical decisions about adaptation, and policy decisions about adopting legal rules, rights and obligations. The real challenge is for Parliament to design a scheme that will give the Government the necessary delegated powers to do the job of legal certainty and legal predictability effectively and appropriately, but that does not stray into simply handing the Government *carte blanche* to rewrite rights and obligations according to its own subjective political preferences.

Realistically, the Government will do the great majority of the work. We have been talking about this quite a bit. Most of the work will have to be done through delegated powers. Parliament's role will concentrate on the design of the system, the criteria according to which it will be executed, the types of oversight that Parliament will exercise and, crucially, the situations where the degree of change and adaptation justifies parliamentary involvement of a primary legislative sort, not just delegated powers. The onus is on clear design for the Bill, recognising that most of the hard work is actually going to be done by Government.

Dr Mike Gordon: I agree with what has been said so far. I think the more we look at this very closely, it is going to be a detailed and complicated matter. In particular, what I am interested in is doing it in a constitutionally appropriate way. Bear in mind that we are talking about potentially very significant secondary legislative powers. How we do that in



a way that respects the proper roles between Parliament and Government is crucial.

Q3 Chair: I am going to ask one more question and then open it up to colleagues. We will start with you, Dr Gordon, and then work back the other way; otherwise, you might just end up saying, "I agree with what I have heard from my esteemed colleagues."

Do you think that a general provision should be placed in the Bill to the effect that delegated powers granted by the Bill should be used only, for example, as far as necessary to adapt the body of EU law to fit the UK's domestic legal framework and also, as far as necessary, to implement the result of the UK's negotiations with the EU? Do you think it would be sensible to put that in the Bill?

Dr Mike Gordon: I do think that, yes. What is really important with the delegated powers and secondary legislation set out in the Bill is that there will be inevitable complexities, as Michael just alluded to, in deciding what is necessary to ensure the functioning of the UK's legal system and what is a policy choice.

Where EU law cannot be transposed legally and easily, there may be a range of different policy choices to be made in that context. It is important that in the Act the tone and context for the way the Government exercise these powers is set appropriately.

That does require the exclusion, effectively, of policy change, certainly significant policy change, and that that change is done outside the terms of the Great Repeal Bill and in the context of a primary Act. The scale of this is going to be so significant: the way that that Act, whether it looks simple or complicated on the face of it, sets the context for how Government and Parliament behave is going to be crucial. We can't necessarily scrutinise in detail every single, tiny technical exercise of delegated power. I think it is important that the purposes of the powers are clearly defined.

Q4 Chair: And you are concerned that the Government might say, "This has been so much fun. We might keep this power around for another 100 or more years."

Dr Mike Gordon: It is right to be concerned about that. The legislation can be appropriately drafted with the necessary time limits. That would be another important part of it as well. The purpose of the Bill is to provide certainty and continuity in a period of transition effectively. That implies logically that those powers exist for that period of transition, perhaps to deal with the after-effects that cannot be anticipated at the time it is being done, so yes.

Professor Michael Dougan: I will elaborate a little on what Dr Gordon said by pointing out that there is also a balancing act here. If we accept that the Government will need very extensive delegated powers in order to do the job of legal certainty and continuity effectively, and that those powers will inevitably involve the opportunity for policy decisions—that is



HOUSE OF COMMONS

inevitable in the process—and the less detailed the framework that Parliament sets down, obviously the more scope there is for the Government to claim power to make policy choices that are not strictly necessary for the purposes of continuity and certainty.

There is also a counter-tension to bear in mind, which is the possibility that the more detailed the framework and the more prescriptive the legislation, the more that it might then ultimately invite judicial challenges by people who are disgruntled by some of the choices that the Government have made and who feel that adaptations were not appropriate or within the terms of the Act.

Ultimately, we could end up possibly losing some of the value of certainty and predictability that we wanted to achieve through this process, almost by inviting litigation about an overly prescriptive set of straitjackets for the Government.

Professor Catherine Barnard: I would add that the leave campaigners got a lot of traction with their message of take back control. Of course, take back control extended beyond Parliament to take back control of borders and so forth. Nevertheless, there was a strong message that came out. According to Lord Ashcroft's polling, that was the main reason that people gave to vote leave: to take back control to Parliament.

The reality is that it is a gargantuan exercise that has got to be delivered and, therefore, a lot of it is going to be done by the Executive. The question for you as parliamentarians is how much control you want to have over the Executive. You also need to be thinking about what sort of mechanism of control you will have over the use of Henry VIII and other powers.

Chair: I am going to bring in my colleague James Duddridge, because before you arrived I made the fatal mistake of saying in private, "Let us accept that the Government needs more powers," and that did not necessarily go down too well with Mr Duddridge. He doesn't like to accept things; he likes to explore things.

Q5 **James Duddridge:** I could barely contain myself when Professor Dougan used the word "if". He said, "If we accept there is a need", but personally I am not convinced. As someone who was a Brexiter, I thought the Great Repeal Bill would actually involve repealing things, rather than being an enabling Act in itself, or that there would be a series of Acts. Do we really need to grant these extra powers to Government in order to do this in an orderly manner? Isn't that a temptation for the Government to hold on to those powers for longer than it needs, and perhaps even beyond this Parliament and the next? There are a few questions bundled up there, basically on whether we starting from a false premise that these things are needed.

Professor Catherine Barnard: Yes, the Government will need these powers because there is a lot to be done. As you will appreciate, there will be a new regulatory landscape that needs to be set up. At the moment, a



number of directives and regulations make reference to the fact that decisions have got to be taken by the European Commission or any of the EU agencies. Of course, depending on what is agreed in any article 50 and subsequent deals, assuming there is no agreement on those sorts of matters and that we will not continue to make use of those bodies, then we do need to set up our own equivalents or at least to extend the powers of the existing bodies. That will require quite extensive secondary powers, either in the Great Repeal Bill or in other pieces of legislation. So that is point number one.

