

Procedure Committee

Oral evidence: Exiting the European Union: scrutiny of delegated Legislation, HC 386

Wednesday 2 May 2018

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Members present: Mr Charles Walker (Chair); Bob Blackman; Mr Peter Bone; Bambos Charalambous; Sir Christopher Chope; David Evennett; Helen Goodman; Alison Thewliss; Mr William Wragg.

Questions 174-235

Witnesses

I: Rt Hon. Andrea Leadsom MP, Lord President of the Council and Leader of the House of Commons, and Mr Steve Baker MP, Under-Secretary of State for Exiting the European Union.

Examination of witnesses

Witnesses: Andrea Leadsom MP and Mr Steve Baker MP.

Q174 **Chair:** Thank you for coming. You are both quite regular attendees at this Committee. Do you want to make any opening statements, or shall we crack on? We know you're both busy, and we're all busy, so we thought we would just get into the meat of it as quickly as possible. Then we can all be released from here as quickly as possible.

Mr Baker: As you wish, Chair.

Andrea Leadsom: Sounds fine, yes.

Q175 **Chair:** Excellent. My first question—I am fascinated by this. Since the excellent work we did as a Committee, with almost all of our amendments to the European Union (Withdrawal) Bill accepted by Government, the Bill has been to the House of Lords, which has tried to improve on our excellent ideas. One of the things that they would like to see happen is, instead of the sifting committee having 10 days to have a chance to think about SIs, for that to be extended to 15 days. I know there has been push-back on that by our Front Bench in the Lords, but I think the Lords have tabled another set of amendments to make it happen. Could the Government live with 15 days? I suppose that is a slightly unrealistic question, because you might cut the legs off of your Minister in the Lords, but is 15 days something that could be considered?

Mr Baker: We think not, Mr Walker, and I would like to explain why. Obviously, we want to facilitate Parliament carrying out proper scrutiny, but we also have this requirement to get the statute book functioning by exit day. We think that 10 days strikes the right balance. Consider, for example, that if we laid SIs for sifting during the two-week return from the summer recess into the autumn, on the basis of 10 sitting days, sifting would be complete in mid to late October; if we add an extra five days, sifting would not be completed until the end of October at best. We need to make sure that the sifting committee has the right information and the right opportunity to sift, but we think that that is illustrative of the pressure on time that would be imposed by moving to 15 days. I would also say that, with us sitting four days a week, if we have 10 days to sift, that allows two elapsed weeks plus the further two days in the next week. A committee would potentially have the opportunity to look at an instrument twice, for the purpose of considering the procedure that it goes through, so we think that 10 days strikes the right balance between getting the instrument through sifting and getting all the instruments through to correct the statute book.

Q176 **Chair:** On that basis, would the Government consider perhaps having a fixed day in the week when they put forward their SIs, to allow the sifting committee to better plan its work? They wouldn't come on a Monday, a Friday or a Thursday; they would come, let us say, on a Tuesday.

Mr Baker: I am slightly concerned that if we were to lay SIs only on a particular day, that would create a surge of activity always for that day.



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Perhaps a compromise might be to consider whether we laid SIs by a certain day of the week—so that we didn't end up laying them the day before the Committee sat—and any other day of the week would be acceptable. Suppose the Committee sat on a Wednesday, we would always lay SIs by, say, Monday.

Andrea Leadsom: If I may, the key thing that we are trying to achieve here is a fair balance between giving enough time to the sifting committee to look legitimately at whether SIs should move from the negative to the affirmative, and at the same time recognising that there will be quite a significant amount of work to get through in a short period of time. We would like to start before the summer recess, and there will be recesses to take into account. Therefore, of course, we recognise that there is quite a lot of work for us all as a House to get through to ensure that the statute book is fit for purpose at the end of March 2019. It is a case of compromise on all sides. In particular, it would be interesting to know whether you, Mr Walker, think that there could be scope, where the committee does not wish to change a negative SI to an affirmative SI, for notification coming when the decision is taken rather than after 10 days have elapsed, to speed things up. It could work both ways, really, to accommodate the needs of the committee and the need to crack on with the work.

Q177 **Chair:** I am just going to ask two more questions—I think colleagues will want to come in on this—and they are sort of linked. There is a Cabinet pre-scrutiny committee that you will be involved with, Leader of the House, looking at the flow and nature of SIs. Do you expect to work closely with your colleague Mr Baker to ensure that there is as far as possible a smooth flow of SIs throughout the period during which we expect them to come, with very few ending up in the last month when, obviously, you would be able to implement an emergency procedure that would truncate scrutiny?

