

Procedure Committee

Oral evidence: Motions under section 13(1) of the European Union (Withdrawal) Act 2018, HC 1664

Wednesday 24 October 2018

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Members present: Mr Charles Walker (Chair); Bob Blackman; Mr Peter Bone; Bambos Charalambous; Sir Christopher Chope; Nic Dakin; Sir David Evennett; Helen Goodman; Mr Ranil Jayawardena; Sir Edward Leigh; David Linden; Melanie Onn; Nick Smith; Alison Thewliss; Mr William Wragg.

Questions 1-48

Witnesses

[I](#): Rt Hon Mr Dominic Grieve QC MP

[II](#): Rt Hon Sir Oliver Letwin MP

[III](#): Mr Chris Leslie MP

Written evidence from witnesses:

- [Rt Hon Mr Dominic Grieve QC MP](#)
- [Rt Hon Sir Oliver Letwin MP](#)

Examination of witness

Witness: Rt Hon Mr Dominic Grieve MP

Q1 Chair: Dominic, we do not have a huge amount of time, so we are going to try to ask very quick questions, and I know that you will want to respond with concise answers. Can I open with two sentences from the Institute for Government's brief, entitled "Parliament's 'meaningful vote' on Brexit", which I believe was produced earlier in the week? It says this: "If Parliament does amend the motion to approve the deal, the Government will not be legally obliged to do what it asks. However, the Government's ability to ratify the deal could be constrained if Parliament amends the motion to such an extent that it no longer expresses approval of the negotiated deal."

I know that there has been lots of irritation about the Government responding to my letter. I did request a response. Those two sentences from the Institute for Government seem to chime with the Government's concerns.

Mr Grieve: Yes, they do, and I don't have any reason to disagree with what the Institute for Government is saying. I think that one needs to look at this issue in the round. I hope you have had my note. As an ex-Law Officer, I am always mindful of the fact that problems come up and hit Government, and they may not necessarily have spent the necessary time anticipating them before it happens.

If the Government say, "We think there is a problem, and we are going to have to think carefully about how a motion is done for approval of our decisions," I don't have any disagreement with that, although I would gently make the point that this is not a subject that has not been under scrutiny over the last nine months. In fact, the Government have consistently given the impression, to Select Committees and on the Floor of the House, that they were of the view that there was a fairly settled procedure. It would obviously not be a 90-minute debate; everybody would have expected 90 minutes to be extended. They never qualified or explained that the amendable motion that they were promising for the approval of whatever deal it is might be different from what most Members of the House would expect. I just say that for starters.

Q2 Chair: And of course we know that the Government can't change the procedures of the House, because they belong to us as Members of Parliament.

Mr Grieve: Exactly. The next point I would simply make is this. First, it is absolutely right that the House can express an opinion in a motion on whatever it likes, but it is not the law of the land. As I have said on many occasions, Parliament can ask for anything it likes and the Government can say no, although obviously if the Government say no to what



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Parliament asks for it is an unusual state of affairs, because the Government are then at risk of Parliament withdrawing its support for the Government. Alternatively, when Parliament expresses an opinion, in those circumstances the Government may say, "Well, even though this may not have been our preferred option, we will go along with it because it is the will of a majority of Parliament."

It is true that it is an expression of opinion; even approving the deal is no more than an expression of opinion, but it is an expression of opinion on which the Government will indicate to our EU partners that we have come to agreement, and there is an expectation that that will then be honoured and that Parliament will pass the necessary enabling legislation in the European Union (Withdrawal) Act to give effect to it.

Of course, it is possible that Parliament could express a desire to approve the deal and then unravel it in the passage of the EU withdrawal agreement Act—speaking personally, that is a bit of a nightmare scenario for obvious reasons, but constitutionally it could happen. Of course, this is all about the royal prerogative and the ability to conclude treaties, but a treaty concluded does not change your own internal laws; that has to be done by statute. We have been up hill and down dale about this right through the whole of Brexit.

So yes, I agree with that, but where I disagree profoundly with the Government's approach is that the approach the Government have recommended has the consequence that the first thing it will ask Parliament is, "Here is the deal. Take it or leave it." If you take it, then that must effectively be the end of it, because if Parliament decided to pass motions thereafter qualifying it, I don't know what sort of effect that would have in practice.

The second mischief is that throughout this whole process anxiety has been expressed in the House about how Parliament can express collective opinions, particularly because the Government, not unreasonably, have been saying, "Look, we have to get on with the negotiating. You have got to see what we come up with." The Government have used that—and I don't mean this critically—as a lever or weapon to suppress debate of alternatives, because they have said, "Please don't debate these alternatives at the moment, because they would then be used by those people with whom we are negotiating to undermine our negotiating stance." They have not always been successful in that, and from time to time it has poked up, such as on the customs union or EEA, but on the whole lots of MPs have not expressed their views because they have wanted the Government to get on with it and see what they come up with.

My concern is that the Government's proposal means that Parliament will be denied the ability collectively to express opinions about where they would have wished to see this process end. There are alternatives. First, the Government could simply stick to the procedure in Standing Order No. 33. If the motion is amended, I must say that, unless it is amended to say, "The House of Commons wishes to express its undying thanks to the Government for their complete cleverness in this matter," I think it will



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probably be fatal to approval—it is difficult to think of a motion that would not be. You could use a process under Standing Order No. 33, and the Government Minister would simply indicate on each amendment, “You’ve got to understand that if you pass this amendment, in practice you will be rejecting this deal.”

