

# Committee on Exiting the European Union

## Oral evidence: The European Union (Withdrawal) Bill, HC 373

Thursday 26 October 2017

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Members present: Hilary Benn (Chair); Mr Peter Bone; Joanna Cherry; Stephen Crabb; Mr Jonathan Djanogly; Peter Grant; Wera Hobhouse; Stephen Kinnock; Jeremy Lefroy; Seema Malhotra; Mr Pat McFadden; Stephen Timms; Mr John Whittingdale; Sammy Wilson.

Questions 157 - 257

### Witnesses

: Mr Steve Baker MP, Parliamentary Under Secretary of State, Department for Exiting the European Union; Mr Robin Walker MP, Parliamentary Under Secretary of State, Department for Exiting the European Union.

### Examination of witnesses

Witnesses: Mr Steve Baker MP and Mr Robin Walker MP.

Q157 **Chair:** Can I extend a very warm welcome to Steve Baker and Robin Walker? We have been blessed this week; we have had a full set of DExEU Ministers in the space of two days, and we are very much looking forward to your evidence today.

Can I just begin by asking a point of clarification about the evidence that we received yesterday from the Secretary of State on this question of the timing of the vote, which obviously we have been discussing in the House this morning with the urgent question, but has a great bearing on the withdrawal Bill? He told us, "It is no secret that the way the Union makes its decisions tends to be at the 59th minute of the 11th hour of the 11th day, and so on. That is precisely what I would expect to happen here".

That is what he said to us. It would just assist the Committee if we were to understand whether that is, in fact, the position—that the



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Government expect it to run to the wire—or is your hope still that this could be done before the 59th minute of the 11th hour?

**Mr Baker:** Mr Benn, thank you very much for having us along. I know we are both very glad to be here. It is my first appearance before this Committee, so it is a great pleasure.

**Chair:** You are especially welcome for that reason.

**Mr Baker:** I would take you up on the second point. It is our hope that we will conclude the agreements necessary in good time for ratification, in a way that would meet with both our expectations in the UK and with the European Parliament's. Michel Barnier has said, as I expect you know, that he hopes to get the deal agreed by October 2018, and we share that aim.

Q158 **Chair:** It is your aim. Is it also your expectation that it will be in time?

**Mr Baker:** Given that Michel Barnier and we agree that we would like to get the deal done in good time by October, I would hope and expect that we will do just that.

Q159 **Chair:** Good. Can you tell us why the Government are not proposing to deal with the implementation of the withdrawal agreement by way of a separate Act of Parliament, but are proposing in this Bill to take the powers to do that?

**Mr Baker:** The purpose of the withdrawal agreement powers in this Bill is to make sure that everyone can have confidence that we have the capacity to deliver a withdrawal agreement by exit day. As you know, these powers cannot be used after exit day, but they allow us to show to everyone in the UK and in the EU that we will be able to deliver a withdrawal agreement by exit day.

Q160 **Chair:** Indeed, that is what the Bill seeks to do. The question that I asked was why the Government have decided to deal with the part that is the implementation of the withdrawal agreement, for which there are specific powers in the Bill, in the Bill as opposed to through a separate Act of Parliament? What was the thinking behind that decision?

**Mr Baker:** Our view at this point is that it is a matter of time. It is about the imperative to deliver by exit day, so it is a matter of being able to deliver the certainty that the statute book will be in the right shape by exit day.

Q161 **Chair:** You are saying that you do not think it would be possible to do that in time if the withdrawal agreement were implemented by a separate Act of Parliament? Is that the Government's position?

**Mr Baker:** Further to our earlier conversation, we know that we are in the midst of a withdrawal agreement negotiation, so, of course, elements of what we will need to do would currently be speculative.



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Our current thinking is that we need these powers in order to ensure that we will have implemented the withdrawal agreement by exit day. That is where we need to be, but as we have said before, if we need to bring forward further legislation, of course we would do so, as I hope you would expect.

Q162 **Chair:** You refer to “exit day”, and we have taken evidence as a Committee where it has been put to us that the wording of the Bill would make it possible for there to be different exit days for different purposes. Can you confirm that that is, indeed, a correct interpretation?

**Mr Baker:** That is the correct interpretation.

Q163 **Chair:** That is the correct interpretation. That is very helpful. Thank you.

On the nature of the vote, which has occupied a certain amount of attention over the last 24 hours, are you willing to put the commitment to that on the face of the Bill? Are you willing to put the undertakings that have been given at the Dispatch Box on the face of the Bill?

**Mr Baker:** At this point, we are not willing to engage in that conversation prior to Committee stage. As the Secretary of State said earlier, we have given those assurances at the Dispatch Box, and I hope you will not mind me saying that I did watch Sir Keir at the Procedure Committee yesterday, where he said, “I do not doubt assurances that are given at the Dispatch Box”. He said that in the spirit of good will, which I welcomed.

He did, of course, did go on to explain that what matters is what is in the law, and I would agree with him, but at this point we know that we have given a commitment that goes beyond the strict requirements of CRAG, and we would, of course, expect to fulfil the commitment we have given.

Q164 **Chair:** You will have heard, during the second reading debate, a lot of members saying that there needs to be some kind of sifting mechanism to determine what degree of scrutiny is appropriate for the many, many regulations that the Bill proposes the Government will be able to put in place to deal with this whole process. I know the Government are still thinking about it, but do you see any merit in having a sifting mechanism to determine different levels of scrutiny for different types of regulations?

**Mr Baker:** Mr Chairman, as you will know, there is a great deal of consensus around this Bill. There is consensus around the idea that we need to convert EU law into UK law, and I think there is a developing consensus that, in order to meet the imperative of delivering by exit day, there is a place for using statutory instruments to do so.



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We have put forward scrutiny mechanisms, as you know, plus the triggers and so forth, and the exemplary list of potential deficiencies that we would need to correct, but we are aware that Parliament is calling very strongly for a sifting committee. We are looking at what we could do. I have to say, this is about the balance between delivering the imperative of a functioning statute book on exit day, which I hope all parliamentarians would support, and satisfying Parliament that there has been satisfactory scrutiny.

Q165 **Chair:** Is your concern that a sifting mechanism might create delay?

**Mr Baker:** Yes. One of the processes that has been proposed amounts to a kind of super-affirmative, and we believe that that would not allow sufficient time to pass the necessary legislation.

Q166 **Chair:** The Bill contains a number of safeguards. Take, for instance, Clause 8(3), which says, "Regulations under this section may not (a) make retrospective provision, (b) create a relevant criminal offence", and Ministers made reference to that and said, "Look, you do not have to worry. It is not going to enable those things to happen".

Could you then explain why, in Clause 9, it says, "Regulations under this section may make any provision that could be made by an Act of Parliament (including modifying this Act)", because if by way of regulations you could modify this Act—i.e. the EU (Withdrawal) Bill—once it became legislation, am I correct in saying that it would technically be possible for the Government, by regulation, to amend the safeguards that they have prayed in aid as a reason why the Act itself should be passed?

**Mr Baker:** It is a matter of fact, as is stated on the Bill, that it may make a provision including modifying the Act, but I would point out first of all that any such provision would, of course, trigger an affirmative procedure in the House.

The other thing I would draw you back to, rather earlier, deals with deficiencies. The first subsection of Section 7 requires us only to correct deficiencies that arise as a result of our withdrawal, so that is a very clear restraint on what we may do. We may only correct deficiencies or failures of the law to operate effectively that arise as a result of our withdrawal. The purpose of that subsection to which you refer, "including modifying the Act", is simply to ensure that, in the event that it is necessary, this Bill, or in due course Act, itself is able to comply with any provisions of the withdrawal agreement, which as you realise are not yet known.

Q167 **Chair:** Indeed. In other words, would it be fair to say that that power could not be used, for instance, to create a relevant criminal offence, because that would not—it seems to me—come within your definition of rectifying a failure to transpose the law?



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**Mr Baker:** That is the case, yes. I have absolutely no expectation of putting before the House a statutory instrument along the lines you describe that would do that. This is a power to ensure that this Act complies—in due course, should it become an Act, Parliament willing—with the withdrawal agreement.

After yesterday's experience, I am rather reluctant to engage in any kind of speculation on what may or may not be possible, but one might imagine that if Parliament were, for example, to choose to retain the general principles of EU law as a cause of action, if something were to come up in the course of the withdrawal agreement that meant we had to make a change relating to the general principles of EU law as a cause of action, it would be necessary to change the Act.

That is just one example, and I state very plainly that it is a speculative example to assist the Committee. However, at this stage, of course, we have not negotiated our withdrawal, and when we have negotiated a withdrawal agreement, we will be able to explain to Parliament what we are asking Parliament to approve.

**Chair:** That is very helpful. Thank you very much indeed.

Q168 **Mr Whittingdale:** This Committee has been working apace since the return of Parliament in order to get as much work done as we can before the start of the Committee stage of the Bill. It now appears we perhaps need not have worked quite so hard. Can you give us any indication of when you think the Committee stage will begin?