Q6 James Duddridge: I totally understand your logic in terms of there being a need to change those things, because they are wholly inappropriate; but why does it need to be done by secondary legislation? Why could not we have, for example, seven Bills—a fisheries Bill, a taxation Bill, an immigration Bill—rather than a Great Repeal Bill that gives greater delegated structure?

Professor Catherine Barnard: I see no reason why it cannot be done through separate Bills in the way that you describe. The Government, in the White Paper, have already indicated that there will be primary legislation in the field of immigration, which I think is necessary, because it is an area where considerable reform will be needed, because by definition the citizens' rights directive, for example, which is given effect in the UK by the Immigration (European Economic Area) Regulations 2016, clearly will need to go; but there may well be transitional provisions, especially in respect of EU citizens who are already here. So, absolutely it could be done in a separate number of pieces of primary legislation. The question is: how much time and capacity has Parliament got?

In respect of your related question, if there are a lot of broad Henry VIII and other powers in the Great Repeal Bill, or, indeed, in any of the other Bills to which you refer, the temptation may well be for the Executive to hang on to them, because, of course, it is very appealing; and certainly it is well known that there has been a dramatically increased use of Henry VIII clauses across a whole range of primary legislation. The question then is: do you put a sunset clause on to these powers, if Parliament were to authorise them, and/or do you curtail them in other ways by thinking about other mechanisms of scrutiny of the use of those powers, not just the existing ones that don't work as well as they might at the moment?

Professor Michael Dougan: I will make a few points about the separate questions that you asked. In terms of whether the powers are necessary, I don't want to just repeat my written evidence but I will just summarise it very quickly. What I did in the written evidence was try to identify a total of eight reasons why there needs to be adaptation and decisions taken about which bits of EU law will remain part of the UK legal system, at least on an interim basis, and which parts may not.

There are different reasons, and they are largely to do with the particularities of EU law in relation to a country that is no longer going to be a member state of the EU. Catherine mentioned, for example, the fact that there are significant policy areas where EU agencies and EU bodies



HOUSE OF COMMONS

take decisions. We assume that we will no longer let EU bodies and agencies take decisions with binding legal effect in the UK, but that means that we have to identify alternative decision makers; we have to identify ways that they can be held accountable. There are also large sections of EU law that will need a much more technical adaptation because, for example, the rules refer to national decision makers taking account of the European interest, having regard to the functioning of the internal market or giving recognition to Council or Commission decisions for the purposes of exemptions and derogations. Those are found throughout the legal system, and they really are scattered across huge numbers of policy issues.

There will be policy fields in which the changes are so radical and so extensive—immigration, fisheries, agriculture—that it is difficult to say that they will not require primary legislation. I think the White Paper will also recognise that. In answer to your question about whether it is a big job: if you want to safeguard certainty and predictability for public bodies, businesses and individuals, it is a big job.

A second quick point on the time is that, although it is difficult until we have seen the draft legislation, I am not particularly convinced that these powers need to last beyond withdrawal itself, save for one exception. If we are genuine about safeguarding certainty, predictability and consistency, these jobs should be done by the date of UK withdrawal, because in terms of predictability and consistency there is no point in still trying to tidy up the legal system after you have already left.

The only exception for me is that there may well be unforeseen circumstances where we just did not anticipate that something could be a problem. So an exceptional power, clearly defined, to incorporate, repeal or adapt in the light of unforeseen circumstances could be justified, but in principle I think the job should be done by the date of withdrawal.

Dr Mike Gordon: I agree that we will need these powers, because of the scale of the job and because of the embeddedness of EU law within the UK's domestic legal system. The way membership of the European Union works has required us to interlink EU norms with UK domestic rules such that in many ways the distinction between them is not an easy one to navigate. It is that special feature of EU law that makes this such a complicated task.

I suppose as well, in relation to your point about why it is not a range of substantive pieces of legislation instead of the Great Repeal Bill, I think it is both: it is the Great Repeal Bill to lay the groundwork and to capture things as we are now, to give us the best basis on which to build in the more substantive policy areas. So I think it is both of those things, and maybe this is a matter of sequencing, rather than of seeing the Great Repeal Bill and substantive legislation as alternatives.

A practical other point would be: one of the features of the roll-out of EU law into the UK has been the use of delegated legislation through section 2(2) of the European Communities Act 1972. That power has been used



quite extensively to implement EU obligations so, although the analogy is not perfect, because the outcomes of the EU legislative process and the secondary legislation that we are imagining here cannot necessarily be compared accurately, given that there has been a secondary power to implement EU law, to some extent there also needs to be a secondary power to deal with the introduction of EU law to the UK as well.

Q7 Patricia Gibson: You have already told us that significant policy changes will be underpinned by separate primary legislation. Am I correct in thinking that we all should be rather concerned about the lack of clarity on what constitutes significant policy change, as set out in the White Paper, and the fact that we do not now even know who will decide what a significant policy change actually is? Professor Barnard, you talked about this being a gargantuan task. I suppose this question is quite speculative, but in your learned opinions, how do you envisage the burden of new legislation to be passed through Parliament being managed in a legitimate and accountable way?

Dr Mike Gordon: On the first question, about the significance of policy change, yes, I think it is an omission from the White Paper not to lay out in more detail what the parameters of that mean. It is really open to interpretation. This is one of the areas that the Great Repeal Bill will have to look at quite closely. There will be an open question of how exactly you define the significance level, or the threshold at which policy change becomes significant, to take something outside the Great Repeal Bill, potentially, and into a new threshold. At this stage—you talked about it being speculative—until we see a draft of what the Government imagines for the Great Repeal Bill, it is difficult to see exactly how they envisage marking the boundaries of how that works.

One thing that is also an omission from the White Paper is provision for pre-legislative scrutiny of the Bill. This is just one very important example of a range of things that are under-defined in the Government's policy, so the fact that there is not going to be an opportunity to scrutinise in draft form, even on an expedited basis, the text of the Great Repeal Bill is unfortunate.

In terms of the legitimacy and accountability question, it will be an immense challenge for Parliament and the Government, co-operating, to try to do this in as constitutionally appropriate a way as possible, respecting their boundaries. I hope they are successful in that.