Secondly, there is another way that I have also suggested, which has been used before; you will have to craft something. There will presumably be quite a lengthy debate. It is such an important issue that I would assume that, as when we joined the EEC, it will be a four or five-day debate—it jolly well ought to be—so that people can express their opinion. I would have suggested that at the end of that it would be perfectly possible to have resolutions tabled and selected for expressions of view, which could be entirely contrary to what the Government want but allow Parliament to gauge what the opinion of Parliament is on different ideas prior to the Government still being able to put an unamended motion on the basis that, “All this is very interesting.” However, it would enable parliamentarians to understand what colleagues believe is the right course of action, because that is bound to be important in whether or not they decide to vote for the actual deal on offer. That is my concern.

As I say, I am sympathetic to the Government’s problem, but it seems to me that the route they have chosen quite wrongly closes down debate. As I also say, without wishing to get too judgmental, it is at clear variance with the sort of mood music that was given over a long period about how the motion system would work at the end.

Chair: Thank you.

Q3 David Linden: You will remember that during the passage of the withdrawal Bill there was lots of tension in the House, particularly when it came to the meaningful vote. What was your understanding of what a meaningful vote would actually be?

Mr Grieve: I understood the meaningful vote, in the context of the deal, to be an amendable motion presented to Parliament so that, first, Parliament would be able to approve or disapprove the deal. Some people were anxious at the beginning of the process, perhaps pointlessly, that somehow the Government would sign a treaty and bring it back afterwards. If you remember, there was a lot about the need for this vote to take place prior to a deal being signed off.

Secondly, it was also seen as important that Parliament should have the ability to express support for alternatives. The Government may not like that, and they may say that it is very much at the end of the process, but I am afraid that is just inevitable. My view is that, if the Government try to pursue the route they are opting for, it is far more likely that the deal will be rejected, because Members will be confronted with an all-or-nothing choice and will not be able to talk about anything else until they have decided to reject the deal. That is a mistake.



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That is what I understood it to be. You will remember that we also had a lot of debate in June about meaningful votes in the event of no deal. Interestingly, the Government deliberately highlighted that they wanted different processes—one amendable and one not. After some reluctance, I finally accepted that, because of the reason of the Prime Minister's negotiating stance. However, my view is that if we don't get amendable motions at the end of the day, Parliament has plenty of ways of expressing what it wants at that stage through its own powers. However, I will leave that to one side.

The two processes were clearly differentiated, which reinforced the impression that this was both a substantive motion that the Government would rely on and that it would be possible for Parliament to express a desire for alternatives when it came to consider this. That is what I see as absolutely critical. There are different ways in which that can be done.

Q4 Mr Wragg: Talking of mood music, impressions, expectations and so forth, did you vote for the law as it is written in front of us?

Mr Grieve: I almost certainly did. I suppose we put the clauses stand part. In fact, look at what happened on the Floor of the House—somebody will correct me if I have got this wrong—because of what had been said by both the Member for Wycombe and by the Member for Haltemprice and Howden to the different Select Committees of both Houses. This issue, which might have been debated further, was regarded as being closed.

Indeed, you only have to look at the report from the Committee on Exiting the European Union—published on 28 June, I think—to see that they were in absolutely no doubt of what the Government's approach was, and that it would enable alternatives to be debated. Throughout the course of the passage of this legislation, one point I kept on making was that, whatever view you may take of Brexit, you have to have the European Union (Withdrawal) Act. It is a vital piece of legislation.

Q5 Mr Wragg: Members regarded the word of two former Ministers of the Crown, rather than what was voted on and is now the law. That is the blunt reality of it. My colleague asked about the meaning of "meaningful". Without going into an etymological discussion about things of that type, is it not meaningful that Parliament has the ability to reject or accept the deal that comes back?

Mr Grieve: I am sorry, but I disagree completely. Everything has to be given its context. I do not mind looking at the plain words of the statute, but it is capable of being applied, as often happens, in different ways. When you come to looking at how it should be applied, what Ministers say about what the process is going to be becomes very important.

Quite apart from anything else, it is worth bearing in mind that if we had tried in statute to proscribe the Standing Orders of this House, I think the Clerk of the House would have come along, and a Law Officer might have tapped somebody on the shoulder and said, "I'm not sure this is a very good idea." You will be perfectly aware that if you put in statute something

that is subject to our Standing Orders, you lose the privileges and rights that this House—

Mr Wragg: Of course—article 9 of the Bill of Rights and so forth.

Q6 **Bob Blackman:** You are quite right, I think, that any amendments that are successfully moved are likely to prove fatal. Given that there will be a process of Parliament approving a deal—or not, as the case may be—and 27 other Parliaments, and the European Parliament and so on, how do you think that would proceed if the deal were amended in that way?

Mr Grieve: I can easily see that if the deal were to be amended so that Parliament passed something ambiguous, bluntly speaking, I think it is rejecting the deal. If it is unambiguous, it isn't. However, as I say, the only way it could be an unambiguous amendment is if it said, "And three cheers for—" And then something completely irrelevant to what it is intending to do.

I am entirely in sympathy with the Government's position, but the reality is that Parliament's scope for telling the Government that the deal is other than the Government have agreed is non-existent—but that was not the point. The point that came up repeatedly was Parliament's right not only to decide whether or not the deal should be accepted, but to express an opinion on whether there were alternatives that it preferred. The Government may say, "There may be alternatives; there's nothing we can do about them now," but Parliament might take a different view.