**Mr Baker:** It was announced today, Mr Whittingdale. The first day of Committee will be Tuesday 14 November.

Q169 **Mr Whittingdale:** That is straight after we come back. Was it announced how long the Committee stage will last?

**Mr Baker:** The first two days were announced as the Tuesday and the Wednesday, and beyond that business will be announced in the usual way.

Q170 **Mr Whittingdale:** How many days do you anticipate?

**Mr Baker:** It is an eight-day Committee stage, so you are guaranteed eight days.

Q171 **Mr Whittingdale:** Can you perhaps give us an outline of what you think the consequences would be if the Bill did not pass?

**Mr Baker:** The first thing to say, in answering that, is that this Bill is about how we leave. It is about delivering certainty and continuity in the law as we leave the European Union. It is not about whether. We triggered Article 50, and we will as a consequence leave the European Union in accordance with Article 50 of the Lisbon treaty.



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If this Bill were not to pass, or if it were to pass in a way that defeated its main purpose of delivering a functioning statute book on exit day, there would be holes in the statute book, which of course, at this position, I would not be able to define for you, because it would remain to be seen what the shortcomings were in the Act and where we landed. The result would be that the statute book would not function as intended, and I feel sure that both Houses of Parliament will want to avoid such circumstances.

**Mr Walker:** I would only add that it would also cause significant uncertainty with regards to the frameworks that exist within the United Kingdom, so it is very important that the Bill goes forward with the engagement of all the devolved Administrations, so that we can ensure that we have certainty and stability at every level.

Q172 **Mr Whittingdale:** Once the Bill is passed, in a sense, the work begins after that. Have you made any estimate yet of the number of statutory instruments that will be required to be passed before exit day?

**Mr Baker:** We continue to rely on the estimate we have provided of 800 to 1,000 statutory instruments. As time advances and the work continues, we become increasingly confident that that is the correct number, and of course, once we have progressed further down the path, we will have an ever-clearer idea, particularly as we negotiate our withdrawal. 800 to 1,000 is our expectation, which is a far lower number than some very early estimates from outside the House.

Q173 **Mr Whittingdale:** When would you want to have those passed?

**Mr Baker:** We need to get on and pass those instruments in an orderly way, in a well-scheduled way, but we need to get on with them at the earliest moment.

Q174 **Mr Whittingdale:** If there was an enhanced scrutiny process of some kind, would you be able to pass them?

**Mr Baker:** I would expect, if there were an enhanced scrutiny procedure that added undue delay, that we would end up with holes in the statute book. That is my expectation, but obviously, at the moment, there are a number of unknowns. There would be a substantial risk of failing to deliver a working statute book by exit day if the procedures involved were too time-consuming.

Q175 **Mr Whittingdale:** Clearly, that would be very damaging. In order to avoid that, whatever scrutiny method is eventually decided by Parliament, we will need to pass those statutory instruments, and if it requires Parliament to sit all night, five days a week, would the Government intend to do that?

**Mr Baker:** Mr Whittingdale, it is not for me to determine such a matter, if you will forgive me, but it is fair to say that, if the nation's



best interest required that Parliament passed certain instruments, we would have to ask parliamentarians to agree to do just that.

Just to zoom out slightly, we are only proposing to use procedures that are well-established in the House for scrutiny of secondary legislation. Of course, there is a conversation to be had about the adequacy of that scrutiny, and we are having that conversation, but we are not proposing to take unprecedented powers. We are proposing to use powers that the House has approved of in the past, and we very much hope that the House will allow us to use these powers to ensure the statute book works.

Q176 **Jeremy Lefroy:** As a follow-up to John's question, I therefore take it that the Government are quite prepared to ask Parliament to cancel or curtail recesses in 2018-19, in order to ensure that business gets through, given the volume of it?

**Mr Baker:** It would be going too far, Mr Lefroy, for me to agree to that. I feel sure that all parliamentarians are committed to parliamentary democracy and the rule of law. After all, that is why we are here, and that is why we are having this very conversation about this Bill, and I would hope that if it proves necessary, parliamentarians will make the right choices in order to deliver a working statute book in any event.

Q177 **Wera Hobhouse:** Would it be fair to say, from what you have just said, that you prioritise speed over scrutiny?

**Mr Baker:** No, not at all. Our priority is to deliver a working statute book in a way that meets with public and parliamentary satisfaction that we have done it well.

I have to say to the Committee that I am expecting—I will put it as simply as this—a majority of these statutory instruments to objectively merit only the negative procedure, because they will be really technical changes, changing references to institutions. That is my expectation, and I remind people who may be concerned about this that we can only rectify deficiencies in EU law that would otherwise arise from our withdrawal. We are committed to not making any major policy changes through this legislation. We will only make those changes that are appropriate to ensure that the law functions as it should.

Q178 **Peter Grant:** Good afternoon, gentlemen. Can I first of all pick up on Wera's question? From the answers you gave a few minutes ago, it is perfectly clear that you are not prepared to allow anything to stand in the way of having what you described as a properly functioning statute book on the day that we leave the European Union. Does that not implicitly mean that, regardless of how unhappy Parliament may be about some of the detail, regardless of how unhappy we might be about some of the statutory instruments you bring forward, if it is a choice between going ahead without proper parliamentary scrutiny and



not having the statute book in place, the Government's position is that the statute book will be in place, and if there is not enough time for parliamentary scrutiny, that is too bad? Is that the position?

**Mr Baker:** I do not accept that for one moment, Mr Grant. We are proposing to use procedures that will allow all these instruments to be before Parliament, whether they go through on the affirmative or the negative procedure. This is a democracy. Those of us who campaigned to leave the EU did so because of our great belief in parliamentary democracy. That is the overriding concern of, I think, most of my Conservative colleagues who campaigned to leave, and it is our intention to ensure that we work with Parliament to deliver the objective.

**Mr Walker:** It is very important to note that the objective is not to make changes here. The objective is to keep things working in the same way. If this were a piece of legislation that was suggesting sweeping and dramatic changes, it could well be that the process of scrutiny could take a very, very long period of time, but, when the objective is to protect the existing working of the law, that is a lot less controversial than it might otherwise be.

Q179 **Peter Grant:** Is it not the case that negative procedure means that it goes ahead? I think it has been once in the last 30 years that a negative procedure proposal has not gone ahead. Affirmative procedure means that Parliament gets a choice: take exactly what the Government are proposing, or take nothing. Affirmative procedure does not usually allow for any amendments as the legislation passes through. That is the case, is it not?

**Mr Baker:** It is the case, as you have just set out, to the best of my knowledge, that the affirmative procedure gives Parliament a vote, but I would say to you that we are acutely conscious of the extent of scrutiny throughout this. The central argument about this Bill now is scrutiny, and we will be exquisitely careful to ensure that what we put before Parliament is in a fit state.

When I gave evidence to the Procedure Committee with the Leader of the House, she was explaining that we accept, in the past, statutory instruments, for a long time, did not meet the quality standards that perhaps they ought. One of the desirable side-effects of going through this process is that we are dramatically improving both the scheduling of statutory instruments and their quality. We are committed to improving the explanatory memoranda and so on.

One of the side-effects of this process will be that we dramatically improve the scrutiny of secondary legislation, and I would be very pleased about that. I have blogged about my deliberate scrutiny of statutory instruments. If one were to trawl through the record, one would find that I have spoken far more often in those Committees than the average, so I have a record of taking this scrutiny very seriously,



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and the Government will ensure that we put fit statutory instruments before Parliament.

- Q180 **Peter Grant:** Thank you, but the fact remains that the Bill, in its present form, will give Ministers the authority to do things that would usually require an Act of Parliament without having to go through the full parliamentary process. Can I look at one specific example? Can you tell me what part of the Bill, as it is presently worded, would prevent a UK Minister from using those powers to overturn a decision of one of the devolved Governments, or even to strike down or amend an Act of one of the devolved Parliaments? What part of the Bill actually prevents that from happening?

**Mr Baker:** Section 7(1): "A Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate (a) any failure of retained EU law to operate effectively, or (b) any other deficiency in retained EU law arising from the withdrawal of the UK from the EU". I hope you will forgive me for saying that I cannot see how the scenario that you have just sketched would be possible when we are operating under that profound constraint on what we can do.

- Q181 **Peter Grant:** Who decides what is arising from withdrawal from the EU, and how widely would that be interpreted?

**Mr Baker:** We will have to take those decisions, but we will explain to Parliament in the explanatory memoranda what the original EU law was doing, why we are changing it, and why we are making the decisions that we have.

**Mr Walker:** I would also point out that the legislation that the devolved Administrations have passed already exists within the frameworks of EU law. There is nothing in this legislation that alters that balance. What it does instead is to preserve that, and to create in the structure of the clause the ability to delegate further powers to devolved Administrations as they return through orders in council. There is no question of existing powers being taken away as part of this, or interference in the laws that exist already under a shared framework.