Professor Michael Dougan: I agree with everything that Mike said, but we need to be careful not to treat the White Paper as if it is a statute already. It uses language that is very loose, and it is not particularly illuminating. For example, it talks about EU law being retained or incorporated into the legal system where "practical and appropriate". Those words in the abstract do not mean very much at all. It talks about amendments to EU law to make it "function sensibly" within the UK legal system—again, very vague language. The language of "significant policy changes" for situations where primary legislation would be justified or required is another example of that vagueness.



HOUSE OF COMMONS

One of the exercises that Dr Gordon and I did in preparation for this evidence session was—we did not try to draft a Great Repeal Bill, but we tried to think schematically about how this legislation might operate. We identified three situations where the question of significant policy changes, which might become a threshold for primary legislation rather than delegated powers, was operable.

The first is on the decision about what to retain. We know that a lot of EU law is already incorporated into the UK legal system, either by Act of Parliament or by statutory instrument, and a decision will be made, based on the “practical and appropriate” idea in the White Paper, about whether to retain that. If a decision is made not to retain existing EU legislation, whether an Act of Parliament or a statutory instrument, the question arises: what do you replace it with? If you are going to take law away and leave a vacuum, you have to be pretty certain that the vacuum will exist comfortably, or you need to re-regulate. That is one area where you have to ask the question: will that re-regulation of a legal vacuum be done by secondary legislation, or will it be so significant as to amount to primary legislation?

The second situation relates to the incorporation of Acts that are not already incorporated into the UK legal system because they are directly effective—particularly regulations, but not just regulations. Here, the White Paper says, again, that we will seek to incorporate where it is practical and appropriate, but what happens if we decide not to incorporate? Again, the question arises: will we re-regulate that legal vacuum by delegated legislation or by primary legislation?

Probably the most difficult category, though, is the third situation. That is where we are going to retain or incorporate EU law in the UK legal system—it is going to be there in some shape or form—but we want to adapt it and make it “function sensibly”, in the wording of the White Paper. At what point do technical adaptations and policy choices become so significant that they are no longer just a matter for delegated legislation and should become a matter for Parliament itself to legislate on?

So, looking systematically at the types of issues that are going to arise, the choice about retention of existing measures, the choice about incorporation of new measures and the question about the adaptation and policy choices surrounding what we do with these to make them work for the UK are the three pressure points where the question of significant policy change will become crucial.

Professor Catherine Barnard: To turn to your question about the scale of the task, we do not know how much EU legislation is actually in UK law already or is binding UK law. There are very varying estimates, but if you look at the information that came out of the European Parliament recently, they talked about 20,000 or so pieces of EU legislation that need to be considered as part of any negotiation. Whether that figure is correct or not, it is of that sort of order of magnitude. That is a huge task to work through. These are often complex directives and regulations on quite



detailed matters. Of course, in areas such as agriculture and fisheries, devolution issues are raised as well in this context. It is a piece involving multiple parts. Of those multiple parts, of course, the EU will not stand still, either while the process of Brexit is occurring or going forward. You are in a slightly paradoxical situation: we are in the process of leaving but, meanwhile, new directives are being adopted, which will have to be implemented in the UK, because we are still members of the European Union and still bound by the obligations under EU law.

There are those moving parts but there are also moving parts post-Brexit. It raises the question of what happens when the EU amends a piece of legislation post-Brexit. How are we going to respond to that, given that the original piece of legislation is already part of our domestic law?

In a very technical area, there may be a problem. If you have an exhaustive piece of harmonisation—does that jargon mean anything? That might be in an area where the EU has exhaustively occupied the field, such as something very technical about the internal specification of the headlamp on a car. If that is exhaustively harmonised, it has been implemented in the UK and the UK manufacturer will manufacture according to UK standards, which reflect the EU standard.

If that manufacturer wants to manufacture according to the new standards that the EU has introduced post-Brexit, there will need to be provision in UK legislation to amend our legislation to allow the manufacturer to manufacture to the new standard.

If they cannot do that, they will be acting in breach of UK law by manufacturing according to a standard not prescribed by UK law. If they cannot manufacture according to the new EU standard, they will not be able to sell it on to the EU market. Some highly technical matters require a lot of thought about how we are going to engage in the process, post-Brexit as well.

Q8 Bob Blackman: May I take up the issue of what happens? I think we accept that we are all ifs, buts and maybes, but given that, the Government have set out to invoke article 50 by the end of March and there will be two years to reach a settlement before leaving. Presumably within that two-year period, the Great Repeal Bill is supposed to deal with all of the legislation that we either keep or dispose of.

What is your understanding, as eminent lawyers, of the following position? We have got to the end of two years, the Great Repeal Bill has dealt with some matters but not everything, and then we have got legislation still hanging around that either Parliament has not decided or, under delegated powers to Ministers, nothing has happened. What is the status of that legislation? Clearly, that could end up in the courts in some, shape or form to resolve.

Dr Mike Gordon: That is a really important and difficult question. I think you are probably right about seeing litigation about these issues. Ultimately, we and the courts would look at the intention of the repealing Act. If we are looking at the European Communities Act as the legislation



HOUSE OF COMMONS

that is being repealed primarily by the Great Repeal Bill, alongside the transposition of all the EU law we choose to keep in the domestic system, the courts would look at the intention of the Great Repeal Bill and try to interpret it in a way that was consistent with that.

So if there were gaps or omissions or legislative silences, the starting point for the courts would be to try to interpret what Parliament intended when leaving a gap there. Did, for example, Parliament intend for secondary legislation enacted previously under section 2(2) of the European Communities Act to fall, because it was not preserved by the Great Repeal Bill? Or did, in contrast, Parliament not give it such an interpretation?

Because parliamentary draftsmen will usually deal with that explicitly, and I am sure will make every effort to do so in as thorough way as possible in the Great Repeal Bill, it is not so straightforward to see precedents. Logically, we would think, in my view at least, that if secondary legislation enacted under the European Communities Act is still there, untouched by the Great Repeal Bill, in repealing the 1972 Act, the authority for those rules falls away and they are void at that point.