Andrea Leadsom: If I may, in this Parliament we have significantly improved a lot of the processes around secondary legislation. I think that I raised this with the Procedure Committee when we met the first time, in private. What we have sought to do is to recognise that, in the past, the management of secondary legislation was a bit more ad hoc, so we did end up with these big peaks and troughs—we had big peaks at common commencement days, then a kind of famine of no SIs for a period of time, and quite often SIs would be laid and then withdrawn again, and so on. So what we have sought to do from the beginning of this Parliament is to get a proper forward look at all statutory instruments that are coming through, particularly with Brexit SIs, but with all our domestic business-as-usual SIs as well, so that we can smooth—exactly as you say—the flow of statutory instruments. It is fully our intention to ensure that we don't end up with enormous panic peaks and so on. Obviously, that is our clear intention.

What we have also required of Departments is that they look very carefully at the policy, at the handling; that they have dealt with any potential objections; and that they have considered the drafting

thoroughly, so that we don't get things withdrawn, then having to be re-laid and so on. I think we are in a very strong position. Obviously, it is to a certain extent subject to both the negotiation and the passage of legislation, but I think we have put in place all the steps possible to create a smooth path for SIs.

Q178 Chair: My final question, Leader of the House and Minister, is, who will be the big stick in Government to ensure that Departments are aligned with your twin ambition to get an even flow of SIs? Who will be driving that across Whitehall?

Andrea Leadsom: You could call us a forked stick, I suppose—if you want to know who the big stick is—on the grounds that it is both of us, with Steve from the point of view of Brexit. Certainly part of the new process around statutory instruments has been to appoint in every Department a Minister who is responsible for secondary legislation. All Departments now meet at ministerial level to go through their statutory instruments for the next three months. They meet on a regular basis—most of them are meeting monthly—so there is that oversight. There is a Minister responsible for secondary legislation, and there is also a senior responsible officer in each Department responsible for secondary legislation.

Mr Baker: To reinforce the point made by the Leader of the House, I am already in frequent touch with Ministers about their preparedness, right across Government. I will continue to be in close touch with them, and our officials will continue to look at the exit programme of statutory instruments to ensure that it is as smooth as it plausibly can be.

If I may, I will just pick up on this idea of statutory instruments towards the end. I hope you don't mind if I say that I wouldn't accept that their scrutiny will be truncated. If something comes in under the urgent procedure, it will be made affirmative—that is, it will come into force and then Parliament will have 28 days to choose to vote for those instruments or not. If after 28 days they have not been approved by both Houses, they will be annulled. So I think that there is adequate scrutiny towards the end, but of course we recognise our responsibility for smoothing.

Chair: Now, the batting order—David wants to come in on this. Then we will go to Will, then Helen. David, if it's on this.

Q179 David Evennett: There is a very innovative approach across Government, which is commendable. Obviously, you don't expect there to be delays, but what contingency plans have you got in the event that the laying of an instrument falls behind schedule? Yes, you can liaise with all the other Departments, but what are you going to do if they fall behind?

Mr Baker: We will always prioritise instruments to make sure the most important go first. I do not wish to pre-judge any particular instrument that might find itself coming a little later for any other reason—I wouldn't wish to offend any Department. We will always consider our priorities as this programme goes through. I very much hope we will work with both Houses to make sure things don't fall behind. I wouldn't wish to speculate on the circumstances in which that might happen. I hope that Ministers

will choose the appropriate procedure overwhelmingly and will satisfy the sifting committee, and that both Houses will feel able to approve the instruments. I hope we will be able to get those instruments through.

Q180 **David Evennett:** Good. And are you pretty positive, Leader?

Andrea Leadsom: Yes, I am. Part of the work we have done to prepare for Brexit secondary legislation is that we have very carefully had face-to-face meetings with different Whitehall Departments, urging them to bring forward now any vital statutory instruments that are not time-sensitive to clear the deck and make way so we can focus on the Brexit secondary legislation. I think we are in a good place. We have certainly thought about all the pitfalls, and we are quite clear about our process for getting all that legislation through by the end of March next year.

Q181 **Mr Wragg:** Good afternoon. You have consistently estimated that the number of instruments needed to make changes to legislation as a consequence of the withdrawal Bill is between 800 and 1,000. Is that still the best estimate you have?

Mr Baker: We would still work on the basis of 800 to 1,000, because things can change. I would tell you, Mr Wragg, that at the moment the new information shows that it will be very much closer to 800 than 1,000.

Q182 **Mr Wragg:** So there hasn't been any change to that since it was decided to remove the power to implement the withdrawal agreement by statutory instrument.

Mr Baker: As you know, we will bring forward the withdrawal agreement and the implementation Bill in due course. We are still working on an estimate of 800 and something statutory instruments to fulfil the withdrawal agreement.

Q183 **Mr Wragg:** So it is at the lower end of the prediction.

Mr Baker: It will be at the lower end of the band. That is where our estimates currently are. Conceivably, it could head upwards. As time passes, our estimate becomes more accurate. At the moment, I would expect it to be much closer to 800. I can also tell you that we think that 20% to 30% of those instruments will be on the affirmative procedure.

Chair: And who says this Committee doesn't create headlines? That is breaking news.

Mr Baker: It is, Mr Walker. I especially sought permission to raise these figures.

Andrea Leadsom: He did.