- Q182 **Peter Grant:** Let me take this scenario a bit further. It is possible—you might not think it is likely, but it is possible—that one of the unintended consequences of leaving the EU is some kind of disruption to the UK energy market. The Government may then decide that the existing legislation is no longer operating properly, because it allows the Scottish Parliament to prohibit fracking in Scotland, and the UK Government thinks that the UK's energy needs cannot be adequately met as a result of leaving the European Union without fracking in Scotland. Does the Bill as it stands just now allow the UK Government to interpret that, as it will then be, as giving them the power to overturn that ban and insist on fracking being permitted in Scotland,



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despite the fact that the ban has been supported by the Scottish Parliament?

**Mr Walker:** No, I do not believe it does. I think the existing frameworks of devolution are respected by the Bill. It does not intrude on those areas where the Scottish Parliament has already been able to take decisions, and, in that respect, I would not see any change as a result of the design of this legislation.

Q183 **Peter Grant:** Do the Government intend to amend the part that gives the power to amend any Act to say "except the Acts that set up the devolved Parliaments in Scotland, Wales, and Northern Ireland"? You will still be retaining the power to amend those Acts.

**Mr Walker:** Clearly, the detail of the Bill in Clauses 10 and 11 sets out where the Government are able to take action, but that action will be taken working with the devolved Administrations, and it is something that also empowers the devolved Administrations to correct their own law. It does not change the balance of competences, and that is the crucial point. What we are not talking about here is beginning to intervene in areas of devolved law that are currently in the competence of devolved Administrations.

Q184 **Peter Grant:** I will move on very quickly, because I know the time is short. One other issue I wanted to raise is the transition period that the Government seem to be keen to talk about, if not yet to commit to. What is the legal basis for a transition period within the EU treaties?

**Mr Baker:** This Bill is not about the transition period. This Bill is about how we leave the European Union and get our statute book ready for exit day. Its purpose is to deliver certainty and continuity as we leave. Its purpose is not to implement the implementation period. As I have said before, if we find we need to bring forward additional legislation, we will do so.

Q185 **Peter Grant:** One of the most contentious parts of the Bill is the removal of the Charter of Fundamental Rights from domestic legislation. The Government's argument appears to be that nobody's rights or interests will be damaged by removing the charter from domestic legislation. Can you tell me whose rights or interests will be damaged if you leave it in?

**Mr Baker:** Mr Grant, the thing about the charter is, as I hope you know, that it did not create any new rights. It was intended to catalogue the rights that arose through EU legislation, which we will be bringing into UK law. Because the charter is only effective when institutions are operating within the scope of EU law, we believe it is not necessary to bring it into UK law.

Although, of course, it sounds a very grand and effective instrument, it is not the only instrument, as you will know, in the UK's human rights framework. The Human Rights Act, implementing the European



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convention, is very important. I am glad we committed to it, but this is a piece of legislation that has had an interesting journey. I think it was once said that it would have no more force than the *Beano*, if I recall correctly, and now we are having a row about it.

This is an opportunity to simplify our human rights framework, and I would refer members to the report of the European Scrutiny Committee on this subject, subtitled *A State of Confusion*, when it looked at how various parts of the frameworks overlapped with one another. It is right that we leave behind the charter, and that we continue to rely on the Human Rights Act and the convention.

Q186 **Peter Grant:** With respect, Minister, that is not the question I asked. The question I asked was: whose rights or interests would be damaged if Parliament agreed to amend the Bill so that the charter was left as part of domestic law? Can you think of anybody whose rights would be damaged—just briefly, yes or no?

**Mr Baker:** If you were to read the report that I have just referred you to, you would see that the current human rights framework has areas of confusion, and this is an opportunity to ensure that we protect human rights while simplifying those areas of confusion.

Q187 **Chair:** Can I just ask you, Mr Baker, whether I heard you correctly in saying to Peter Grant that, when it comes to the transitional arrangements, this Bill would not be used to implement those and you would require separate legislation? Is that what you said?

**Mr Baker:** That is our position, yes. This Bill is about delivering a functioning statute book on exit day.

Q188 **Chair:** That is extremely interesting, because if that is the case, if you are going to require a separate piece of legislation to implement any transitional arrangements, does it not rather undermine the argument that you put earlier: that having a separate Bill to deal with the whole withdrawal agreement—of which the transitional arrangements would be part—would not really work in terms of time? You have just accepted that you will need separate legislation for that. Why should that not also deal, for instance, with the divorce settlement and any framework agreement on future relationship, if you are going to have the Bill anyway?

**Mr Baker:** You make a very interesting point, Mr Benn, which is well-made and heard, and we will consider the implications of what you have said.

**Chair:** Now, that sounds like a very, very interesting answer, for which I am profoundly grateful.

Q189 **Joanna Cherry:** Could I ask you to look at Clause 7(6) of the Bill, please, Ministers? You see, Mr Walker has just said that there is no question of taking existing powers away from the devolved



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Administrations by way of delegated legislation, but you will see if you look at Clause 7(6), whereas the Northern Ireland Act is specifically protected from change by statutory instruments, neither the Scotland Act nor the Wales Act is specifically protected.

If it is your intention not to take any existing powers away from the devolved Administrations, will you agree to the amendments put forward jointly by the Scottish and Welsh Administrations to include the Scotland Act and the Wales Act in Clause 7(6), so they are protected from amendment by delegated legislation under this clause?

**Mr Walker:** Obviously, we are not in this session able to pre-empt discussion at the Committee stage of the Bill, but the structure of the Bill sets out on the face of the Bill where we see the amendments being necessary to the respective Acts, so as to make very clear that we are seeking to protect the devolution settlement as far as it exists. I understand that the distinction with regards to the Northern Ireland Act is really to preserve the elements relating to the implementation of the Belfast agreement, rather than any other element, but of course, we will be looking very seriously at all the amendments that are being put forward during Committee stage, and we will be responding to them in detail at that stage.

Q190 **Joanna Cherry:** Would you agree with me that, as the Bill stands, there is no prohibition upon a UK Government Minister altering the Scotland Act or the Wales Act by delegated legislation in which neither the Scottish Parliament nor the Welsh Assembly will have any say whatsoever, and the House of Commons will have very little say?

**Mr Baker:** I am sorry if I sound like a stuck record, but Section 7(1) requires us only to correct deficiencies that would arise through our withdrawal.

Q191 **Joanna Cherry:** Yes, but you have already told us that it is you who will decide whether or not your actions fall within that section.

**Mr Baker:** Of course, we will be held accountable. We will explain what we do. The instruments will come before Parliament one way or another. Sometimes, people's capacity to create circumstances that would allow something to be snuck through is completely at odds with the experience I now find while I am within government. It is fanciful to suggest that we would in any way be sneaking through such a change.

Q192 **Joanna Cherry:** I just want to pursue this very briefly. You see, the Scots were told by the United Kingdom Government recently that they had the most powerful devolved Parliament in the world. Are you aware of any other devolved Parliament in the world whose founding legislation can be altered by statutory instrument of the parent Parliament, with no say of the lower Parliament whatsoever?

**Mr Walker:** It is very clear that that is not the intention of this Bill. The intention of this Bill is to respect and protect the existing



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devolution settlement, and that is why we set out in detail the elements in the schedule—the second part of Schedule 3, I believe—where we see there are necessary amendments to the Scotland, Wales and Northern Ireland Acts, so that those can be fully scrutinised and fully examined as part of this process. This is not a question of changing legislative competence. It is absolutely one of preserving the existing frameworks that exist between us.

**Q193 Joanna Cherry:** Are you aware of any other setup in the world where that can happen?

**Mr Walker:** I am not a world expert on constitutional law. I am not going to attempt to answer that question.

**Mr Baker:** I do not think either of us is accepting the premise of your question.

**Joanna Cherry:** It is what the Bill says, Minister. It is what the Bill says.

**Mr Baker:** The Bill says that we can only correct deficiencies that arise out of our withdrawal from the European Union, and I am struggling to understand how a deficiency could arise from the EU that would create the circumstances that you suggest.

**Joanna Cherry:** David Mundell, the Scottish Secretary, has drawn up a list of 111 powers that come into contention for UK frameworks, and they include many areas that are currently wholly devolved under the Scotland Act: for example, justice, agriculture and fisheries.

**Mr Walker:** In some of those areas you have just mentioned, particularly agriculture and fisheries, there are also shared frameworks under which we are operating now. We want to have a constructive conversation with the devolved Administrations, which is already underway—the First Secretary of State is leading the JMC process to do this—to discuss where shared frameworks will need to be maintained as they exist at the moment in the European structure, and where shared frameworks will not be necessary, so that those powers will be able to go on to the devolved Administrations. In that respect, it is very important that this Bill provides the means for doing that. It provides the orders in council mechanism for releasing those powers.

This is a process that needs to go along beside the Bill. I think it is very positive that the JMC(EN) that took place on 16 October has come out with a shared view between the devolved Governments and the UK as to where shared frameworks will be required. I hope that work can move forward very quickly, so we can reassure you on this point that there is absolutely no intention to restrict; rather, the opposite. The intention and the objective of this Bill will be to increase the power of each of the devolved Administrations.