The danger I see is that, first—I speak from my personal point of view—I have no idea what this deal is going to be. One thing is quite clear: if I am denied the option of debating what the possibilities might be, that is likely to make me much more hostile to the main motion, because obviously once the main motion has been approved that is the end of it—the guillotine has fallen. The only way you could then do it is by rejecting it and having this debate afterwards. I think that is a mistake. This should be wrapped into the five-day debate and, if I may say so, trying to get to the nub of the level of agreement that seemed to exist in the House, and looking back at the hours I spent on the Bench listening to it, that was, it seems to me, the reassurance that the Government were providing.

As I say, I am not going to castigate the Government because they are coming along and saying, "Actually, we may have to craft a special process here," but I think that the spirit of what was intended, and the plain meaning of the statute in the absence of anything else, is so clear that to go back on this or to try to avoid it would be both wrong and, I might add, a very big mistake.

Q7 **Bob Blackman:** To clarify that issue, in this extended debate—maybe four of five days, as you rightly say—clearly it would be open to all Members to raise issues that would be amendments, which would potentially be votable in the event that, as the Government are proposing, the main motion is rejected. It does not prevent debate, but clearly the Government's proposal is a vote, and then, if the Government



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lose, amendments.

Mr Grieve: I disagree fundamentally, because the mischief of the Government's approach is that at the time people go in to vote yes or no on the Government's motion, they will not know what the opinion of the House is on those alternatives that they have been debating. It seems to me that that is really rather important. Of course, some of the alternatives may be fanciful; some may be rejected out of hand, in which case people will know that in their mind. Nobody wants to leave without a deal, so that is bound to inform MPs who have to go in and vote on the main motion as to how the issues are narrowing down and crystallising. It helps crystallise an understanding.

Forgive my saying so, but I always say to sixth-formers, "This place, if it works properly, is not about majorities imposing their will on minorities; it is about minorities accepting majority decisions, and decisions being arrived at by a process that provides the greatest level of understanding of options and consequences." My complaint about the Government's proposal is that the way it is being done prevents that from happening, and that is a mistake procedurally. It is unnecessary because, as I have indicated, showing deference to the Government's anxiety that there must be a vote at some point on what I call an uncontaminated Government motion, there are ways in which you can craft procedure—or recommend that the procedure be crafted—that allow both that to happen and expressions of view to take place where people have an understanding of where the House's opinion lies. That is what is being prevented.

Q8 **Sir David Evennett:** I am not a lawyer, but—

Chair: I am going to allow this one, but we do have a list of people, and people are leaping in.

Sir David Evennett: I am not a lawyer, but first of all, the Government would normally come forward with a motion. That is what they do all the time. If you have five days, taking Bob's point of view, there is loads of time, and then people could vote down. What you are saying is that you want an amendable motion.

Mr Grieve: No—

Sir David Evennett: Hang on a second, please. In court it is different, but—

Mr Grieve: No, it isn't. On the contrary—I am jumping the gun. I apologise.

Q9 **Sir David Evennett:** As I say, the normal procedure would be that the Government put forward a motion. We have a large number of days to debate it, and then at the end of it, it is either voted for or it is voted against. During that time, people can raise all sorts of things. What you are saying is that you want some motions down in between so that people can vote on these amendments before they vote for the motion.

Mr Grieve: I want the House of Commons to have the ability to collectively express an opinion on alternatives.

Q10 **Sir David Evennett:** But Members can do that anyway through debate.

Mr Grieve: Well, no. They can do it by debate but, if I may say so, that is entirely different from the House's opinion being sought and tested by means of a vote. If I stand up and make a speech and there is a Division, and the Division goes 550 to 40 and I am in the 40, I know that this is a hopeless proposal and, one way or the other, it is not going anywhere. If, on the other hand, I put forward an alternative and discover that, in fact, 500 Members of the House of Commons think that is a very good approach, then—obviously subject to the debate and everything else—that may have a very powerful informative role in whether, at the end of the day, I support the Government motion or not.

As I say, one way of following the normal way is that the motion is amended, and then we end up voting on an amended motion at the end. The proposal I am making is to try to meet this objection of the Government. I am trying to meet the Government halfway, while also pointing out what I am absolutely certain was on the minds of the Select Committees and Members of the House when they were asking for amendability; they were asking for the ability to express alternative opinions precisely because—as the Chair put it to me at the beginning—at the end of the day, an amended motion is not binding on anybody.

It can be done in different ways. As long as that expression of opinion can be delivered, I myself would be quite content—though others might not be—if, at the end of the day, the Government have their clean motion voted on, because I do appreciate the Government's problem. They have negotiated a treaty with a third party, and obviously they would like some clarity as to whether that treaty is accepted or rejected by this House. Of course I understand that.

Q11 **Helen Goodman:** You said that all amendments are fatal. I just want to push you a bit harder on that.

Mr Grieve: Not entirely. I didn't quite say that.

Helen Goodman: You did, actually. I wrote it down when you said it.

Mr Grieve: I said that I think that in reality all amendments are fatal. I can think of some amendments that wouldn't be fatal at all, but I don't think they would make very much difference to the issues under consideration.

Q12 **Helen Goodman:** I can see that some amendments would be fatal. I can see that an amendment that said, for example, "We don't like the facilitated customs agreement. We would rather have a Canada deal," would be problematic for the Government, but what about process amendments? Suppose we had an amendment that said, for example, "We like this deal, but we believe that the agreement of the Scottish Parliament should also be secured." That wouldn't be fatal, would it?

Mr Grieve: I think it would, actually, in practical terms.

Helen Goodman: Alright, the Welsh Assembly, then.