Chair: Fantastic. There you go—wow! Will, have you finished?

Mr Wragg: I have.

Chair: You've just scored massively there.



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Q184 Helen Goodman: I'm just trying to do a bit of arithmetic. It sounds to me as if you are going to be trying to push through these 800 statutory instruments in six months. You have 800 to do—that's 32 a week. It sounds like quite a lot of statutory instruments to me. Do you think we can really do it? Will we be able to scrutinise 32 statutory instruments properly every week for six months?

Mr Baker: Yes, because I expect the rate to be broadly comparable to the normal rate of instruments coming through the House. I also expect the division of affirmative versus negative to be broadly 20% to 30%. Yes, I expect that the House will be able to scrutinise them.

Andrea Leadsom: If I may—

Q185 Helen Goodman: Sorry, I beg your pardon. How many do we do normally?

Andrea Leadsom: I was literally just going to say that. I have the figures here for 2004. I won't bore you with all of them. There were 1,885 in a one-year session. In another year, there were 1,319. In 2009-10, there were only 823. In 2013-14, there were 1,173. In 2014-15, there were 1,378. Given the sorts of numbers we are talking about, this is not out of the ordinary.

Q186 Helen Goodman: Will the Departments be ready, given that the Brexit legislation has been much slower in progressing through the House? It is under that Brexit legislation that we are going to have these Bills. They still have Report stage for the European Union (Withdrawal) Bill. I don't know when we are going to have done it—maybe the end of the month, or maybe even the beginning of June. I don't know what your timetable is for the customs Bill and the international trade Bill. We haven't yet seen an agriculture Bill or an immigration Bill.

Mr Baker: Of course, we have been working with Departments to get ready for all scenarios throughout this period. Therefore, Departments are working to be ready, and I would expect us to begin laying statutory instruments shortly after Royal Assent, so yes, I am confident that Departments will be ready on time.

Andrea Leadsom: The majority of the statutory instruments will emanate from the withdrawal Bill itself. Your timing is not far out: we expect to be able to start laying some of those before the summer recess. The majority will come from the withdrawal Bill. Other Bills coming forward could generate in the low hundreds of statutory instruments, and those will be brought forward. So we are comfortable with the timetable that we have at the moment.

Q187 Helen Goodman: But the agriculture Bill and immigration Bill have not even been introduced. How long do you think that is going to take to get through the House? You have not introduced it, yet you think that you are going to have Royal Assent and be doing the statutory instruments by, say, Christmas. That seems pretty helter-skelter and also not under your control.



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Andrea Leadsom: Each of the Bills for Brexit is coming forward as it needs to, in time to deliver new policy. The withdrawal Bill, as you know, creates the UK statute book once we leave the European Union, in March next year. The other Bills are a matter of policy, so we bring those forward as we need them. The Parliamentary Business and Legislation Committee, which I chair, has had various meetings to discuss the timetabling, the policy, the handling and so on with each of the Bill Ministers, and they will come forward in due course, but as I say, the timetabling is all in line with our expectations.

Q188 **Helen Goodman:** Is there a Bill other than the EU withdrawal Bill that will use this process?

Andrea Leadsom: The sifting committee?

Helen Goodman: Yes.

Andrea Leadsom: No. The EU withdrawal Bill is the Bill that will use the sifting committee.

Q189 **Helen Goodman:** You won't put statutory instruments from other Bills through this process—only the EU withdrawal Bill?

Andrea Leadsom: Only the EU withdrawal Bill. That is what the House has agreed, yes.

Helen Goodman: Okay.

Q190 **Mr Bone:** The timetable you have just given us means that we must be getting the withdrawal Bill back into this House in June, to deal with Lords amendments. Am I right in thinking that?

Andrea Leadsom: Obviously, we cannot second-guess. In the other place, they do not have the same constraints on timetables. But we are of course working to what we expect to happen, and we expect to have the withdrawal Bill back around then.

Q191 **Mr Bone:** If we do not have the SIs starting to come before the summer recess, you will have to have the Act, I assume, in June. We can take it that, when the Lords finish, the Government will not delay bringing those Lords amendments back to this House for ping-pong.

Mr Baker: Mr Bone, I am very keen that we get on with being ready to leave the European Union. As you know, the day is on the face of the Bill; it is 29 March 2019.

Q192 **Mr Bone:** Is that changing, Minister?

Mr Baker: No, it's not, as you know.

Q193 **Mr Bone:** Even if the Lords change it? Have the Lords not—

Mr Baker: They will have the opportunity to look at that section of the Bill, but it is our intention to ask the House of Commons to stick with the settlement we reached during our phase of the passage of the Bill.

Q194 **Mr Bone:** Good. That is breaking news as well: the Government is going to try to reverse the Lords amendments.

Mr Baker: Mr Bone, you would expect me to support the settlement that I saw through in the House of Commons.

Mr Bone: As I do.

Mr Baker: Indeed.