There are provisions in the Interpretation Act 1978—sections 16 and 17—that introduce some general provisions. There could be a debate about whether section 16 in particular saves some of those provisions because they were made under a valid piece of legislation at the time. That would be the sort of territory that the courts would look to go on to and see how they understood. I don't think there are straightforward answers, to be honest.

That is why the real, crucial task is, whatever choice is going to be made about retention, to form a Bill that, at least in theory, covers the entire ground as much as possible, perhaps keeping an exceptional power to save any oversight circumstances, perhaps on an expedited basis. That would probably be the legislative design that would be necessary to minimise, if not eliminate, some of the issues, if that is possible.

Professor Michael Dougan: Maybe it would be useful if I gave a slightly different perspective on the relationship between the negotiations that will proceed under article 50 and the Great Repeal Bill process.

The Great Repeal Bill process is essentially going to be a domestically facing process about continuity and certainty for our own legal system. The international negotiations between the UK and the EU are obviously a different kettle of fish. We are not quite sure yet, until we see the draft legislation, what the relationship will be between those two processes: the domestic and the international.

It is important to bear in mind two factors that sometimes get lost in these discussions but are actually really quite important. The first factor is this. If we set aside any hypothetical questions about revocability of a notice to leave the EU, if we just forget about those, the consequence of notice is that the UK is leaving. The only question is: do we leave with a deal or without a deal?

Parliament's interaction with the international process of the negotiations under article 50 are really of a relatively limited nature and value because, if Parliament ultimately rejects the deal that is agreed under article 50, the UK will just be leaving but with no deal. Most people's evaluation of that would be of a worse outcome than having a deal.

That is the first factor but the second one is probably even more important. The White Paper is based on the assumption that there will be a single deal concluded before we leave, or if not a single deal, at least two deals done in parallel and concluded together. The problem is that that assumption is not widely shared outside the UK.

Q9 **James Duddridge:** May I just check on those two deals? I did not understand the point you were making. What are the two deals?

Professor Michael Dougan: Sorry, the deal to withdraw, the divorce agreement as we call it, which will settle the financial liabilities, and then the future deal on trade relations, security, environmental co-operation and so on. Sorry, I should have clarified that.

The problem is that that assumption is not widely shared outside the UK. It is not widely shared among my colleagues in academic European law across Europe, based on legal analysis of the treaties. It is clearly not widely shared among many political actors at the Commission, the Parliament and various foreign Ministries. They believe that there will be two deals and that they will be consequential. You sign your divorce agreement and then you leave and then you sign your trade agreement, which might be several years down the line.

If the Government assumption is incorrect—bearing in mind that we have to persuade everybody else that our assumption is correct and theirs is wrong, which is quite a task—it is likely that the article 50 deal will be relatively narrow and technical. It will deal with budget liabilities, staffing pensions and so on. It may well anticipate some issues about future relations but it will be relatively narrow and technical. Many of the key issues set out in the White Paper will not be dealt with in that withdrawal agreement.

If that is so, Parliament's power of approval or rejection over the article 50 deal will, again, be of relatively limited value, because it would not necessarily do us much good to reject a relatively narrow deal that is trying to sort out basic principles of liability, pensions and so on.

It is important to bear in mind that the two processes are separate. We do not yet know how the Government intend in the draft Bill to link those processes together, but the linkages might not be as important or far-reaching as we often take for granted.

Q10 **Bob Blackman:** Can I just be clear? Your view is that the basis behind the Great Repeal Bill will actually continue for a considerable time, while a deal is being organised with the European Union on future relations. Clearly, there will have to be incorporation or disposal of the law as it affects the EU institutions. For example, we might opt in to something



HOUSE OF COMMONS

and our partners in the European Union say, “That’s fine but you have to keep these functions in law.”

Professor Michael Dougan: Certainly. We are talking about two quite different tasks. There is an overlap but they are quite different. The first one is the task of preserving continuity and predictability. It is basically about making sure our public authorities, businesses and individuals do not suffer an undue degree of uncertainty and disruption in their lives. That is separate from the choices we might make in the future after withdrawal about what we want to do with all these rules—do we want to keep them, amend them, axe them or replace them with other things? Those are policy choices for this Parliament and the Government to make into the future. It might be decades down the line that we finally decide to change a certain piece of consumer law or environmental law.

There are overlaps, as I mentioned. Even the first process will involve substantive policy choices, and they will perhaps be quite extensive. Certainly in some fields, such as immigration, agriculture or fisheries, they will be very extensive. Ultimately, it is for the future to decide on these rules. In that regard, whatever deal we reach with the EU will be part of the equation. If we accept international obligations towards a third country or organisation that we will behave in a certain way and adopt certain pieces of legislation, that is an international obligation that we assume voluntarily. That might well shape the choices that we make. Ultimately, they will be choices that are made domestically in the future.

Professor Catherine Barnard: I would just add that if you look at the language of article 50, it expressly envisages that account will be taken of future relationships between the leaving country and the European Union. The problem is that article 50 does not provide the EU with the competence to negotiate a future trade deal. That has got to be done under separate treaty provisions. It is for that reason that continental lawyers view the two situations—the divorce and the future relationship—as separate, albeit bridged by the reference in article 50 to taking account of the future relationship. Therefore, it is likely that in the divorce itself there will be an idea of what is going to happen going forward—as we say, what is going to happen to the kids—because there needs to be something.

That brings us to the more difficult question of what is going to happen at that bridge. That brings us to transitional arrangements or, as the Government prefers to call them, implementation arrangements, which raise further issues for the Great Repeal Bill. What powers will there need to be in the Great Repeal Bill to give effect to the transitional arrangements, whatever form they take? That is a problem of sequencing, because it is unlikely that we will know until quite late in the day what the transitional arrangements will be. Yet the Great Repeal Bill is being drafted at the moment without any knowledge, as far as we are aware, of what those future relationships might be.