Mr Grieve: Well, even the Welsh Assembly. As I understand it, the Government wishes to go back after this is done and say that the treaty has been agreed by Parliament. Obviously, there is still the legislative process that follows. Clearly, if there is doubt that Parliament has in fact approved it, because there is a precondition laid down that the Scottish Parliament or the Welsh Assembly should approve it, it must raise some doubt.

Q13 **Helen Goodman:** Surely that is not fatal. Surely that depends on what happens subsequently, and those things can happen in parallel to taking through the legislation. You say it is obviously fatal, but why it is obviously fatal?

Mr Grieve: The Government might be able to accept it and then quickly go and do the consultation and carry on. I can see that, but on the whole, foreign Governments expect the UK Government to be able to say whether or not they are in the position to ratify and agree a treaty. The usual way is that the Parliament, which has the locus for doing that, expresses its opinion that it is favour of it.

I want to emphasise that I can see circumstances in which ambiguities might be curable, but I have some sympathy with the Government over that issue. Where I don't have sympathy with the Government is over the route they are choosing to get round it. As I say, others may take a different view; I don't know. I notice that there have been a lot of submissions and, as mine came in at some speed, I would be very interested to hear what other people think. I can see that there are circumstances in which a motion might not be fatal, but if the process changes, such that it introduces a new hurdle that has to be overcome before ratification can take place, unless that hurdle can be overcome very speedily, it seems to me that the Government are faced with a motion to give them the authority to go and sign off the agreement.

Q14 **Helen Goodman:** But this is the position that the other party in the negotiation is in, because they have got to get the agreement of the European Parliament, and there is absolutely no certainty that they can achieve that.

Mr Grieve: Absolutely. I agree with that.

Q15 **Helen Goodman:** The question of whether one is sympathetic to the Government or not seems to me to be not strictly speaking relevant. The question is whether a process-type amendment could be fulfilled by the Government, and whether it allows them to retain the legal certainty about the underlying legal documents.

Mr Grieve: If they can fulfil it, they might have the legal certainty, but it still raises an inhibition. That's all I can say. It is impossible to speculate, if I may say so, exactly what that might be. I can see what the Government are worried about from their point of view. That said, one way is for the



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Government simply to announce before each amendment is called that they are keeping the ordinary process of amendability, and then put the House on notice that they consider that the amendment is fatal or not fatal, or that it is liveable-with or what they consider the consequence might be. I am the first to acknowledge that we could stick to the usual procedure under Standing Order No. 33. You could do that. Of course you can. But in a spirit of trying to be conciliatory and also trying to be helpful, it seems to me that there might be some other routes. Do I consider that the process under Standing Order No. 33 is unworkable? No, I don't. It could work, but it would require the Government to give a clear indication to the House before each vote on an amendment how the Government viewed the effect of that amendment.

- Q16 **Sir Edward Leigh:** You are right: under current procedure the Government lays a motion, anybody can lay amendments, and the amendments have to be taken first. But where you are wrong is in saying that there is a potential democratic outrage here in the Government's unilaterally reversing that process. In order for the Government to do so, they must make a business statement. They must then lay a business motion, which is votable on by the whole House. Assuming the Government want the straight agree or disagree vote to come first, because it makes their negotiations much easier, they have to lay a motion. If you—or, for instance, Brexiteers or anybody else disagree with that—it is open to you to oppose that motion and defeat it, so it is entirely democratic. Do you accept that?

Mr Grieve: I never suggested it was not democratic. All I suggested was that the Government's proposal, as submitted to this Committee, is at variance with the impressions they conveyed to the House of Commons and the Select Committees at the time the legislation went through, and that that was quite an important issue when we enacted the legislation in terms of achieving what actually was consensus, because it was never disputed as to the wording that went into the Bill. That's all.

- Q17 **Sir Edward Leigh:** But procedurally the Government are doing absolutely nothing wrong. This is not a democratic outrage. If you and your friends want to defeat the Government, and if you want to combine with the Labour party, you can defeat the Government and the amendments will be taken first.

Mr Grieve: You keep on repeating that I am talking about democratic outrages. I am not. I might talk about a parliamentary procedural outrage because on the whole I take what Ministers say to Select Committees, privately and at the Dispatch Box at face value. Particularly on difficult issues of process, where I know well enough from past experience how difficult it is, the Government have the legal and the procedural advisers who are there to help them with the process of Parliament, and therefore they tend to be in a much better position than anybody else to know how the system works. Even after 22 years in this place, there are all sorts of things where I do not necessarily know the arcane mysteries of the Standing Orders of the House. So you listen very carefully to the Government, and what the Government say, unless you have good reason

to disagree, tends to be the basis of your understanding. That is why I use the word “trust”.

I come back to my point. That having been said, I can understand what the Government are anxious about, but having said that the Government are anxious, there is a perfectly clear way through it, I would suggest, that meets what the House wants. But of course you are right: at the end of the day, if this gets tabled in front of the House and gets voted on, we will decide whether in fact these Standing Orders, or any proposal that the Government finally try to put to the House as to how we proceed, get a majority or not. On the whole, it is nice if we can proceed by consensus, but I certainly will not vote for a Government motion that seeks to do what is suggested by the Minister in his submission to this Committee.

Q18 Melanie Onn: In the light of your view that the Government are currently putting forward a procedure that is at variance with commitments made through previous debates, could you have confidence in a procedure that provided for the Government’s motion to be set down first to be decided upon and then subsequently amendments to be considered by the House? Would there be anything, in your view, that would bind the Government as a result of subsequent amendments?