Q195 **Mr Bone:** On the sifting committee, when is it going to be set up?

Andrea Leadsom: The Standing Orders, as you know, are in draft form, and we are certainly looking forward to the findings from this inquiry to inform the final changes. Some changes will be necessary. I gather some proposals have been made and, indeed, an amendment has been put forward, as you will be aware, by the Women and Equalities Select Committee Chair. All those things will need to be considered. We have discussed, as I mentioned to Mr Walker, the possibility—rather than 10 days elapsing before the conclusion can be drawn that there is no objection to a negative instrument—that if a decision is taken, it could be notified earlier to enable us to snaffle back those few days. There could be some changes to the drafts, and those will then be laid as soon as possible once we have Royal Assent.

Q196 **Mr Bone:** May I go back to my question? When are we going to actually set the committee up? I heard all you said about the reason it might be delayed, but to be honest, it is in the power of the Government to bring this motion to the Floor of the House and deal with all the issues about this ridiculous thing of having seven and seven, or whatever it is. All that can be dealt with. It is in your power, so when will we actually have it?

Andrea Leadsom: I can only repeat what I have just said, which is that we are looking forward to hearing the recommendations from this Committee on whether the draft Standing Orders are good to go as far as the Committee is concerned. Some other amendments have been put forward. The Government then need to respond to the Committee's findings. It will all be very quick, but the sifting committee will obviously decide its own terms of reference. It will be a matter for the House to decide the make-up of the committee and so on. The Standing Orders will be finalised as soon as possible, which will depend on the report from this Committee and other inputs.

Q197 **Mr Bone:** If it is not set up, Leader, everything else would just grind to a halt.

Andrea Leadsom: It will be set up. I can absolutely assure you that it will be set up, Mr Bone.

Q198 **Mr Bone:** So, in parliamentary terms, shortly.

Andrea Leadsom: In parliamentary terms? I think I have tried to be very explicit—

David Evennett: Soon.



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Mr Bone: Soon, is it?

Andrea Leadsom: I have tried to be much more explicit than “soon” and have set out exactly what we are waiting to see.

Q199 **Chair:** Can I ask the Minister for Brexit: when do you anticipate—obviously, not to the actual day—the first SI being laid? You have mentioned before the recess, so let us say July. At some point in July we might see the first one. I don’t want to put words into your mouth, but we might see the first SI come out.

Mr Baker: I would like to begin laying SIs shortly after Royal Assent. As the Leader has indicated, that is a moveable feast, but I would like to see the first ones being laid before we have exited June.

Q200 **Chair:** Before we have exited June.

Mr Baker: Yes, if we can get Royal Assent.

Chair: That answers Peter’s question.

Q201 **Mr Bone:** Is that before the end of June?

Mr Baker: If we can.

Q202 **Mr Bone:** This year?

Mr Baker: Mr Bone, as I said a minute ago, I am keen that we get on with it.

Q203 **Chair:** Again, we will not hold you to this, but what year and what month would you expect to see the last one appear?

Mr Baker: I would expect us to get through these SIs in the period up to March ’19.

Q204 **Chair:** So, in nine months?

Mr Baker: Yes. Well—

Helen Goodman: It’s not really, because we have all that time—

Chair: But we might sit for seven days in those nine calendar months.

Q205 **Mr Wragg:** On that point about the amount of work to be done, given the clamour that there was for such additional parliamentary scrutiny, I am sure you will find an army of willing volunteers from Members to man those Committees seven days a week. But in terms of amendment (a)—

Andrea Leadsom: Will has volunteered.

Q206 **Mr Wragg:** I’ve volunteered, yes. In terms of amendment (a) to paragraph (6) of draft Standing Orders whereby it stipulates that there should be no fewer than seven women or seven men, as tabled by the Women and Equalities Committee, can you comment on the irony of its tabling that to this Committee rather than its own?



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Andrea Leadsom: It is a perfectly valid amendment to put forward. Obviously, there are, as you allude to, practical issues around the availability and willingness of Members to sit on those Committees and issues around the other commitments that they have, so I think it will need to be considered. It would certainly be helpful to have comments from this inquiry as to your own views about that.

Mr Wragg: Thank you.

Q207 **Chair:** Sorry, our own views on?

Andrea Leadsom: On whether it would be appropriate to set a hard number of women and men.

Q208 **Chair:** I am not entirely sure it's for this Committee to pass judgment on other Members' amendments, so I might advise the Committee that that amendment will stand and fall on its own merits.

Andrea Leadsom: That's fair enough.

Q209 **Bob Blackman:** I apologise for being slightly late. I was attending an SI Committee on rather an important subject. *[Laughter.]* On the numbers, I want to be clear. I caught some of the questioning and Mr Baker's view on the number of SIs that will be required. Can I clarify whether we are talking about additional SIs to the normal run of Government business? The Leader rightly alluded to the quantity of SIs that generally go through each year. So are we talking about an additional 800 on top of what we get in a normal year, which could almost double the amount that we do in a normal parliamentary year?