Q11 **Mr Nuttall:** I want to follow up on a point that Professor Barnard made a few moments ago about regulation for manufacturing. Professor Barnard



HOUSE OF COMMONS

referred to car headlamps, widgets or whatever. Is it not the case that there would actually be no need for us to worry about legislating to try to keep up with the changes that the EU makes? We do not worry if any other country changes its rules about what is permissible for goods sold in that particular country. We leave it to the individual company to go and find out. It should be up to the companies to find out what the rules are, just like they do with every other country in the world, and manufacture their goods in such a way that they are compatible and open to be sold, so we do not need to say, "The EU has changed its rules, so we need to change ours." Do you agree with that?

Professor Catherine Barnard: You are absolutely right, but I am making a narrow technical point. If the UK legislation that gives effect to the exhaustive harmonisation rules of the EU says that a widget can only be 4 mm by 2 mm, our legislation will be drafted to say that if you manufacture widgets they can only be that size. If there is a change in the rules and they have to be 5 mm by 3 mm, and if UK law is drafted in an exhaustive way and says, "This is the only way the widget can be made," that will cause a problem because the manufacturer will be contravening UK law when it wants to sell on to the EU market at 5 mm by 3 mm. It is very technical legislation and we need to check that our manufacturers' hands are not tied.

Q12 **Mr Nuttall:** Is that not a very good argument for saying that we should not have such prescriptive legislation?

Professor Catherine Barnard: Absolutely, but at the moment—

Mr Nuttall: Thank you. That is a good argument for saying that we should not have such prescriptive legislation.

Professor Catherine Barnard: —but at the moment it may well exist, so it needs to be checked.

Q13 **Mr Nuttall:** But that is the reason that so many people voted to leave the EU—here is so much prescriptive legislation like that. People are tearing their hair out and that is not what we want. We don't want to replicate. We do not want to become EU Mark II. That is the great danger: sitting in this straitjacket and saying, "The EU have done this. Crickey, we had better do it as well." That is what we want to get away from. We want to give people back some freedom and let them decide for themselves whether they make a 4 mm or 5 mm widget. It should not be for this Parliament to tell them how to do their business.

Can I move on to a second point? Professor Dougan might have addressed this as part of his exercise that he referred to. There are under existing EU rules and regulations many references to disputes being determined by EU bodies. Clearly, we don't want to, and we won't be able to, refer any future disputes back to those EU bodies, whether it is the ECJ or some other specialist agency. Has a list been drawn up by any of our witnesses of what those bodies are and whether there is an equivalent body in the UK at the moment? If not, which ones have a blank at the side of them, saying, "We can't think of any organisation



HOUSE OF COMMONS

that has the capacity at the moment to be able to do that. We need to put something in place.”?

Professor Michael Dougan: I think that is exactly the type of large-scale work that the civil service is probably carrying out as we speak. It is quite specialist and involves very diverse areas of law.

If you are interested in knowing what I did personally, one of the exercises I did was simply to look at the list of EU agencies that exist in different fields, to try to get a sense for myself of which areas I might want to explore in more detail, as case studies for some of these more general issues that need to be addressed. It covers very diverse fields from safety in aviation through chemicals regulation, medicines regulation and so on.

A good concrete example that illustrates the type of question that we will have to ask ourselves is the freezing of terrorist assets. If someone is suspected of supporting terrorism and there is a decision to freeze their assets, currently that decision is taken at EU level by the Council and then applied by all of the member states pretty much simultaneously, so the assets are frozen across the entire internal market. Obviously, when it comes to making a decision about the incorporation of those EU regulations into the UK legal system, I assume we are not going to say, “The Council will decide these things for us.” I assume we will want to have our own list of people suspected of involvement in terrorism and to have our own freezing mechanisms. That means we have to make a choice about who makes that decision. Will it be a Minister? An agency? Who will it be? By what criteria will they make that decision? Who will oversee them, exercising oversight? What judicial protection will they be entitled to?

That is a good example of how just changing the decision maker, even though it looks like a relatively technical change, actually involves fairly fundamental questions about governance, legitimacy and accountability. That to me is a good example to bear in mind regarding the types of issues that we will have to raise in the field of decision makers.

- Q14 **Mr Nuttall:** But would you accept, in principle at any rate, given that this country has a long and proud history of judicial independence and we have a plethora of different tribunals, leaving aside the main court structure, it would not be that difficult to ascribe to one of those various bodies? If not, we could say it would be determined by the High Court. People could apply to the High Court—a body that already has jurisdiction over all sorts of matters. One only has to look at a day’s business to see the wide range of matters it deals with, and the High Court has demonstrated that it has the capacity to develop specialisms within its capacity to determine all sorts of disputes.

Professor Michael Dougan: It is not a matter of whether in principle we can do it; we just have to do it. Catherine, Mike and I are not making value judgments about whether these are good or bad things; we are saying that it just has to be done. If it is not done, it will cause disruption and uncertainty and make our own lives more difficult. It is not a matter of



HOUSE OF COMMONS

whether it can be done and whether we can do it well. We just have to do it, and we have to do it well for our own sake.

Chair: Excellent.

Mr Chope: May I pick up on the first point that David Nuttall was making? I have had strong representations in my constituency from a firm making steel products. They are exasperated by the CE marking requirements because they do hardly any trade in the European Union. They do most of their trade either within the UK or globally. They are looking forward to Brexit because they see that the requirements for complying with CE markings will have gone and they will be able to revert to British standards, which are highly respected in the rest of the world. They will no longer have to comply with EU standards, even when they are not trying to sell into the EU market.

I do not understand why it seems to be so complicated for us to revert to the rule that we have British standards for the sale and manufacture of goods within our home market. If people wish to manufacture to a standard that is required in the EU market, they can go off and do that themselves, but we are not going to require them to do that under our legislation. Why can't something as simple as that apply?

Professor Catherine Barnard: You are absolutely right. In respect of Mr Nuttall's observations, I am not making a value judgment about the wisdom or otherwise of EU legislation. I am trying to explain that at the moment there are areas of law that are exhaustively harmonised by the EU. We have given effect to that and we don't want to make life more difficult for our manufacturers by putting them in the position that they are currently breaching UK law when they want to do something rather different.