**Q194 Stephen Crabb:** I understand the reference to the Belfast agreement



with respect to the Northern Ireland devolution framework. If you are content that the underlying legislation for Northern Irish devolution should not be touched, why are you treating the underlying legislation for Welsh and Scottish devolution differently in this Bill? I do not understand that.

**Mr Walker:** I do not think we really are. Across the whole range of legislation, there are references and provisions that will not make sense when we leave the EU. This Bill, through the second part of that schedule, goes through—specifically, on the face of the Bill—those areas where we think the existing devolution legislation might need to be changed in order to meet that point.

It maintains a correcting power for the Wales Act and the Scotland Act, which is limited to only correcting deficiencies and is provided as a contingency arrangement to prevent gaps appearing in the statute books. Because the Northern Ireland Act is the main statutory manifestation of the Belfast agreement, and agreed by the UK Government and the Irish Government, on that basis, should the Act require further correction, it would have to be by primary legislation.

Q195 **Stephen Crabb:** What are the specific fears that you have in mind as to why you are reserving this power in the legislation, without necessarily the consent of the devolved Administrations, to change the underlying Acts? Are these theoretical risks, where you are just building in safeguards, or is there a specific fear that you have in mind that you want to mitigate?

**Mr Walker:** This is more about building in safeguards, but it is also something that can be unlocked and progressed through moving forward on the discussion of common frameworks, and agreeing between us where common frameworks are, and are not, going to be required. Of course, some of the powers we are talking about relate to the withdrawal agreement, and it may be that that will have an impact on this process. We need to bear that in mind as we move forward, but we have been very clear throughout our negotiations with the EU that our commitment to the Belfast agreement in all its parts, and to fully implementing it, is non-negotiable as part of this. Therefore, we have to make sure that that is reflected in the legislative process.

Q196 **Jeremy Lefroy:** Following on from Stephen, further to the agreements and discussions of 16 October, would it not be sensible to have a binding agreement with the devolved Administrations, in parallel with the passing of this Bill, which makes it quite clear what is expected of Westminster and the devolved Administrations in respect of those areas that are either contentious or being discussed, so as to clearly set out that what will be done in respect of devolved Administrations' powers, as this goes through and afterwards?

**Mr Walker:** It is a good thing that those discussions are underway about where there are shared frameworks required. The Welsh



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Government have acknowledged that there will need to be shared frameworks in certain places, and reaching agreement on that will absolutely be beneficial.

Of course, we need to make sure that we have the flexibility to deliver on that with regards to the different outcomes that this Bill is required to meet: the potential different outcomes of a withdrawal agreement and so forth. When you say “binding agreement”, the extent to which this can be precisely defined at this stage is somewhat limited. What we should absolutely seek to do, though, is reach an agreement on this. That is exactly the process that is already underway, and that is a very constructive process. It has started well. Clearly, it needs to make further process, and I would like to see more detail on that in the coming months.

**Q197 Jeremy Lefroy:** Would you accept, Minister, that having that kind of agreement would give much more confidence to the devolved Administrations that their concerns about how powers may, hypothetically, be used will be allayed?

**Mr Walker:** Absolutely, yes. That is why we and the Cabinet Office are engaging very constructively to build that confidence and that understanding. That is a very important part of this process. Of course, it is not part of the legislative process that we are talking about here; it is running alongside it, but the sooner we can reach agreement on those issues, the better for all parties concerned. We should not forget, of course, that this is also an important piece of legislation for empowering the devolved Administrations to deliver on the working of their own statute books. That is something that we are very keen to do.

**Q198 Mr McFadden:** Following on from the question Stephen Crabb was asking a minute ago, can you just set out for us in what way Section 7(6), Schedule 7, to which it refers, and the associated schedules that are part of all this limit the capacity to change anything arising from the Good Friday agreement, in contrast to how the Bill deals with the other devolved Administrations?

**Mr Walker:** I think this is the point that Joanna was making. It is only to the extent that there are powers to use secondary legislation, purely within the limitations of Clause 7, on the Scotland and Wales Act, which we are saying we would not use on the Northern Ireland Act, because of the fact that that is something that was agreed between the parties. If there were necessary changes to that Act, we would have to bring them forward as primary legislation, so as to reassure that this in no way contravened the arrangements under the Belfast agreement.

**Q199 Mr McFadden:** Is the effect of these clauses relating to Northern Ireland that any changes to the Good Friday agreement could not be made under this Bill, and would have to be made by primary



legislation? Is that your intention?

**Mr Walker:** Yes, and let us be clear here that we repeatedly stated—and are very happy to state again—that we have absolutely no intention to make any changes to the Good Friday agreement. It is not something that we envisage, but it is an additional reassurance, if you like, that that power to act by secondary legislation does not apply to the Northern Ireland Act, because we recognise that that is something that is agreed between the parties.

Q200 **Sammy Wilson:** On the concerns that have been expressed around how much scope this gives to Ministers, apart from Clause 7(1), likely deficiencies are listed in subsection 2, which gives a flavour of where you would be going to if you are looking at deficiencies. Then, of course, subsection 6 of Clause 7 also says what you may not do—impose taxes, et cetera. If the concerns remain, what additional assurances do you feel, from the talks you have already had with those who are opposing this particular part of the Bill, need to be given, given that you have outlined the scope of any changes, listed eight deficiencies and then listed things that you cannot do? Are there any other things that have arisen during discussions that you feel need to be included in this?

**Mr Baker:** Of course, we have already had a canter around the question of the sifting committee that has arisen, which we are considering very carefully, and you will be aware of the trigger conditions, which are in Schedule 7. We think we are asking for reasonable measures to deliver a working statute book by exit day, making no major changes to policy, to ensure that people face—broadly, insofar as it is possible—the same law the day after exit as they faced the day before exit. I think what we are asking for is reasonable and is right, and we look forward to working with Parliament in Committee stage to deliver a working Bill.

Q201 **Sammy Wilson:** What would happen if, given those assurances—and there are lots of assurances given in Clause 7—there is still not an acceptance by the devolved Administrations, which have to give legislative consent to this Bill? In the case of the Northern Ireland Assembly, that is no longer going to be the case because we do not have an Assembly, but, if the Scottish Parliament and Welsh Assembly do not give legislative consent to it, what steps can the Government take to progress this Bill?

**Mr Walker:** You are absolutely right. We are seeking legislative consent, because we recognise that this legislation touches on areas of devolved power, and we want to be very clear that we are seeking to work with the devolved Administrations on this. By the end of this process, there will be a real incentive for all the devolved Administrations and assemblies—and I hope, sincerely, that there will be a Northern Irish Executive in place, and that the Northern Irish



Assembly will be functioning—to get consent. That would be in all of our interests.

The process that I have talked about in terms of the JMC, and the discussions underway being led by the Cabinet Office, to reach agreement on common frameworks that need to be protected, but also where they are not needing to be protected, will be able to reassure each of the devolved Administrations and assemblies that their powers will be increased through this process. That is one that we need to pursue with regard to getting consent from every part of the United Kingdom. That is absolutely the scenario that we are focused on.

- Q202 **Sammy Wilson:** Would you have any difficulty giving assurance that these powers will not be held indefinitely by the UK Parliament by including in the legislation a sunset clause, whereby, once you had worked out through primary legislation, et cetera, what powers needed to be retained at Westminster and what would be needed to have a common market across the United Kingdom, they would be time-limited as to when a decision would be made on what powers went back to local Administrations?

**Mr Walker:** I would draw your attention to the fact that the timetable on which we envisage reaching agreement on these things is much faster than any of the existing sunset clauses within this Bill. It is something that we would like to make rapid progress with. We have had a meeting of the JMC, in which common, shared principles have been agreed. There is technical work now going on to take that forward and look at the areas where they may not be necessary. I would hope that we can deliver on that in a timescale that will mean this debate about sunset clauses will be irrelevant.

- Q203 **Stephen Timms:** I wanted to go back to the question you were talking about a few minutes ago, about the Charter of Fundamental Rights not being incorporated into UK law. I understand the case that Mr Baker made that rather generalised affirmations of that kind do not fit very comfortably in UK law, but I wanted to ask you about some of the practical problems that we are being told could arise from the charter not being incorporated.

We took evidence last week from Dr Charlotte O'Brien, senior lecturer at York Law School, and I will just read to you from what she said. She said, "The explicit exclusion of the charter is problematic for a number of reasons". "I did an approximate count and found that there were 248 cases in the courts of England and Wales that cited the charter, 17 in Northern Ireland, 14 in Scotland". "That is a lot of cases that have to be read differently and it is not clear how they are to be read differently". Can you comment on those potential practical difficulties that will arise if the charter is not in UK law anymore?