Mr Grieve: As I say, the truth is that if the Government proceed on the basis that they are recommending, if Parliament approves the deal, there will be no further consideration of the matter at all because it would be absolutely pointless. I suspect the House would adjourn. Under the procedure suggested, I think it is the end of it. As I understand the procedure that they want to use, which is the one on Opposition day motions, unless I have misunderstood it, once the Question has been approved that the original words stand part of the motion, that is the end of the process. If it is not, it raises the bizarre situation: where are we? On the one hand, Parliament approves the deal. Then, 15 minutes later it votes saying, “Actually, we want to stay in the EEA,” which may be at complete variance with the nature of the deal. It does not work. The truth is, it is over once that has happened.

As I say, throughout the whole of this debate—because heaven knows I have been involved in it enough—it has been noticeable that the Government have tended, perhaps for understandable reasons, to try to close down avenues of opportunity for Parliament to express alternatives. This is the opportunity, and it was the assurance of that opportunity that was being made by Mr Baker and Mr Davis when they were giving their evidence to the Select Committees. It was not being in any way resiled from at any stage on the Floor of the House when we were considering this.

For all those reasons, I think the Government, and this Committee, should take that firmly into account in trying to craft the right process. As I say, in a spirit of trying to be helpful, I can see that there are alternatives to going along with the process in Standing Order No. 33. I don’t know—this Committee may have decided that there is another way in which you can approach this. However, it strikes me that the absolute central point is the

right of Parliament, prior to voting on the deal, to express its opinion about alternatives, because that is what we were discussing throughout the process when this Act was being put together.

- Q19 **Mr Bone:** I agree with most of what you are saying about strengthening Parliament, but we find ourselves in the difficulty of having to make a yes-no decision on the withdrawal agreement. That has to be a yes-no vote, and having amendments afterwards seems a little pointless. What if the Government were to lay a whole series of motions first that covered all the issues that were what we would normally call amendments? Then the opinion of the House would have been expressed on all those points before people made a yes-no decision. Would that be something that you would find suitable?

Mr Grieve: That is what my last paragraph suggests as a possible route through, yes. I can see that that could meet it. You can criticise it because it does not create an amendable motion, but there would be affirmative statements by Parliament of what it wanted. We had a similar process—slightly different—over Lords reform. This has been done before, and my understanding is that it is well within the processes of this House to offer a menu of alternatives.

As I say, my sympathy for the Government is over the point about the clarity of the final decision that they need. They have to come to us, and they are entitled to an answer. If they end up with an ambiguous answer, that is not very satisfactory, but the fact that they are concerned about an ambiguous answer should not be used as a device to shut down the ability of Members of Parliament to express their desire for alternatives.

- Q20 **Mr Bone:** Having debated it in those five days, then voting on all these possible motions, you then come to the big one at the end, and people will have been fully informed.

Mr Grieve: It will also be, if I may say so, helpful for the Government, because if at the end of the process Parliament rejects the deal, the Government will be able, possibly, to know that there are alternative approaches that may still be feasible to pursue that would meet, or appear to meet, with parliamentary majority approval. That in itself seems to me, from the Government's point of view, a rather helpful place to be.

Chair: Dominic, thank you very much for that. It was extremely interesting and illuminating.

Mr Grieve: I hope it was helpful. I wish you joy.

Examination of witness

Witness: Rt Hon Sir Oliver Letwin MP

- Q21 **Chair:** Oliver, thank you for coming to see us today. We have just had an interesting discussion with the former Attorney General, who believes



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that it would be within the scope of the Government, and in order for the Government, before an amendment was voted on to its motion, to say that that amendment, if passed, would be fatal. That is a good introductory sentence to start you on—over to you.

Sir Oliver Letwin: Thank you. It is not actually fatalities that I came to discuss. I made the point very straightforwardly in my letter to you, Chairman, which is echoed in the rest of the submissions that have been made, one way or another, that because these matters are likely to be contested in the courts if there is any doubt about them, despite the principles of comity and the Bill of Rights and all that, it is of great importance to the proper and smooth operation of our constitution that the result should not preclude the Government being able to proceed with implementation despite section 13(1), simply by virtue of never having got around to voting on a clean motion that unarguably authorises the Government to proceed if it obtains a majority.

At the same time, it is pretty clear from all the submissions that just about all of us agree that, given the range of opinion and the evolving nature of the opinions that there are in the House, and that there are likely to be right up to the last moment, about what the right solution is in the light of whatever the Government has negotiated, it is pretty important—in fact, it is critical—that the House should have the opportunity to consider individually, in some orderly way, a range of serious proposals and to express whatever majority there is in the House in relation to each of those proposals.

It seems to me that the issue that we are facing, therefore, when the House eventually comes to decide about this, which I hope your Committee's recommendations will help us to tackle, is how to reconcile those two objectives. How do we make sure that the House has an opportunity to look at each possible proposal that carries any significant support—maybe as ascertained through the number of signatories, or something of that sort—and to take a vote on each of those, but also that it has the opportunity to vote on the clean motion, so that if there is a majority in favour of the clean motion, and there is also a majority in favour of one or more other solutions, everyone knows where they are? The Government can proceed, under section 13(1), but they would understand the politics of doing so under circumstances where the House had voted by a majority in favour of some modulation of that that was represented by some amendment.