It is a particular technical problem in an area of exhaustive harmonisation. The area that you are referring to may be an area of minimum harmonisation, so that we can have flexibility to do our own thing. It just means that there have to be powers in the Great Repeal Bill to ensure that our manufacturers have the choice whether to manufacture according to British standards or other international standards. I am making a very technical point that they should not be caught unwittingly in a straitjacket of not complying with UK law because there is not a power in the legislation to allow them to do something different. It is an area of high technical specificity that needs to be considered in the Great Repeal Bill.

Once that problem has been removed in respect of matters that are currently exhaustively harmonised at EU level, then of course manufacturers will have the freedom. That is what the UK legislation may well say—that they have the choice to make either according to UK standards or other international standards. They should have the choice. The point may have been over-egged, but the question I was asked was about the Great Repeal Bill. The question I was not asked was about the benefits or otherwise of EU standards. I am not trying to make that value judgment.



Q15 Mr Chope: Thank you for that clarification.

My other point goes back to something that Professor Dougan said. He did not think any of the delegated legislative powers should last beyond withdrawal, except for emergency circumstances. I wondered whether that was a view shared by other witnesses and whether he could see that that would be likely to carry weight. What counter-arguments might the Government put forward to that? How could we cover off this issue of unforeseen circumstances in emergency powers? Surely that it is an area where we could have primary legislation rather than give immense delegated powers.

Professor Michael Dougan: To clarify what I said, this comes back to the answer I gave to Bob Blackman. The Great Repeal Bill is essentially a domestically-facing process, which, as presented in the White Paper, is about predictability, avoiding vacuums and avoiding disruption for us. International negotiations—they might be with the EU, but it might be with the WTO, America, China or anybody else; in a way it doesn't really matter—are going to be conducted in the international sphere and then will have to be incorporated, whatever agreements are reached, into the UK system.

My point is that I do not see any inherent reason why, just because the Government reach an international agreement, whether it is with the EU or with anybody else, we should somehow have legislation that fast-tracks it into the UK legal system, because I don't think that is about preserving certainty and continuity. I think that is about changing policy. It is about establishing new international relationships and deciding what the future of the country is going to be, in different directions.

That is why I draw a much clearer distinction between the domestically-focused process, which is just making sure that we do not cause undue disruption and damage to ourselves, versus the internationally-facing processes. That is why I believe that a power to amend and retain and incorporate after the point of withdrawal, assuming we have done the job properly before withdrawal—we have to keep our fingers crossed that we manage that—should be restricted to unforeseen circumstances and problems, because it is just about tidying up and making sure that we have not left any loose ends that could cause the type of damage that we wanted to avoid in the first place.

A power that goes further and, for example, provides that UK law should be automatically updated to meet EU standard—or American standards for that matter—is a substantive policy choice. I am not sure it belongs in the same process, or at least is according to the same principles and safeguards and institutions, as the very different domestically-facing process. Does that clarify a little my point?

Q16 Mr Chope: Yes. Do you think the Government would follow your line on this?

Professor Michael Dougan: I shall wait to see the draft Bill and how far it corresponds with our draft.



Q17 **Mr Chope:** I was wondering whether your colleagues had similar views on this.

Dr Mike Gordon: I do share that view. I think that some kind of emergency exceptional circumstances power to deal with technical oversights is almost inevitable, because the scale of this task is almost unknowable even at this point, before exactly the kind of legislative change that is going to be required has been fully mapped. It is eminently possible that after withdrawal and after the primary powers in that Act have fallen away, there could be technical references out there that have been missed, such is the scale and complexity of the task.

I suppose if the Government try to make that argument for the powers, one way that those powers can be constrained is by looking at renewability clauses if the Government want a power along those kinds of lines to extend beyond the end of this Parliament. There have been discussions before—for example, about the European Union Act 2011 and whether the referendum locks contained in that should extend into the future indefinitely or should be subject to renewability clause motions in both Houses in a new Parliament. That kind of mechanism might be appropriate as a way of constraining the power. Then the Government get the possibility of having those powers extended if they turn out to be widely used. It is always difficult to know how widely a power like that might be required. If it is not required at all, the power could fall.

Professor Catherine Barnard: The only thing I would add to that is that I hear what you say as a parliamentarian about how you would prefer it to be in an Act of Parliament rather than in delegated legislation, but if the power extends beyond the Brexit process, it may be that the power needs to be specially ring-fenced, subject to careful scrutiny. It may be that it requires, before it is used, an emergency power; the use of it may need to be verified by a Joint Committee of the House of Commons and the House of Lords, so there is more scrutiny of the use of the power; or there may be a requirement for an impact assessment before its use. Something along those lines may be needed to ensure that there is closer parliamentary control over the use of such a potentially far-reaching power.

Q18 **Sir Edward Leigh:** People argue that it is all so difficult, but I do not recall the same people arguing the opposite way in 1972. Famously, the French delayed our entry until they had fashioned the EU in their image, and there was a vast *acquis* created between 1957 and 1972, while we were not members, that all had to go in our law. What happened then? Presumably all that was incorporated into our law, wasn't it?

Professor Catherine Barnard: As you know, some people would say that the European Communities Act is one of the most brilliantly drafted pieces of legislation because it is so economical in delivering on what you have just described, particularly through the use of the section 2(2) Henry VIII power to implement directives through secondary legislation.

Q19 **Sir Edward Leigh:** I was quite young in 1972 and I was not a Member of



HOUSE OF COMMONS

Parliament so I do not know all the technicalities, although I remember there were great debates around the principle. Remind me what happened during the Bill. How long was it? How much discussion was there about it—not about whether we should join, with those great speeches by Tony Benn and Enoch Powell? Let's get to the nitty-gritty. Was it all one Bill? How was it done?

Dr Mike Gordon: It was one Bill. I can look at the details and send them on to you subsequently because I do not know the exact length of it. What I will say is that it was a major constitutional undertaking then—it was a very significant measure that did effect massive change, and that change has increased as the EU has changed over a period of years.