Andrea Leadsom: Yes. The low 800s, as the Minister has just alluded to, is for Brexit SIs. As I have also mentioned, what we have been seeking to do in this Parliament is to smooth the flow of statutory instruments, and make clear to Departments that where they have urgent SIs that need to be passed but are not so time-sensitive, they should be bringing them forward now. There has been a good flow of statutory instruments to ensure that we have cleared the decks to make way for Brexit SIs.

Q210 **David Evennett:** And you've been quite successful at that, haven't you?

Andrea Leadsom: Yes, we have. Thank you.

Q211 **Bob Blackman:** Clearly there will be substantial pressure on Members to be involved in these Committees and to oversee this legislation. For Members across the House, this will be a bit of a shock, potentially, in terms of the number of meetings that may need to be held to scrutinise the legislation. I just want to tease out of you what you envisage being additional burdens on Members as a direct result.

Mr Baker: From my point of view, being narrowly—although it seems quite broad most days—responsible for Brexit, we have heard a great plea for scrutiny of what we are doing. We have responded to that plea for scrutiny by, for example, agreeing with the Committee that there should be a sifting committee. I hope that Members would therefore agree with



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us that we should all step to, and attend those Committees with a glad heart, having demanded them.

Q212 **Bob Blackman:** Obviously, the scrutiny level is absolutely right, and I completely agree with you. Equally, the demands on Members' time—I think Whips on both sides were trying to persuade colleagues to attend these different Committees—will potentially be quite challenging, particularly given the days on which these SIs may be held.

Andrea Leadsom: That, of course, will depend on how many the sifting committee decides to make affirmative as opposed to negative. If the normal rough rule of thumb is that 20% to possibly 30% of SIs as a whole are affirmative, and you are looking at the low 800s, you might be looking at around 200 or so. It might be possible to group some of those, as is often the case where there is a group of SIs debated together, or indeed a number of subjects taken under one heading if they are on a very similar subject.

Again, it is not unmanageable. It is neither an extraordinary number nor type of activity for the House, and it should be perfectly manageable.

Q213 **Alison Thewliss:** On the issue of numbers and timescales, we had a bit of a discussion in evidence before about notification to interested parties about SIs that might come up within their particular area of expertise. Has there been any further thinking about how that evidence process from external parties is going to develop?

Andrea Leadsom: As you might be aware, there has been the agreement on the information to be laid alongside statutory instruments. Just for the record, that includes: the good reasons for making the SI, including a statement that the measures in it are a reasonable course of action; a statement on whether it amends, repeals or revokes equalities legislation and, if it does, the effect of each amendment; a statement that Ministers have due regard to the need to eliminate discrimination and so on; explanations of the purpose of the SI; what the law did before exit; why it is being changed and what it will do now, and so on. I will not go into all those details.

There will be a very clear and detailed explanatory memorandum around each SI. The sifting committee may decide that it wishes to consult on certain statutory instruments and that it wishes to make contact with particular organisations for that purpose, or indeed for other bodies in the House to do that. Certainly, the explanatory memorandums will be extremely useful documents. As part of this review of secondary legislation, there has been a significant uptick in training and preparation of officials who are preparing SIs, so they understand what is expected of them.

Q214 **Alison Thewliss:** In terms of any changes that might be required to SIs, say an SI is put out there and organisation X comes back and says, "Actually, this isn't going to work. You've made a technical mistake in there." My understanding is that SIs are unamendable. What kind of mechanism is there for dealing with something like that?



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Mr Baker: We would like to be laying more SIs in draft and will make available more information on that when we can. I hope that the practice of making them available in draft will assist people in that regard.

Q215 **Bambos Charalambous:** I, too, have just come from an SI Committee. I have two concerns. The first is the volume of work that Members will be required to do to get through the SIs. I appreciate there will be a sifting committee, but I wonder if any thought has been given to whether there should be the equivalent of a Bill Committee, but for SIs. There might need to be an element of expertise, and you may have the same people on that Committee—certainly the Ministers and the Opposition parties, who may be there constantly. I wondered if any thought had been given to that, to help speed the process along.

Mr Baker: This one feels above my pay grade. I have not been party to those conversations.

Andrea Leadsom: Early on in this Parliament there were discussions about the merits of a specialist team, or indeed simply a group of people onto whose shoulders this was placed, for example. It was generally felt that, first, as I have just explained, the workload will not be extraordinary. It might be a bit heavier than usual, but it will not be exceptional. Secondly, the types of secondary legislation will be extremely varied, as is the case with normal statutory instruments, across a whole range of different subject areas. Therefore, a particular expertise in a particular subject area is not necessary. Thirdly, as in the normal course of secondary legislation, the aim of all business managers is to ensure that the burden is shared among all Members and not unduly given to one set of people.

Q216 **Bambos Charalambous:** And on prioritising the other SIs that will be coming forward, how would that happen? Would there be somebody who decides whether something is urgent and essential, or would it be down to the Departments to decide? How would that work?