I have to say that I am rather attracted—I was not here for the former Attorney General's testimony—by the proposal he makes in his penultimate paragraph, that we should therefore adopt a smörgåsbord approach of the kind that was used in the House of Lords debates, where individually, on a series of propositions, there are votes. I do not actually think that the order particularly matters, as long as they are independent, because this is a situation in which, as I think we are all aware, there could be no majority for any solution—it is not a very happy result for our Parliament, but it may be the case—or there may be majorities for a range of solutions. We owe it to the country to make sure that whatever is the



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truth about that is revealed by this process. That was exactly the idea that lay behind the arrangements that we adopted as a House for the House of Lords debates. People were able to take a view. As a matter of fact, in the particular case I am thinking of, it turned out there was no majority for any solution. That might happen again, but at least we would know that we had an orderly process and that the majority view of the House of Commons was revealed.

- Q22 **Mr Wragg:** Previously, Dominic spoke of the impression that was created—the mood music—and the expectation there was from noises from admittedly former Ministers in this whole process. Do you regard what is now in statute in the Act as somehow not being true to those expectations or impressions that were given, or is it, again, open to interpretation?

Sir Oliver Letwin: I was myself somewhat involved in the final formulation of section 13(1). All colleagues will recall that there was a great deal of discussion. My recollection is that there were many different views about what it meant. One thing is clear, I think, which is that it stipulates—and it was the intention of everybody involved in it, I think, from whatever point of view they were coming, that it should stipulate—that the Government simply cannot not proceed without a majority in favour of the motion it puts. That is the cardinal principle of the meaningful vote, as I understood it throughout that process, and in that respect section 13(1) is crystal clear.

- Q23 **Mr Wragg:** And would you say it is therefore—depending on the meaning of “meaningful”, which I raised before—meaningful for Parliament to have that ability to say yea or nay to what comes back from the negotiation?

Sir Oliver Letwin: It clearly is meaningful, yes, and somehow that meaning has to be revealed. There has to be a moment at some stage in this process when there is a vote on that clean motion and it either gets a majority or fails.

- Q24 **Helen Goodman:** I want first to go back to the House of Lords example. In the case of the House of Lords, two motions were passed in 2007. A motion for a 100% elected Chamber was passed by 337 to 224, and a motion for an 80% elected Chamber was passed by 305 to 267.

Sir Oliver Letwin: May I just interrupt for a second to say that I think you are right but that was a different occasion? On the occasion I am thinking of, there was a further set of votes in which, if you recall, every single proposition that was put fell. These things can come out many different ways. That is my point.

- Q25 **Helen Goodman:** I thought your point was that by having separate resolutions we could insert some certainty. What I am asking you to consider is that in 2007, when the House assented to two different reform proposals, we could not go ahead with either. That was following the process that Mr Grieve suggested to us and that you said you thought was quite a good process.



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Sir Oliver Letwin: Okay. I see this differently, in the sense that it seems to me that the way section 13(1) is cast means that if this Committee proposes to the House, and if the House accepts, a procedure in which there is at some point during the process of the debate and votes a vote on the clean motion of the Government, and if that receives a majority, the section 13(1) requirement will have been satisfied and it will then be possible for the Government to proceed lawfully with implementation. However, it would clearly be bizarre for the Government to proceed in that way without paying any attention to what the House had voted in relation to other possibilities. If the House had voted on a range of possibilities, and if there were a majority for some other possibility, that would become a politically significant fact, though the legal requirement for a vote in favour of a clean section 13(1) motion would have been satisfied.

Q26 **Helen Goodman:** I do not quite understand the basis for your argument that one resolution has legal priority over and above another, given the experience that we had in 2007.

Sir Oliver Letwin: I am not a constitutional lawyer, and this could get argued out in the Supreme Court, and I do not know how it would come out. As a layman, it seems to me that if section 13(1) says, and this is all it does say, "You cannot, O Government, proceed unless you have a majority in favour of it in a resolution to proceed," if you get a majority in favour of a resolution to proceed, as a common man I would have thought that that means that you can proceed. It nevertheless would be—

Q27 **Helen Goodman:** So why didn't we proceed in 2007?

Sir Oliver Letwin: I don't know, to tell you the truth. We are, I think, effectively inventing everything here from scratch, because this Committee and the House have to decide on something of much greater magnitude than the House of Lords issues, and here we all know that there is a very wide range of views. It seems to me, incidentally—I suspect this is something on which we could all agree—that for many, though not all, Members, what they vote about X will be influenced by what they understand is the majority or minority in relation to Y, Z, P and Q.

It is a very different thing to vote on the plain motion knowing, if this were the case, that there is no majority for anything else, than it is to vote for the plain motion knowing that there is an overwhelming majority for some other proposition. Therefore if, as I think in this penultimate paragraph Dominic is recommending, it had been revealed in the course of considering a series of other propositions that there was an overwhelming majority for path X, that might influence how people voted.

Q28 **Helen Goodman:** Well, we don't generally have triggers, do we? What we do is decide who has the most votes in their Lobby. Whether it is overwhelming or two votes, that is the decision. I don't know why you are inserting this "overwhelming" thought into your remarks.

Sir Oliver Letwin: Because I do not think in the end that this is a matter of trying to find some sort of clever-clever solution that looks



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constitutionally proper. I think this is a matter of trying to find out what the will of Parliament is.

- Q29 **Helen Goodman:** The underlying objective that you have, or that the Government have and you are, as I understand it, supporting, is that it is very important that they have legal certainty. It seems from Mr Raab's memo to the Committee that he really feels that the Government should be allowed to sign irrespective of the views of the House, which is why he wants the motion first and, if it is carried, he does not want to hear what anybody else has to say. He does not want the House to express a view.