**Mr Baker:** For cases going forward, we believe that there are domestic causes of action that can be relied upon in place of the charter: in



particular, the Human Rights Act. In relation to the Walker case, I have some illustrations of other causes of action, if you would like me to provide them. I would have to look very carefully and take specialist advice on the particular point of what it would mean. I hope you will understand that it happens that I have not had the opportunity to look at the professor's evidence, but I would undertake to write to the Committee with a response to those points.

**Q204 Stephen Timms:** It would be very helpful if you would do that, and if you could provide us with those examples that you have.

Can I ask you about one particular worry here, which is about data protection? It has been put to us that the edifice of data protection law in the UK is built on the foundation stone of the affirmation in Article 8 of the charter that everyone has the right for their personal data to be protected. The worry is that it is unclear what the impact of removing that foundation stone will be on that edifice. Nobody can quite predict what is going to happen.

Of course, there is the added dimension here that we will want to secure a declaration from the Commission that our data protection arrangements in the UK are adequate, in order that we can carry on communicating personal data between the UK and the other countries of the EU. Can I ask you two things on this? First of all, do you agree that it is absolutely essential that we obtain this adequacy agreement from the Commission? Secondly, do you accept that omitting Article 8 from UK law is likely to make that harder?

**Mr Baker:** On the first point, it is in both sides' mutual interests to have a data adequacy agreement. As I am sure you know, we will be implementing the relevant directive in UK law before we leave, beginning from a position of having implemented EU law on data protection. Given that it is in all of our interests to secure data adequacy, I would have thought that we would be able to proceed quickly, in our mutual interests, to secure a data adequacy agreement.

**Q205 Stephen Timms:** You agree that it is essential that we do.

**Mr Baker:** We must be ready in all circumstances to leave the European Union, as I explained in the adjournment debate we had the other day. It is our intention to secure a high-quality agreement on our withdrawal and our future relationship, and of course we would like that to cover data adequacy. We believe that it is in all of our interests; indeed, various things have been said on the other side of the waters that show it is in the interests of our negotiating partners. I expect it to be delivered, and it is important to all of us.

**Mr Walker:** The data paper that we published over the summer made very clear that this is an area where we feel there is huge mutual interest in discussing it. One thing that is repeatedly brought up with us from our contact with European member states and institutions is that they understand the importance of data arrangements being in



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place for security co-operation, and the Prime Minister has made very clear that our commitment to security is non-negotiable. It is something that we will want to continue in any case.

This is certainly something where we see there being a very strong interest from both sides of the table in reaching a sensible conclusion. Along with the approach that this Bill takes to writing European law into place, it will allow the jurisprudence to be taken into account up until the point of exit, which partly addresses your point on data.

**Q206 Stephen Timms:** Yes. A concern has been put to us by industry—and I am sure it has been put to you as well—that removing that foundation stone from the law creates some uncertainty.

**Mr Baker:** I return to what I said earlier: the charter is intended to catalogue rights that arise out of other EU law. As I am well aware of the amendment that you have tabled, I would like to give you a full answer in the event that we reach your amendment.

**Q207 Stephen Timms:** I am reassured by that. I fear that my amendment may not take a large chunk of the debating time that we have, but I certainly welcome any response you are able to make. I would just make the point that the schedule in the Bill makes clear that general principles would not be grounds for challenging potentially inadequate data protection laws, and that is where we could be vulnerable in our aims—which we all share—to achieve this adequacy agreement.

Could I finally raise a slightly different point? The precautionary principle is in UK law, not because of the charter, but because of the treaty. Will that be retained in UK law after we leave the European Union?

**Mr Baker:** If I can draw your attention to Schedule 8 of the Bill, paragraph 25, on page 57, this is “General transitional, transitory and saving provision”, “Continuation of existing Acts et cetera”, at 25(1), “Anything done”. This is a maximalist approach to carrying over EU law. The purpose of this Bill, as we have not ceased saying, is to deliver certainty and continuity, to ensure—insofar as it is possible—that people face the same laws the day after we leave as they faced the day before, so these things will be carried over.

**Q208 Stephen Timms:** The precautionary principle will still be in UK law.

**Mr Baker:** That is my expectation, as a consequence of this Bill.

**Q209 Chair:** If that is the case, on page 24 and 25 of the explanatory memorandum, you have listed, as you said, “The Government considers that the following TFEU articles contain directly effective rights which would be converted into domestic law”, and there is a whole list of them, but it does not include the article of the TFEU that relates to the precautionary principle, which from memory—and I will stand corrected—is Article 191. Given the answer you have just given



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to Mr Timms, why is that not referred to in the explanatory memorandum, if that is the list of things the Government think will be moved across?

**Mr Baker:** Mr Benn, I will have to write to you with an explanation.

Q210 **Chair:** That would be very helpful. Secondly, you referred to a data adequacy agreement. Now, my understanding—and I may be completely wrong—is that a data adequacy decision is a regulatory decision of the Commission in respect of a third country, deciding whether that third country's way of handling data means that the EU can agree to it holding data on EU citizens. Are you saying, by using the word "agreement", that you think that regulatory function of the Commission could be superseded by an agreement between the UK and the 27 member states that there would be a data adequacy agreement, and therefore the Commission could not subsequently say, "Well, actually, we do not think your rules are up to scratch"?

**Mr Baker:** I am saying that we need to ensure the free flow of data, and we need to negotiate that in the course of the remaining period of the Article 50 negotiations. These things will be a matter for negotiation.

**Mr Walker:** I think our data paper makes clear that we would like to explore arrangements that could be put in place between ourselves and the EU to put the data arrangements on, perhaps, a firmer footing than they have been in some other cases. That is clearly something for the negotiations; it is not something that we can legislate for at this stage.

**Chair:** That is exceedingly interesting. I do not know whether the Commission shares that view that it is happy to have its regulatory functions, as laid out, overridden by an agreement, but anyway we will come to that.

Q211 **Wera Hobhouse:** To get this all into my mind, we all understand, for example, on data sharing, that it is absolutely vital that we get a deal. Would any of that be part of a no-deal scenario, or in the light of all this is the talk about a no-deal scenario absolute nonsense?

**Mr Baker:** No. I will revert to what we have said before: it is our intention to secure a deep and special partnership between us. You can see, as a result of the Florence speech, that there is a new momentum to talks. It has been clearly stated that our European partners are moving on to their internal preparations to talk about the future relationship, and we are confident that we will secure an agreement between us.

Q212 **Stephen Crabb:** Do you agree that, in converting EU law into UK law, there is something of a governance gap being left, particularly with respect to enforcement of environmental law, whereby oversight of the government and public sector compliance with obligations moves from



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the EU Commission to some unspecified new UK body? Do you agree with that argument that we as a Committee have heard?

**Mr Walker:** It is a commitment from the Government, as you know, to be the first Government ever to improve the environment and to leave the environment in a better state, so we want to have an extremely robust system of protection to do that. Part of the implementation of this Bill will be about making sure that things work in the same way the day after exiting the European Union as they did before, so there are clearly decisions that have to be taken as part of that, to ensure that people have the appropriate mechanisms for raising those concerns domestically, instead of at the European level.

However, of course, it is for Parliament to make sure that, in the future, it sets out the frameworks for how we deliver on our commitment to be the greenest Government ever, and to improve our environment for the next generation. We are already seeing some actions being taken in that respect by our colleagues at Defra, but I certainly would not be surprised to see more in the years to come.

Q213 **Stephen Crabb:** You do not envisage some new body being set up, one step removed from government, that takes a view on the UK Government's interpretation of its environmental laws.

**Mr Baker:** I met the Secretary of State for Environment, Food and Rural Affairs yesterday, and we have begun a conversation on these matters. I feel sure that he will be in a position to make announcements at the relevant moment.

Q214 **Stephen Crabb:** Could we just come back to the issue of the implementation period? Do you envisage changes to retained EU law being made during the implementation period?

**Mr Baker:** No.

Q215 **Stephen Crabb:** Even if EU law evolves during the period of implementation, you do not see the need for UK law to keep in line with that.

**Mr Baker:** The Prime Minister has been clear in what she sketched about the implementation period, but it is a matter for negotiation. This Bill is intended to take law as it stands, as you know, the day before we exit, and make it work for the day after, but it does not include "keep pace" powers, and we do not intend that it should.

Q216 **Stephen Crabb:** You do not envisage that any obligations placed on us as part of an implementation agreement would mean the UK having to accept new EU laws, and amendments to current laws.

**Mr Baker:** It is a matter to be negotiated.

Q217 **Stephen Crabb:** If it turns out through the negotiation that that is the case, what will be the mechanism for amending the EU law that has



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been converted into UK law, given that the European Communities Act no longer applies?

**Mr Baker:** At the risk of frustrating you, Mr Crabb, I have to say what I said before: if it is necessary to bring forward additional legislation, we will do so.