Andrea Leadsom: As I mentioned at the beginning of the hearing, we have significantly changed the proactive way in which we manage secondary legislation. We now have a much better forward look at which statutory instruments are coming along. We have asked Departments to prioritise them. There is now a Minister specifically in charge of secondary legislation in each Department, as well as a senior responsible officer, a senior official in each Department, whose job it is to ensure that if they have something that is going to be urgent but is not due until November, it is brought forward now, if they can. In other words, their job is to make sure the decks are cleared once we get the Brexit secondary legislation.

That has been happening, and we have been bringing forward statutory instruments that are urgent and priority SIs for Departments now. At the same time, we have been looking carefully even at drafts or indications of what statutory instruments will be necessary for Brexit Bills, and urging Departments to bring those forward so we can take a look at them and



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properly prioritise them. Again, that is timetabled in and we feel comfortable with where we are on that.

Q217 Helen Goodman: I think Mr Baker gave a good explanation for why you do not want the number of days that the sifting committee has to go up from 10 to 15, and it is completely reasonable to point out that days is not the same as sitting days. But I am a little bit nervous about this idea of pushing down from 10 days in some circumstances, because if that was to happen, you could have two upshots. One upshot would be that, as Alison Thewliss has just said, outside people who might want to have input into the process could easily miss deadlines. If you are going to have a system, have a system, because that is much easier for everybody to understand.

The other upshot is that it could mean that people's behaviour becomes perverse. If I was on the sifting committee—I will not be, because I am on the Front Bench—and I had 25 different things coming in every week that I had to look at, and somebody said to me, "Can you decide No. 18 quickly, please, Helen?" I would be very inclined to say no to everything, in case I made a mistake. Could I push back on the idea of reducing the 10-day time on an ad hoc basis?

Andrea Leadsom: Of course.

Mr Baker: It would be a matter for the committee to decide, of course. I don't think the Leader of the House is suggesting that the committee would be forced to do it.

Andrea Leadsom: No, I'm not.

Mr Baker: If the committee made a decision on an instrument and chose to release it, that would be helpful to us. The point you make is a very interesting one, which the committee will no doubt consider when it is formed.

Q218 Mr Bone: I think that some of us in this room are on the Panel of Chairs. There is a small group of Members who have to chair these DLs. While there is a bigger pool of MPs to choose from, there is a very limited number of Members on the Panel of Chairs.

There is something that seems to me to be a bit of a waste of time, if we are going to have a lot of SIs. Sometimes when I take a Delegated Legislation Committee, it is over in 10 minutes flat. Others are very important and might go for one and a half hours, but they are exceptionally rare. Is there a method whereby SIs that have the same Minister and shadow Minister could be grouped together, with the same Chairman? Instead of having to start one and a half hours later, because that is what it says, we could start the next SI as soon as the previous one had finished. That would take some planning, because you would have to make sure it is the same Minister, shadow Minister and Committee members, but you could get a lot more SIs done with that Chairman if that was a possibility. I don't know whether that is something you have thought about.



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Mr Baker: That is a very interesting idea, Mr Bone. I hope you won't mind me observing that, given the process we have been through, it would be a bit presumptuous if the Government brought forward instruments and suggested that the House would be able to get through them quickly. I feel that would very quickly be criticised. If such a mechanism were established, it would be for the House to suggest it to the Government, and for the Government to seek to assist the House.

Q219 **Mr Bone:** Yes, absolutely. I don't know how long the SI talk that Members are on today is, but it might be fairly brief. I am not saying that those SIs need to be finished in 10 minutes flat. What I am saying is that if they do finish, why not move on to the next one straight away with an hour and a half protected time, and then if that one finishes, go on to the next one? I don't think that hinders parliamentary scrutiny, and it might be a procedural way to speed things up a bit.

Andrea Leadsom: It is an interesting point. As I mentioned earlier, sometimes when SIs are on a very similar subject, they may be grouped for debate, which is another way to avoid having Members turn up to something that lasts only 10 minutes. There are plenty of useful ways to—

Q220 **Mr Bone:** That does happen, but it is very rare, and you might get two SIs grouped. I am thinking of when it is the same Department.

Andrea Leadsom: We can certainly consider that. As Mr Baker said, it will be for a committee to propose it to the Government, rather than the other way round. He is exactly right that there would be a lot of push-back if the Government started to suggest there was going to be a flow that would potentially keep Members there all afternoon.

Chair: As a member of the Panel of Chairs, like Mr Bone, I would be deeply disappointed if the sifting committee was sending SIs to a Committee that was then dispatching them within five or 10 minutes. The whole purpose of the sifting committee is to identify what is really, really important and needs the House's attention. As Mr Bone rightly suggested, if it is being dispatched in five or 10 minutes, they are perhaps not fulfilling their duty as well as the House might have expected.

Q221 **Mr Bone:** I was actually referring to the 20% that will be affirmative by their nature. Those ones quite often go through pretty quickly.