I wonder whether you have considered that amendments might be of two different forms. There could be amendments of substance. For example, some people would rather have a Canada deal than a facilitated customs agreement, or whatever it might be. There could also be process amendments, and they do not cut across the legal certainty in the documents, which is Mr Raab's concern. Process amendments are more under the Government's control, so could you not envisage a situation where we could perfectly well have process amendments before the main resolution without running into the legal uncertainty problem that is worrying them?

Sir Oliver Letwin: I want to check, but if I have understood you correctly I think my answer to that is yes, you are right. I do not actually read the DExEU Secretary's statement as meaning that he does not want to hear what the rest of the House thinks about the rest of the propositions. I think what he is trying to achieve, and certainly the only thing that I am trying to support him in trying to achieve, is at some point a clear straight majority or minority in relation to the straight motion, so that we know that if—only if—there is a majority in the House of Commons in favour of that, it expresses itself in a legally unchallengeable form.

I think that is entirely compatible with the House of Commons taking a view about a whole series of other propositions. To the extent that those other propositions are process propositions, they may be compatible with the implementation agreement; to the extent that they are substantive, they may not. I think it would be a very foolhardy Government that did not pay an awful lot of attention to what comes out of those motions.

By the same token, it would be foolhardy of the House of Commons to get itself into a position where it never had a vote on the plain proposition and therefore, even if there was a majority for that, the Government could not proceed with it, because then we might be in a position where we were forced unnecessarily down the line of a no-deal Brexit. That may be what the House of Commons in the end decides, and I would then accept it, however much I don't like it; but I would not be willing to accept it if the House of Commons had never had a chance to prevent it.

- Q30 **Mr Bone:** As usual, I entirely agree with the thrust of what you are saying. With the former Attorney General, there is the suggestion that you could have a series of motions first. I do think they should be first and voted on, so that the House is informed before it makes its decision



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on the substantive question, which would be, yes, we agree with the Government, or no. If it is no, the Act lays down what is going to happen. If it is yes, it would mean that the House had heard all the other alternatives and could proceed.

My worry about that suggestion is that those motions will be laid by the Government. You frown—exactly. How do we achieve the will of Parliament in laying those motions? Amendments are very clear, but technically motions have to be laid by the Government.

Sir Oliver Letwin: As a student of constitutional history and as probably the only person in this room who thinks that our constitution at the moment is a shambles and that we should have a written one, I am very conscious that the greatest constitutional authorities have said, I think accurately, that the nearest thing we have to a constitution at the moment is the Standing Orders of the House of Commons. That is a regrettable but factual observation. I think this Committee is therefore much more powerful than you are representing, in the sense that I think the House is very likely to listen to your recommendations and the House has it within its power to amend without limit the Standing Orders. Therefore, if you recommend a process, be that what it may, and the House accepts it and puts it into the Standing Orders for this purpose, it will be the process that governs how we proceed. Whether that is the right thing, which I don't think, or the wrong thing, which I do think, doesn't matter. The point is that it is how our constitution works at the moment. Therefore, it is perfectly open to this Committee to come to the view that exceptionally here all motions should be considered that carry more than shall we say 20 or 30 or whatever it might be signatories, or carry some cross-party support, or however you want to frame it.

Q31 **Mr Bone:** Subject to the discretion of the Speaker, I assume.

Sir Oliver Letwin: You could do that, but I don't see why the Committee need necessarily leave that to the Speaker. The Committee could lay down a set of rules about which motions were to be voted upon. Clearly, in the debate, which I understand is likely to be a prolonged debate, all sorts of things would be raised, but when it comes to the voting, it seems to me that this Committee is the right place to come a view about how that voting should proceed. If you put that, I would have thought the House would probably back it. If the House backs it, that's it.

Q32 **Mr Bone:** But that approach would overcome any reservations you have about what is proposed at the moment.

Sir Oliver Letwin: Totally, because then we would all, as Members of the House of Commons, and indeed the whole country, be in a position to see where the House of Commons' view was on a whole series of issues. Critically, when Members came to vote on the main, clean, statutorily required motion, put down by the Government of course in that case, they would know whether they were voting about that motion in the context of not being able to get a majority for any other path, or whether they were voting on it in the context of being able to get a majority for several other paths, or for one other path, and could therefore make a rational decision



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about the kind of risks they wanted to take in accepting or rejecting the Government's proposals. That seems to me what we are all trying to achieve.

- Q33 **Sir Edward Leigh:** As often happens on this Committee as we niggle away at these bones, things do become clearer. The former Attorney General seemed to be accusing the Government of breach of faith, because he was promised a meaningful vote and he sees a meaningful vote not as a straight yes or no, but as the ability to amend. The Government think that a meaningful vote is pretty meaningful because if it is "yes, the deal", the deal goes through. If it is "no", basically it is hard Brexit because nobody else will have the time or ability under our procedures. So this is all right—that is a pretty meaningful vote.

I put it to him that the Government's point of view is understandable, and that they could not impose their will on the House in taking the yes or no vote first of all—they would have to do a business statement and a motion, and they would have to win that. I said that that was entirely democratic. He said, "Oh no, no, no—none of this was discussed at the time. This wasn't promised at all." I am not sure that is right.

To sum up, I think there is a way of squaring this circle. The Government meet their legal requirement under the Act to have a straight yes or no. If it is yes, they can proceed with the other legislation—the withdrawal agreement and all the rest of it. If they cannot, the deal is defeated and they move to hard Brexit, and that is a pretty important decision that the House of Commons has made.