Q218 **Stephen Kinnock:** Good afternoon, gentlemen. I just wanted to probe a little further on this issue of governance gap and regulatory functions. It is clear that we are talking today about the transposition of legislation, but, in essence, legislation is not worth the paper it is written on if it is not backed up by regulation, enforcement, monitoring, and review. There are approximately 50 EU agencies, in addition to the European Commission, that carry out these roles, ranging from the medicines agency to chemicals and food safety. Have you done an assessment, looking across those functions? How many of those functions will require UK parallel institutions in order to continue the proper enforcement and regulation of these laws and regulations?

**Mr Baker:** We have done such an assessment. As part of my work on preparedness, we look at a range of scenarios, as you will know, and departments look at their planning for both a deal and a no-deal scenario, and indeed some additional scenarios. They are working through what they would need to do. However, there are, of course, a number of parallel UK agencies already. If you look at the trigger conditions in Schedule 7, you can see some of the things that we intend to do, because we have set them out in the Bill: establishing a public authority in the UK, et cetera. We are not in a position today to say how many new authorities might need to be established, but we are working through with departments their plans.

Q219 **Stephen Kinnock:** Have you done any sense of a costing: what it would cost to establish this array of institutions, either establishing new ones, or significantly boosting the capacity because they would have to be taking on a lot more responsibility, clearly, because of our departure from the European Union?

**Mr Baker:** As we announced, the Treasury has allocated £250 million of new money towards preparedness, including for no deal, as I said in the adjournment debate, but these matters are all taken up in departmental plans.

Q220 **Stephen Kinnock:** We heard evidence, just burrowing down a little on some of the specifics of this: for example, a senior official from the Environment Agency was telling us that they feel there is a real gap in terms of oversight of the Government's role, and a feeling that the Government thought that judicial review would be a sufficient means of oversight and accountability. Do you think that judicial review can be used as a regulatory function?



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**Mr Baker:** I am glad that you have raised judicial review, because, that is one of the remedies that is available in relation to the statutory instruments that we have been discussing throughout. Can I refer you to the answer that I gave to Mr Crabb some minutes ago? I have had a meeting with the Secretary of State for Environment, Food and Rural Affairs, and I know that he is taking this particular issue extremely seriously.

Q221 **Stephen Kinnock:** We had something, also, from the head of consumer affairs at Which?, saying that the British consumer enforcement regime is already stretched to breaking point. Do you feel that departure from the European Union will put additional and unfair levels of pressure on the regime as it currently stands?

**Mr Walker:** A lot of the evidence I have heard from Which?, among others, is that the British consumer legal regime goes a lot further than the European Union's in many areas already. Part of the reason for it being so busy is that we have some of the best-developed consumer protection laws anywhere in the EU. Certainly, it is an issue that we take extremely seriously. You will see consumers featured right at the front of our White Paper, right at the beginning of this process, and we want to make sure through this piece of legislation that we are protecting consumer rights all the way along.

Q222 **Stephen Kinnock:** I have one final question: would you feel it acceptable as a principle that, given the current institutions and agencies that protect standards and enable the proper functioning of the market, as currently carried out in partnership between British and EU agencies, as we leave the European Union, no function that is required due to the transfer of EU legislation into UK legislation should be carried out until such time that there is a UK agency that has equivalent capacity and capability to carry out those functions as they are currently carried out? Would you agree that that should be embedded into the withdrawal Bill as a basic principle of good governance?

**Mr Baker:** The fundamental principle of this Bill is to carry forward the legislation that we have, and to ensure that the statute book and the agencies that implement it continue to function in the way that people would expect the day after we leave the European Union. That is the fundamental purpose of the Bill, and departments are working through ensuring that we are able to deliver that.

Q223 **Mr Djanogly:** Could I just step back to Mr Baker's contention that the nature of most of these 800 or so proposed SIs is going to be uncontentious? The example that Mr Baker gave was that most of these SIs would be changing EU institutions to UK ones. That was the example that he gave.

**Mr Baker:** That was an example; I hope I did not say "most", but I referenced it.



**Q224 Mr Djanogly:** You gave it as an example, and I was just thinking about that. Is that decision not, in itself, policy-related? For instance, should the powers that come out of the EU institution go to a Minister, or go to another public body? Can we simply say that these things are not contentious?

**Mr Baker:** We are very aware of that argument. I will put on the record a couple of examples in the delegated powers memorandum, selecting them at random: "In paragraph 2, for 'Commission' substitute 'Secretary of State', and (b) in paragraphs"—several numbers—"for 'Agency' substitute 'Executive'". These are the sorts of things that we envisage, which would be largely technical changes.

Of course, you are right that, in some areas where a function is repatriated, there is space for debate about where it goes, and we, in the course of the Committee stage, will set out how we believe we can reassure colleagues on some of these points.

**Q225 Mr Djanogly:** If I could then go to the withdrawal agreement and the financial assessment aspect of it, the Committee heard that Clause 9 regulations might not be enough to give parliamentary authority for paying the financial settlement. As one of our experts, Sir Stephen Laws, explained, "You have provisions in primary legislation that give rise to expenditure but the tradition is that expenditure is authorised under supply procedure".

He went on to say that he was unsure whether the settlement would be paid out of those, or whether it was going to be paid out of the consolidated fund, as EU contributions are currently paid. Do the Government intend to use the Clause 9 order-making powers to pay financial settlements, or will there be an appropriation Bill?

**Mr Baker:** It is our intention to bring forward the appropriate legislative mechanism to pay the bill in a proper manner, once we have agreed it. I should say that a figure remains to be agreed; it is a matter for negotiations, but once we have agreed it, we will ensure that the proper legislative mechanism is in place.

**Q226 Mr Djanogly:** You have not yet decided what that will be.

**Mr Baker:** That is correct.

**Q227 Seema Malhotra:** Thank you, Mr Walker and Mr Baker, for joining our Committee today. The Secretary of State told us yesterday that he was expecting shortly to publish the list of the economic impact assessments and they would be going to the Lords. Are you aware of whether they have gone to the Lords yet? We did inquire with the Lords today, but I do not think that they had arrived.

**Mr Walker:** I know as much as you do in terms of what the Secretary of State said yesterday. I know that there is a list, and as I think he said it has been signed off to go, so it should be with both your Committees before too long, I suspect.



Q228 **Seema Malhotra:** Can I ask, on the impact assessments, when they were all completed?

**Mr Baker:** We have an evolving view of these matters, and it would be wrong to suggest there was any sort of end state to them. The point here is, in any negotiation, it is necessary to have a broad and deep understanding of all parties' positions, and that is what we are developing.

Q229 **Seema Malhotra:** That is interesting. In the freedom of information request response, it suggested that the impact assessments had been largely completed. I can understand that you may want to keep some areas under some review. Could I ask, for the reports that have been completed, whether you have both read them?

**Mr Baker:** I have read a very great amount of material, day in and day out, as I am sure my colleague has. As I say, we have a developing view of everyone's interests, on our side and on the other side. We keep all this information under review and refer to it as required.

Q230 **Seema Malhotra:** You have obviously expressed, as the department, the view that publishing would not be in the interests of supporting the negotiations for the best deal. Others have argued that keeping Parliament and the public in the dark is not the best way to support the debate on those issues. It sounds to me like both of you have not fully read those reports that you say cannot be published because they could jeopardise the negotiations.

**Mr Baker:** Ms Malhotra, you will understand that, in the roles that we both have, we must ruthlessly prioritise our time. My first duty is this legislation, which currently has approaching 400 amendments tabled to it, which must be delivered on time, in a functioning manner, with over 50 new clauses. That is my first priority. My second priority is the cross-government delivery work.

Q231 **Seema Malhotra:** I understand. You have answered the question very effectively. Could I ask, Minister Walker, if you have read these reports?

**Mr Walker:** We have been constantly kept up to date with the latest analysis on all these things, and it is very important that we should continue to do that. As you have said, Parliament voted clearly that we would not be putting information in the public domain that could be prejudicial to the negotiating position. I do not think that that is something that we are going to change. We will be sharing the list of sectors with you, and we will continue to work closely with industry and with all parts of the United Kingdom to make sure that we have the best approach to the negotiations as we move forward.

Q232 **Seema Malhotra:** That I do appreciate, and you will appreciate that I am not asking for the publication. I am simply asking whether you



have read the reports that you say cannot be published.

**Mr Baker:** Let me give you an absolutely direct answer. Some of that material, I have read in great detail. I have not read all the documents that we have. "All the documents that we have" is a very, very large amount of material, and I am scrupulously, ruthlessly focused on my priorities: the Bill and the delivery across government.

Q233 **Seema Malhotra:** Who has read the reports in order to decide that they cannot be published because they could be detrimental to the negotiation?

**Mr Baker:** We have teams of economists and policy civil servants who are fully abreast of our analysis, but I can tell you that this analysis is material to the negotiations, and that we, Parliament, have voted twice not to disclose material that could damage those negotiations.

Q234 **Seema Malhotra:** It seems like you are suggesting that civil servants have read the reports, but Ministers have not read those full reports, and civil servants are making those decisions. I just want it clarified, because I know there is not much time. Have the findings been shared with the Cabinet?