Andrea Leadsom: They do.

Q222 **Sir Christopher Chope:** Isn't one of the issues the choice of people who serve on these SI Committees? It seems that they invariably mainly comprise people who are PPSs, other holders of Government junior office of one sort or another, or—on the subject of Government patronage—on the Government's side. There are very few of what might be described as independently minded Back Benchers. If you have got a whole lot of—for want of a better expression—Government stooges sitting on the Committee, their objective will be to get out of the Committee Room as soon as possible.

If we judge the activity on the Committees as the most important thing,



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what we should be doing is encouraging people who are not appointed to these Committees to go along, speak and participate—indeed, as I have just done in a Committee that would have gone very short if I hadn't been there as someone who was not appointed to it. May I ask the Leader of the House whether she will ensure and encourage every Member to participate seriously in this process, because it affects all Members of Parliament, not just those who happen to be appointed to a particular SI Committee?

Andrea Leadsom: You make a very good point, Sir Christopher. I certainly remember, particularly as Energy Minister, quite regularly Members who weren't actually on a Bill Committee would turn up to speak and participate, because it was a subject they felt strongly about. So I absolutely agree with you and, just to be clear, it is of course open to any Member to turn up, even if they are not an official member of a Bill Committee, and indeed to speak. There is no restriction on that. I am certainly happy to ensure that it is sufficiently well publicised that Members who are interested may turn up and have their views heard.

Q223 **Chair:** Before we move on, I want to ask Mr Baker a quick question. Mr Baker, when do you expect the powers in the Bill to make SIs to expire? You said that you would expect the SIs to be done in a period of nine months from the date of the first one, but that is different from when the powers in the Bill will expire. Will that be the date at which the sifting committee is no longer required? If there is a transitional period, will the sifting committee in your view be in existence during the transitional period as well?

Mr Baker: Yes. Remember, we are tabling amendments because of Members' concerns in the other place about clause 17, so clause 17 will be sunset at 10 years and will be susceptible to sifting.

Q224 **Chair:** Right. So it could be around for quite a long time.

Mr Baker: It could be around for quite a long time. The Government, as you know, have sought to work constructively with Members of both Houses throughout the passage of the Bill, and we have responded to concerns about clause 17 in that way. So, yes, it could be a committee with a longer life.

Q225 **Bambos Charalambous:** I wanted to ask this earlier. It relates to a point that Alison made about the groups that might want to input into draft SIs. Will there be some sort of forward plan published for the SIs—I don't know if that has been answered already—so that outside organisations can know when an SI is coming up?

Mr Baker: We do not have any plans at the moment to issue such a thing, but the point is well made. I shall certainly reflect on it. But I think it is just worth remembering that we are trying to ensure that the statute book works by exit day and that we are firmly committed—indeed, bound, I can fairly say—to make all policy changes in other primary legislation. These will all be corrections to remedy deficiencies under clause 7. That is what



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we are bound to do, so I hope people will bear with us as we seek to correct deficiencies, knowing that policy changes will be elsewhere.

Chair: I am going to move on. I am so excited that this sifting committee will be around for 10 years because, Committee, we will have to find some innovative things for it to do. We don't want it lying idle for a large part of that 10 years—

David Evennett: Perish the thought!

Chair: What an opportunity for us.

We will finish now. Helen has some questions not necessarily relating to the discussion that we have just completed, but moving on to other topical events.

Q226 **Helen Goodman:** Tangentially. Leader of the House, I wrote to you about the possibility of a sanctions committee, which flowed from the discussions we had on the Sanctions and Anti-Money Laundering Bill. Yesterday, on Report, Richard Benyon made a long speech calling for such a committee. I wondered what further thought you had given to this.

Andrea Leadsom: As I said when we first discussed this, it is a very interesting idea and I absolutely sympathise with why you feel it would be necessary that there be proper parliamentary oversight of sanctions as a particular topic. Having discussed this further with business managers, there is always, obviously, a general reluctance to keep establishing new Select Committees. However, the possibility of having, for example, a sub-committee of the Foreign Affairs and Treasury Committees could be a reasonable way to deal with this, so that you develop some expertise, so that you have got the financial input and so on. There are further discussions to be had. Obviously it is a matter for the House, but I think there is sympathy towards your proposal.

Helen Goodman: Thank you.

Q227 **Mr Bone:** Just on the sifting committee, the news on that has been around for quite a long time. As both Ministers have welcomed it as improving parliamentary scrutiny, would it not be a good idea just to extend it to all delegated legislation?

Andrea Leadsom: No. I think that very specifically the peculiar issues around the withdrawal Bill are that it seeks to make the UK statute book fit for purpose when we leave the EU. Other Brexit Bills are around new policies—policies for the UK having left the European Union.

Q228 **Mr Bone:** Sorry, not Brexit Bills.

Andrea Leadsom: All Bills.