Q20 **Sir Edward Leigh:** If I was the Government, I would not attempt in this Great Repeal Bill to deal with every single issue—the vast majority of these EU rules and directives are all quite technical anyway—and I would have some overarching clause. You are saying that that is what they did in 1972. Catherine, you were describing how somebody said it was the most technically brilliant Bill ever, or something like that.

Professor Catherine Barnard: Yes, because it is very short.

Sir Edward Leigh: So, why don't we do that now? Why don't we cut through all this jargon and all this morass, stop paying expensive lawyers and just get on with it?

Chair: Let's hear the answer to that question.

Professor Catherine Barnard: Here is the view of a cheap lawyer, because of course we are not being paid to be here. To give you the view of, indeed, a free lawyer, I would say that there is a difference between what happened in '72 and what has happened now. The EU had only been around since 1957 and there had not been the explosion of legislative activity that there has been in the EU since—you can pick your period, but I would say about 1986—the mid-'80s, with the start of the Single European Act and thus the creation of the single market. Of course, since 1986—probably since Maastricht in '92—the EU's competencies have expanded significantly into a whole range of areas that were absolutely not there in '72.

Q21 **Sir Edward Leigh:** But the principle is the same—we could do it, from a technical and legal point of view, as the precedent has now been set. I am not arguing that it is right thing to do for the matter of parliamentary scrutiny or democracy or anything. All I am arguing is that, from a simple, precedent point of view, if the Government wanted to go down that route, the precedent is set.

Professor Catherine Barnard: I agree. The Chair's opening question was, does this need to be a very detailed, difficult and complex Bill? Our answer was that it does not need to be that complex as a Bill, but it will have quite a lot of delegated powers in to deliver the complexity. Then the question for you as parliamentarians is, how much do you want to do yourselves and how much do you want to delegate?



Sir Edward Leigh: I agree—that is a question of parliamentary democracy. I wanted to get to how the Government could proceed.

Q22 Patrick Grady: Following on from that point, and bringing it to the great debate about widgets, my understanding is that if there is a very simple Great Repeal Bill that says that everything that is EU law becomes UK law, it means that if there is an EU law saying that all widgets must be 4 millimetres by 2 millimetres, that will be the law for manufacturing widgets here in the UK. The question as far as this Committee is concerned is how is that law changed? Is it going to be swept through in a statutory instrument—the Government are going to have a DL Committee to decide on the new regulation of widgets—or are we going to have a sovereign Act of Parliament with everything that entails? That is my understanding of why this is an important issue.

On the issue of the timescale and getting this through, there will be a Queen's Speech in a few months, another one a year after that and then that's it—the next Queen's Speech will be after the Government's stated preferred date for Brexit day. Professor Dougan, you seem to think this must all be done by Brexit day. Is that actually feasible with the amount of legislation and so on that you are conceptualising, or would there be a certain amount that just gets everything technically correct, and all the policy debates and the grand discussion about the size of widgets can come thereafter?

Finally, especially from a Scottish perspective about the impact on the devolved legislatures, there is a debate about whether or not they will need their own continuation Acts. That is less relevant to this Committee; what I think is relevant to this Committee is how those pieces of legislation would interact. Particularly if there are statutory instruments coming through this Parliament, do they need legislative consent north of the border? Where would anything say that? Would it need to go into a Scotland Act, in this Great Repeal Bill or somewhere else?

Chair: Good question. We will let everybody answer that question, and then I want to ask another one.

Professor Michael Dougan: I suspect that Mike is probably the devolution person here, so I will concentrate more on the first half of your question, if you don't mind. I think we have all suggested that the ideal, in terms of time scales and good use of parliamentary time—although that is a decision for the parliamentarians—is a relatively short Bill that sets out the categories of situation, the criteria for distinguishing them, the powers that will govern delegated legislation within each category and the appropriate and realistic parliamentary scrutiny and oversight. But we think the Parliaments' time would best be used dealing with those fields where there really will need to be primary legislation because there will be significant policy choices to make. Within the time available, that feels like a realistic division of labour. Most of the work will need to be done by the Government; Parliament sets the ground frame and worries about the big questions like immigration, agriculture and so on.



HOUSE OF COMMONS

I suppose the reason why I say that it needs to be done—maybe I am being optimistic here, if not idealistic—is that if we really are serious about the objectives of certainty, predictability and continuity, if this job is not done by the time we leave, we will face one of those infamous cliff edges. We get used to the idea of talking about the trade cliff edge: what happens if we leave the EU without a new framework agreement in place to govern future relations? We will revert to WTO rules, and that will be a shock, certainly to parts of the economy.

What we are talking about, in a different way, is a legal or regulatory cliff edge. If we do then end up having to untangle relationships and people question the validity of public decisions willy-nilly because things just were not tidied up properly, or they do not know who is competent to make really important decisions because we have not identified an appropriate decision maker yet and set an appropriate framework for them to make those decisions, that is the legal equivalent of a trade cliff edge. That is why, when I say it needs to be done before withdrawal, I am being idealistic. It needs to be done before withdrawal. We have got to put a lot of faith in our civil service to do the very detailed technical work necessary to achieve it.

Dr Mike Gordon: I will deal with the devolution issues. Much is uncertain at this point, but there are two things to consider that are raised by your question. One is whether the Great Repeal Bill itself will require consent from the devolved institutions. We do not know at this point, because we have not seen a draft of it, but there is certainly an argument that if it alters the competence of those institutions or interferes with devolved matters, the consent of the institutions may well be required, but we do not know whether it will be forthcoming at all.

What we do know from the Miller decision in the Supreme Court on article 50 is that the courts are not going to enforce that convention, but that does not necessarily take away the debate about its applicability. The debate can rage, and it will then be a matter for political actors to settle and agree.