**Mr Walker:** Where this work is going on, it is going on between our department, which is a co-ordinating department, and other government departments. The decision on whether or not material will be published, as the Secretary of State said in his evidence, is a collective one. That is a decision that analysis that could be pertinent to the negotiations in this sense will not be published, following the vote of the House of Commons to that extent. The key point here is that, of course, our approach should be informed of analysis; of course, that is something we should keep on discussing within government, and that analysis is ongoing.

Q235 **Seema Malhotra:** I do understand that, Mr Walker. I am just asking this point because the Secretary of State acknowledged yesterday that, if you have 57 sectors, Brexit under different scenarios may impact areas that other Secretaries of State have responsibility for and they may be interested in those findings. I am just trying to clarify, because I am sure you would be aware of ministerial correspondence going from one department to another, whether or not the findings have been shared with other Secretaries of State.

**Mr Walker:** As I have said, many of those findings have come from those other departments. Our department is a co-ordinating department, drawing them together. I do not think it is a question of just sharing; it is a question of receiving and working alongside other departments across government.

Q236 **Seema Malhotra:** Could I just ask one final question? Has anything that you have read in the reports influenced your thinking about what might be required during the transition period, or potentially in the



final architecture of our new relationship with the European Union, in order to make sure that we do our best to safeguard prosperity, the economy and the needs of businesses and different industries?

**Mr Walker:** All the way through this process, the Government's approach has been informed by its analysis, and the Prime Minister's ambition to get a deep and special partnership with the European Union that allows frictionless trade between us and allows access to each other's markets reflects the fact that that is also our estimation of what is in the best interests, not only of the UK economy, but also the EU.

The implementation period is certainly something where we hear from business their interest in certainty and stability. We put that at the heart of our approach, and that is why she set out in her Lancaster House speech the need for an implementation period, and then expanded on that in the Florence speech. It is very clear that that is something we would like to be able to make progress on in the negotiations. I hope that the decision taken by the European Council to begin preparations on their side to enable that will mean that we can move forward at pace. As the Secretary of State said, if we can do that by the first quarter of next year, that would be welcome from all sides.

Q237 **Seema Malhotra:** I have one final point. It sounds to me from what you have said that the Prime Minister, obviously informing her own thinking on the needs of the economy, will have seen and read the reports.

**Mr Walker:** I am not party to what the Prime Minister sees, but I am sure that she is extremely well-informed.

Q238 **Seema Malhotra:** You will not be aware of whether she has read them, even.

**Mr Walker:** I am sure that the Prime Minister is kept very well-informed.

Q239 **Chair:** On the point about all this preparatory work, let us take an example. I presume—because people are very thorough—that taking the example of the European Medicines Agency, if we are no longer party to the European Medicines Agency, we would need to establish our own principle for certifying and approving medicines. Presumably, this work has calculated how many staff would have to be taken on, and what the cost would be to do this. Do you think revealing the number of staff that would be required, and the cost, would be damaging to our position in the negotiations? It is factual information about what would be required to replace a function that the European Union had done on behalf of all the 28 member states that would no longer happen.



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**Mr Baker:** Throughout this process, all this information must be managed with exquisite care, in order to best support the UK's national interest in the course of the negotiations. For example, I was brought to the Floor of the House to answer an adjournment debate on the no-deal circumstances. You will know that I was scrupulously careful to point out, again and again, that we wish to secure a deep and special partnership.

We are very conscious that everything we release is influential in the negotiations and the thinking of our negotiating partners. It is with that in mind that all the information we consider, and consider releasing, is put through that filter. If we were to go down that route, for any of those particular areas of interest, we would have to think what signals it sent to our negotiating partners and consider it in the context of the negotiation.

Q240 **Chair:** That is a wonderful answer, if I may say so, but it is pretty obvious to anybody that unless we continue to participate in a number of these bodies, if there are functions that they currently do on our behalf, we are going to have to replace them ourselves. It is not exactly a secret to those with whom we are negotiating that we would need to take on our own staff, and it would have a cost. Can I just ask one more time: how exactly would that damage our negotiations, if it was pretty obvious already that that would be a consequence of us not continuing to participate in that pan-European body?

**Mr Baker:** It would send signals that we do not wish to send about our willingness to participate in institutions, or otherwise. Some of these positions have been set out. Secretaries of State wrote regarding the European Medicines Agency, as you know, and we wish to have a close collaboration with them, which we need to negotiate.

With that in mind, I do not think it is in our interests to start sending signals that suggest that we are strongly preparing alternatives. We are, across government, preparing our plans, but we wish to continue to land what the Prime Minister has set out in her Florence speech, which is that deep and special partnership, a good quality free trade agreement and co-operation across a wide range of other areas, and to land them in good time.

Q241 **Chair:** To be clear, the work is being done, the numbers are being calculated and so on, but they are not going to be published.

**Mr Baker:** That is the case. The work is being done, but insofar as things will be published, as I said earlier, it will be through the filter of always prioritising the relevance of that material to our negotiation.

Q242 **Stephen Kinnock:** I just wanted to follow up on that very point. I am trying to understand how this plays into the Government's negotiating strategy. The Government have made it very clear that they need to demonstrate to the world that they are ready for a no-deal scenario in



order to maximise leverage in these negotiations.

Surely, therefore, the more bullish the Government can look—better prepared, with public information: “We are ready for the transfer of institutional functions; we are ready to sort out the Port of Dover; we are ready to take on all the additional costs and complications that are coming”—the better? Is that not precisely the message that the Government need to send to the world, in order to have the leverage that you want through the no-deal strategy? In that case, the failure to publish and the failure to be open about these facts is, in fact, by definition, weakening the Government’s negotiating strategy.

**Mr Walker:** Before Steve speaks, I think he will be too modest to say this, but I would draw your attention to his response to the adjournment debate the other day, which I think struck exactly the balance we are talking about: to show that we are prepared, but not necessarily put all the figures and details in the public domain.

Q243 **Stephen Kinnock:** Surely, it is in your interests.

**Mr Baker:** Well, I am very grateful to my honourable friend. I might have to promote him to “right honourable” in my future engagements. The argument that you have set out is one occasionally argued by those who wish to take a more bullish position, but it is not the tone that the Prime Minister wishes to strike. It is ultimately, of course, the Prime Minister’s responsibility to select the tone of these negotiations, and we are both glad to follow her lead.

Q244 **Mr Bone:** This is my opinion on the matter. Over the last few days, there has been a lot of confusion, but also, now, some clarity. I have had the benefit of this Committee, the urgent questions and the Procedure Committee. It is clear that the European Union sees a very simple process. The fact is that we are in an Article 50 situation. The maximum intended time is two years. That is the maximum intended time. The European Union thinks it should be done well within that time, and October of next year seems to be the clear determining factor, so that, after that, there is enough time for things to be ratified.

In the Chamber today, the Secretary of State said, “Well, alright—not October, but November”, so we now know that, if things are not done by November, they are not going to be done in time for March 2019. Do the Ministers agree with the Secretary of State’s analysis—it is always good to agree with your own Secretary of State—that it will be November 2018 by the latest that everything will be done? If that is the case, why can we not put something like that in the Bill, and then say that, if we get to that stage and it has not been done, we are not going to do a deal? That would be complete clarity for everyone.

**Mr Baker:** I think the three of us, Mr Bone, were sitting within a few yards of the Secretary of State and heard what he said. I think, if we were to go back and check the record, the point that he was making was that, if negotiations need to go on a little further than October in



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order to secure the deal that we feel we should be pursuing, he will allow the negotiations to go on a little further.

**Mr Bone:** He said November, Mr Baker.

**Mr Baker:** He used November, which I am interpreting to be “a little longer”, but the point he was making is that we are seeking to deliver a deal. I think he was making the point that he was not willing to agree with the point you are making now, of some sort of arbitrary stake in the ground, beyond which we cannot go. We are going to do what is necessary to have the best possible chance of delivering the right relationship, in all of our mutual interests.

**Mr Walker:** Mr Bone, you are always good at getting your opinion heard in these matters, but, in this case, this Bill and this inquiry are about this piece of legislation, which is not about the negotiations. This is about the legislation that we need to have to make sure our statute book functions the day after we leave the European Union. In that respect, it would not be the appropriate place to make rules and regulations about how the negotiations should take place.

Q245 **Mr Bone:** This Bill, obviously, does deal with the situation as if we do not have a deal, so I do think it is very relevant to this Bill. Clarity is what the country is calling out for. If we could have a very clear date—even if it is November 2018, and Mr Barnier thinks it should be done before October 2018—that everything has to be done, I just think that would help everyone. It would make you guys work a bit harder; it would make the European Union work a bit harder, and we would get the deal done. Why not put it in the Bill?

**Mr Baker:** I am sure you will be the new favourite of both our wives in suggesting that we should work harder. Thank you. The point is that we are trying to deliver a deep and special partnership with the European Union through a complex negotiation. While we wish to deliver the maximum of certainty, it is a fact that we are in a negotiation. We must ask you to bear with us seeking a little flexibility as we go through that process.