Q229 **Mr Bone:** Yes, to ensure that negative and affirmative instruments are correct. To be honest, I do not think the committee will look at that many. I think it will agree with what the Government have said. If we are



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going to have it, and we are going to pay the Chair and it will sit about, doing a good job and you are keen on it for this particular purpose, why don't we let it just scrutinise all of them? It seems a really good idea of yours.

Andrea Leadsom: Not mine; it this Committee's idea, with which I am delighted to agree in reference to the European Union (Withdrawal) Bill. I think the argument is exactly the same with all other Bills, or indeed all other Brexit Bills. What is different about the European Union (Withdrawal) Bill is that it is seeking to make the UK statute book fit for purpose. There are very great sensitivities right across Parliament with how we go about doing that. The idea of that extra level of scrutiny was one where the Government were very happy to accept that the case was made. Nevertheless, usual parliamentary procedures have scrutiny for every statutory instrument, whether it is negative, affirmative or made affirmative. There is that scrutiny available, and in my opinion the case is not made to change the procedure for all.

Q230 **Mr Bone:** I am probably being thick, but how does a negative statutory instrument get scrutinised?

Andrea Leadsom: Those are laid before Parliament and very often they are scrutinised because they are prayed against.

Mr Bone: And the Government do not always grant the prayer.

Andrea Leadsom: Sorry?

Mr Bone: The Government do not always grant the prayer, so there is no scrutiny whatsoever.

Andrea Leadsom: When a statutory instrument is prayed against within the 40-day period and a reasonable request is made for Government time for a debate, or indeed if the Opposition use an Opposition day for a debate, then that can lead to the annulment of that statutory instrument, as you know, Mr Bone.

Q231 **Mr Bone:** Ah! But you said they were scrutinised. It is entirely in the Government's gift whether that happens. The sifting committee would take that problem away and relieve the pressure or suggestion that the Government sometimes do not allow negative instruments to be debated.

Andrea Leadsom: There are mechanisms of long standing for negative SIs to be debated. Those are of very long standing—long before any decision to leave the EU.

Mr Baker: I just want to make one point, if I may, which is that in the course of the passage of the Bill I have sometimes been concerned that members of the public might have inadvertently fallen into a false impression, perhaps encouraged sometimes by campaign groups, of thinking that any of these instruments would be other than public instruments. I am slightly cautious if anyone says, "No scrutiny whatsoever", because they are publicly available and people can see what is in them. That is why they can be prayed against. Mr Bone's argument is

relevant to the matter of them being debated and scrutinised in that way, but I put on the record the fact that these instruments are matters of public record, even when they are on the affirmative procedure. There has occasionally been some confusion.

Chair: We are going to take two more questions—one from Chris Chope and one from me—and then we are going to let you go.

Q232 **Sir Christopher Chope:** May I ask the Leader of the House for an update on where we are with Friday sittings? Last time she appeared before the Committee, we were told that that was being looked at. We now know that we have got the parliamentary timetable for both sides of Christmas. We know when the House will be sitting at the beginning of 2019. When will the extra days for Friday sittings be announced?

Andrea Leadsom: I am discussing this with business managers. As you will be aware, we have had some quite busy legislative activity in recent weeks, and that has taken up a lot of time. We have already approved 13 sitting Fridays, which is in line with Standing Orders. The last time there was an extended session in 2010 to 2012, the House agreed four extra days for private Members' Bills, and those were approved at a later date in 2011. We expect to come forward with further dates, but I cannot give you absolute chapter and verse on exactly when that will be.

Q233 **Sir Christopher Chope:** Okay, not exact, but how about roughly? Will it be before or after Whitsun, for example?

Andrea Leadsom: I can't—this Committee knows as well as any that an enormous number of priorities are under discussion for giving Government time to or for making decisions. There is the ongoing business of the House to consider, as well as many complex amendments and so on. We will be coming forward with extra additional days, but I cannot say to you now at exactly which business questions I will be making that announcement.

Q234 **Sir Christopher Chope:** So you imply in what you just said that the Government may be thinking of using some of the Fridays after 23 November for Government business, rather than private Members' business. Is that the correct interpretation?

Andrea Leadsom: No, that is not the correct interpretation.

Q235 **Chair:** Can I just ask a final question on the substantive part of this discussion? There will be a Lords sifting committee and a Commons sifting committee. What will happen when the two disagree over the classification of an SI?

Mr Baker: We hope that would be an occasion where they would consider the case on its merits and discuss and consider it with one another in the course of the passage of an instrument, but as you know it is in the end for the Government to decide, and the Government would need to decide on the merits of the case. I think I would be ill-advised to speculate too wildly. We are all very aware of the political controversy over the Bill and the level of scrutiny and attention being paid to it. In the Commons, we



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agreed that the Government would be politically bound by the recommendations of the committee, and I think that political obligation will be felt heavily by Ministers. In the event that the committees disagree on which procedure should be used, the case will be considered on its merits, but in the context of keen political attention from many parties.

Chair: Okay. Thank you both for your time.