I suppose the second thing, which you allude to, is that in the content of the Bill itself, how far do you want to make provision for the engagement of the devolved institutions? Again, there is potentially a range of different options there, increasing in complexity. Whether the UK Government wants to make all the decisions about secondary legislation itself, to try to co-extend powers to Scottish Ministers to be involved in delegated legislation or, as you suggested, write in consent requirements for delegated legislation as conditions for the use of powers by the UK Government, those are all options, and I imagine they are potentially compelling options for the devolved institutions as well, but they are complex to implement in statute.

Perhaps the key thing on the devolution front is whether the limits on the legislative competence of the devolved legislatures, which explicitly provide that they cannot violate EU law, are going to be removed by the Great Repeal Bill as part of removing all references to EU law from the



HOUSE OF COMMONS

UK's domestic legal system. If those references are removed or sought to be removed by the Great Repeal Bill, I think it is clear to say that consent would be triggered, on the common understanding of the convention, albeit not that enforced by the courts.

Professor Catherine Barnard: I have nothing to add.

Q23 **Chair:** Okay. First, I would just make a general observation about colleagues not in this room. Colleagues in this room love scrutiny—that is why they are part of this Committee. That is very much the case. We have some of the most awkward, difficult people in Parliament in this place. The Whips cannot bear them.

My colleagues will say, "We demand scrutiny. We demand the Executive respects Parliament." The problem is that the Government know full well that they can break that resolve very quickly. A few SI Committees—Delegated Legislation Committees—and a few late nights and everybody will be saying, "What the hell is going on here? We've got to get back. We have other things to do. There are TV studios to be visited and envelopes to be opened."

What I picked up from you is this: this can be a short and fairly straightforward Bill. The question that Government and Parliament have to decide is what new delegated powers a Government will seek and which of those powers we are willing to give them. That is the really big question that we need to answer, or that we need to start a dialogue with the Government about.

There are some awkward so-and-sos here, who would be very happy, I suspect, to go through potentially thousands and thousands of SIs, looking for the really politically important ones. This is my final question to you. What does a sifting Committee look like? Is it a joint Committee with the Lords? Is it a Committee of the Lords and a separate Committee in the House? I think that that sifting Committee is going to be absolutely critical to this whole thing, so that the House of Commons feels that it has some oversight but we do not have hundreds of colleagues sucking their teeth because they are being asked to do that oversight on everything. I will start with you, Professor Barnard.

Professor Catherine Barnard: You ought to be sitting here, really, and answering your own question.

Chair: I am sorry if I asked and answered the question—I apologise.

Sir Edward Leigh: It is what we do all the time.

Professor Catherine Barnard: It was terrific. It is an excellent question. I would go back one stage. You have absolutely hit the nail on the head. In reality, there needs to be a balance between what can be done by Parliament and what can be done by statutory instrument. The intermediary question is what you put in the Great Repeal Bill in terms of the control over the use of those SIs.

Chair: So where the balance is.



HOUSE OF COMMONS

Professor Catherine Barnard: Yes, where the balance is and which procedures are going to be used to govern the use of the SIs that are there, and whether there are different procedures for different delegated powers. Perhaps there will be a lighter touch procedure for some of the more uncontroversial things, but powers that might go way beyond Brexit day might demand a more detailed scrutiny. So my first point is what you actually put in the Bill itself to control the Executive, in terms of the future use of those delegated powers.

In respect of the sifting Committee, it is going to be a big job. I am conscious that your time is limited, whether it be through constituency matters or the demands of the TV studios. Therefore, it would seem sensible to have a Joint Committee of the Lords and Commons so that you can look at those things. Of course, your secretariat will be important there in flagging up the ones that may already have been pre-sifted to identify those that are particularly controversial.

Professor Michael Dougan: I would make two suggestions. The first is to be very clear about the parameters: what will be the purposes, the scope, the nature and the limits of the delegated powers that you are willing to give to the Government? That will very clearly set the tone for what the Government think they can get away with and what they think they cannot.

Secondly, draw upon a very broad range of expertise. I suspect that what you would find, if you had 50 of us sitting in front of you from employment law, environmental law, consumer law and company law, that many of the more specialist lawyers could say quite quickly what they think the key measures are in their particular fields of interest. I do not think you need to reinvent the wheel when it comes to knowing what is important in the legal system. I think there are lots of people out there who can help you do that. I think a broad range of expertise to feed in to your sifting process would be very valuable indeed.

Chair: That is a very useful suggestion—it really is. Last but not least, Dr Gordon. I am not sure we are going to have any more questions after this.

Dr Mike Gordon: There are a few things to consider. Briefly, it is the age-old debate between whether you engage existing processes for the scrutiny of statutory instruments that perhaps have acquired experience and sort of ability over time, or create something entirely new. I think that will be a tension. It was interesting that in the evidence you have received from the Lords Committee, they did not necessarily offer a view. They seemed to assume that they would be engaged in some significant way in this. The scale of this will be immense.

The second thing is that that procedure, scrutiny and detail will be really important. What we know is that whether a statutory instrument is subject to the negative resolution process or the affirmative process does not tend to matter, in the sense that statutory instruments do not tend to get voted down. The process of doing the scrutiny will therefore be the crucial thing,



HOUSE OF COMMONS

rather than focusing too much on the end result. That will be important, as Professor Barnard says, but do not underestimate the process.

The final point will be how exactly you deal with the traditional distinction between technical matters and substantive policy issues. That is often engaged in the scrutiny of statutory instruments. The Joint Committee that exists at the moment tends to deal with technical, legal, scope of powers issues, versus the formerly merits-based Committee of the House of Lords, which is now the Secondary Legislation Scrutiny Committee. Would a Committee be doing both those jobs? Would you see it as one rather than the other? I suspect that it might be a bit of both, if you are going to create a new Committee for the purposes of Brexit, given the scale.

Chair: I think that this is one of the major issues that this Committee is going to have to advise the Government on. Colleagues, you have been extremely thoughtful and concise in your questioning. Our panel has been authoritative in its responses, and I think we should let Patrick get to a bathroom to wipe that bit of dust off his forehead. It looks magnificent. It stands out beautifully. Thank you all for coming. Patrick, thank you for your questioning. Everyone, have a happy afternoon.