**Chair:** Being a Minister is jolly hard work, but it has its joys, including appearing before this Select Committee.

**Mr Baker:** Indeed.

Q246 **Wera Hobhouse:** I find myself, bizarrely, agreeing with Mr Bone. I asked the question to the Secretary of State this morning: would it not be helpful, for the purpose of clarity, to at least set out an expected timetable? Of course, the public, and I am sure we around the table, would be perfectly happy to make some allowances that, where we do not have any control over it, that timetable will change, but there are things that we can effect. Why, for purposes of clarity, does the department not set out a timetable of how we expect the



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decision-making to work?

**Mr Baker:** The key point here is that we are looking forward to the December council, confident in the knowledge that our negotiating partners are doing their own internal preparation to talk about the future relationship. I hope and expect that, once we get through that council and we are talking about our future relations, the degree of clarity that we have will accelerate. I look forward to the new year, and to a new degree of clarity, which should emerge after a successful December council.

Q247 **Chair:** There are just a couple more questions from me. Can I take a specific example, which is air quality legislation? Currently, it is the responsibility of the Commission to oversee the enforcement by member states. It can issue infraction proceedings; it can go to the European Court of Justice. Is it your expectation that this Bill will be used to transfer responsibility? You made reference earlier, Mr Baker, quite properly, to some quite important decisions that will be involved in deciding who takes responsibility for certain functions once we have left. As I understand it, if you decided to pass it, say, to the Environment Agency, you could use this Bill as the mechanism for doing that. Is that correct?

**Mr Baker:** Yes.

Q248 **Chair:** If you wanted to create a new agency, you could not. Is that also correct?

**Mr Baker:** No. If you were to look at the trigger conditions on Schedule 7, you can see that in Schedule 7, subsection 2(a), if we were to establish a public authority in the United Kingdom, that would require the affirmative procedure. It is possible to do it, and it is there as one of the trigger conditions.

Q249 **Chair:** Part of what we are seeking to transfer is the ability to hold people to account. Therefore it will be a question of not just passing responsibility either to the Environment Agency or to a new body, using the affirmative procedure, but giving that body the power to hold the Mayor of London, Leeds City Council or whoever to account for failure to meet the air quality targets. Do you think that the Bill is sufficiently clear about the ability of that agency in those circumstances to have the power to hold people to account, including for the public to have a remedy if they think anybody is not doing their job?

**Mr Baker:** To slightly elaborate on the answers I think I have given twice now, I have had a meeting with the Secretary of State for Environment, Food and Rural Affairs. On this particular point, I would expect him to decide his policy in the usual way, to make the usual announcements and for those to be interrogated by the public. As DExEU, our department is in a sense a secretariat to the rest of government. It is not our job to determine policy for the rest of



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government; it is our job to support that policy development and help to co-ordinate it. It would not be for me to determine that policy, and I look forward to working with the department as it takes things forward.

- Q250 **Chair:** My final question relates to the position that the courts are going to find themselves in after we have left. No doubt you will have seen that Lord Neuberger, former President of the Supreme Court, said, if the Government do not “express clearly what the judges should do about decisions of the ECJ after Brexit, or indeed any other topic after Brexit, then the judges will simply have to do their best”. He added that all judges “would hope and expect Parliament to spell out how the judges would approach that sort of issue after Brexit, and to spell it out in a statute”.

I just wondered if you would like to comment on that, because here is a very senior figure saying, in effect, “We do not think the guidance is absolutely clear. That could put us in the position of having to take decisions, including potentially ones that are seen as political, subsequently, and we welcome further guidance in the legislation”. Is that something you are reflecting upon?

**Mr Baker:** It is something that we are reflecting upon. Lord Neuberger is obviously to be taken with the utmost seriousness when he comments on these matters. What I would say from my lay perspective is that we trust our judiciary to know their business when they refer to other courts. One of the aspects of this, for me, is that once we have left the European Union we should be treating the European courts in a similar way—if not the same way—to the judgments of other courts in other countries. To allow our judges to have regard is a perfectly fit thing to do, but other colleagues with specialist expertise in this across government are reflecting on what has been said.

- Q251 **Jeremy Lefroy:** Just going back to the Charter of Fundamental Rights, I tend to concur with those who do not really see why it should not be carried over, given that it was always said that we would carry over the body of law and then be able to deal with things afterwards if we felt that there were inconsistencies. Having heard your answers, would it not be helpful, perhaps, for the Government to provide a detailed memorandum of precisely how every article of the Charter of Fundamental Rights is reflected in existing UK law, or UK law after the withdrawal Bill has gone through?

**Mr Baker:** Mr Lefroy, I am in the possession of a draft of that document, and I will undertake that, when it is in the right state, we will make it available.

- Q252 **Jeremy Lefroy:** That is very helpful. Thank you very much. If I could move on to citizens’ rights, both UK citizens’ rights who live in the EU and vice versa, last week, the Secretary of State said the negotiations



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had been exploring “creative solutions” in Brussels to reach an agreement on how to incorporate the agreement into UK law, to allow citizens directly to enforce their rights in UK courts. Are you able to give any elaboration on what solutions have been considered?

**Mr Baker:** Forgive me; it has been a long session. Was that in relation to the general principles?

**Jeremy Lefroy:** No, it is about incorporating the rights of citizens.

**Mr Walker:** What we are looking at has regard to a potential withdrawal agreement. It is not something that is likely to be dealt with under the powers that we are discussing today in this Bill. It is something where we need to consider the best way of, first of all, agreeing something, and then the correct vehicle for delivering it.

Q253 **Jeremy Lefroy:** He said that the UK was committed to incorporating the final withdrawal agreement fully into UK law, and would be giving it “direct effect if you like”. Do you know quite what he meant by that?

**Mr Baker:** The Prime Minister, in her speech, set out some measures around this in order to give our negotiating partners reassurance. As we have said before, if it proves necessary to bring forward further legislation, we will do so.

Q254 **Jeremy Lefroy:** Thank you very much for that. We are told that parliamentary sovereignty would imply that no rights within the withdrawal agreement could be made inviolable, because no Parliament could bind its successor. Do you agree with that?

**Mr Baker:** I believe it is a constitutional fact that no Parliament can bind its successor in our system. I think we are all aware of that, but I would observe that we have a long and famous tradition of securing people’s rights, at least extending back to Magna Carta, of which we can be justly proud. I think that our country is the cradle of liberty, in many senses, and I am particularly proud of that. We can be confident that this Parliament will uphold our liberties as we go forward, not least within the context of our other international obligations, like the convention rights.

Q255 **Jeremy Lefroy:** Would we expect those rights to be in primary, rather than secondary, legislation?

**Mr Baker:** We would need to have a conversation in the course of the passage of the Bill about this subject, and in particular the relevance of the Human Rights Act to these particular concerns.

**Mr Walker:** To be clear, we are talking about reaching an agreement and then writing that into law. I would have thought the answer to your question is that it is very likely to be a primary, rather than a secondary, process, but we are ahead of ourselves here. This is something that we need to agree, and we need to agree with the European Union the best mechanism for delivering that across the two



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legal systems of the European Union and the UK. We are pushing forward with that. As the Secretary of State and Prime Minister have said, we are in touching distance of getting an agreement on that, which would be enormously welcome on both sides of the negotiation. That is something that we need to move forward to.

**Q256 Jeremy Lefroy:** How confident are you, on the reciprocal side, for UK citizens who are living in the EU, that their rights will continue to be protected in the same way as we would expect?

**Mr Walker:** That is absolutely our intention, and that is the point of reaching an agreement that works in both directions: it provides the certainty that those rights, and the detail of those rights, will continue to be protected. That is what we are pushing towards, and that is very important, as you say, both for the EU citizens living in the UK and the UK citizens living in the EU. We are straying here into the territory of the negotiations, rather than necessarily this Bill, and it is important to be clear that this is something that we are working on as part of the current negotiations.

**Jeremy Lefroy:** I fully understand that, but I do not think that our citizens or EU citizens see a huge difference between the two. They are all integrated.

**Mr Walker:** I understand.

**Q257 Chair:** I have one very final point, since we were talking about courts. We heard evidence in one of our sessions that suggested it would be possible, if someone thought that the agreement reached, ultimately, between the UK and the 27 was ultra vires, for them to go to the European Court of Justice, and the European Court of Justice, if it so found, would strike down the deal. Is that something that you recognise, legally, is possible—because that is the evidence that we heard—and, secondly, are you prepared for that eventuality, should it transpire?

**Mr Baker:** It is in all of our interests on both sides of the negotiating table to ensure that it does not transpire.

**Chair:** I was aware of that, yes.

**Mr Baker:** It is, of course, a matter of fact that the Court of Justice of the EU adjudicates on European Union law, but these are matters that we consider as we go through the process.

**Chair:** That brings the session to an end. Thank you both very much for coming today, and for giving such full and helpful answers.