The Government can then seek the opinion of the House of Commons during the debate, and the House of Commons will have the ability to pass motions saying, for instance, "We like the deal, but we believe that there should be an extended customs union." Do you see my point? Isn't this a fairly meaningful process? We, the Government, Parliament, and the nation have met the obligations to have a meaningful vote—yes or no; proceed or not—and we have taken the opinion of the House of Commons. Does that all sound reasonably sensible to you?

Sir Oliver Letwin: Yes, but I would go one step further. I think it is even more meaningful than you think because it is possible, amid this unrestricted range of possibilities, that the main motion—the motion for the deal—fails and does not get a majority, but that one, or more than one, of the other motions does get a majority. I do not agree, therefore, that the Government looking at that would be at all likely to say, "The main motion has been defeated. We cannot carry that through,"—that is obviously what they must say, because that is the statutory requirement—"and therefore we will simply allow article 50 to occur."

On the contrary, if they see before them a majority in the House of Commons—this is why I said a significant majority, because I think this is a political question, not a legal one—in favour of some alternative, I think they would probably struggle mightily to find some way to bring back to the House of Commons in due course some other proposition that they had a pretty good indication the House of Commons would go for.



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Therefore I think this is highly meaningful. First, it will determine whether the Government can proceed as they intend. Secondly, it will give the Government an extraordinarily strong steer, if the House is not willing to accept their proposition, about what, if any, proposition the House is willing to accept.

- Q34 **Sir Christopher Chope:** Following on from that last point, isn't that, in a sense, what is envisaged by section 13(4)? If there is no agreement to the withdrawal agreement, the Government within three weeks have to come forward with their proposals. If the debate on the withdrawal agreement includes the ability to discuss all the other options, the House will have expressed a view on those other options, perhaps in the strength of debate or the number of people who signed the relevant amendments or whatever. It will not have necessarily reached a conclusion on those at that stage, because if the main motion falls the amendments that were going to come afterwards would also fall, but that debate would then inform the Government on what they were going to do now that their main motion had been lost. Is that not envisaged, in a sense, in the three-week gap between the process at the beginning of section 13 and section 13(4)?

Sir Oliver Letwin: My first answer to that is yes, and you as a Committee could of course recommend that process. I think it would be better, because it would be clearer, if the process that I was discussing with Peter Bone a moment ago were followed and the House had actually had a chance to vote on a series of other resolutions, or whatever one puts them as, not amendments. That is because during the three weeks between section 13(1) and 13(4)—I completely agree with you that it was designed exactly to enable the Government to come back and say that their first proposition was defeated and to set out how they will proceed—the Government would look at the situation and say that there were majorities for option X and option Y, and that Y had a much bigger majority. They would then come to the House of Commons 21 days later or less and say that, having been defeated in their main motion, and having observed the will of the House as expressed in an advisory motion that did not have compelling legal force, it is clear where the will of the House lies and that they propose to follow that route, and they would ask the House to agree to that.

Under section 13(4), the House again has a right to vote, which would be meaningful because the Government could only proceed, as per section 13(4), if the House gives them a majority. Incidentally, there is a lacuna in section 13 that I am sure you have observed—we struggled mightily to deal with it but nobody could find a solution—which is that it does not say what happens next if the House also rejects that. We would then be in uncharted waters.

However, assuming that the Government had actually had disclosed to them where the will of the majority of the House of Commons lay, I think you will agree that it would be a pretty foolhardy Government that did not come back with a proposition to try to achieve what the House had just

said that it wanted to achieve. I therefore think you would get full meaningfulness out of this.

Chair: Sir Oliver, thank you very much. I think my constituents hope that Parliament gets to vote on the deal in a way that is transparent and that shows them it has been voted on and not procedurally pushed into the sidings and not voted on. Thank you very much for your time.

Sir Oliver Letwin: I wish you luck in your incredibly important endeavour.

Chair: By the way, we are the most important Committee. That was a great observation on your part.

Examination of witness

Witness: Mr Chris Leslie MP

Q35 **Chair:** Chris, thank you for coming to see us. You have been incredibly patient, but you are a very wise and clever man and knew that we would not spend only 15 or 20 minutes with each witness, so you also came prepared. Do you want to say a few words, given that you have been listening to that evidence?

Mr Leslie: Only a few. I should also start by saying what an incredibly important and wise Committee you all are. I have always felt that way about the Procedure Committee, unless you make the wrong decision.

In all seriousness, this is of course related to section 13 of the European Union (Withdrawal) Act, but bigger constitutional precedents are potentially at stake. I believe that this is very much about the balance of power between the Executive and Parliament. It has given me cause to think about why we have historically—for hundreds of years, in fact—disposed of amendments prior to a motion, rather than, as a matter of course, having a motion and some sort of amendability thereafter.

There are very good reasons for that. In a Chamber of deliberators, with as many of us as there are, there are many different points of view. To conduct business, we have to try to form as much of a consensus as possible. The process of deliberation—I may be channelling Edmund Burke here a little bit—means that you listen to a debate and go through the different viewpoints as they come along and then try and funnel that debate into a singular point of conclusion. That is why we tend traditionally to have disposed of amendments in the order in which they come in the motion in that particular way.

It is also important to remember that Parliament is sovereign over the Executive. For Members of Parliament, our maximum moment of leverage over the Executive is before they have secured the motion that they seek. The amendability process, and particularly the strength of Back-Bench

Members, very much relates to that moment before the Government get their way, so there are important reasons why we do that.

Having a post hoc process would not actually involve amendments. We would end up with the Commons turning a motion into a resolution—resolution No. 1. We would then come along with what may appear to be an amendment but effectively, if is agreed, is resolution No. 2, and then No. 3 and No. 4 and so on. Even if they are conflicting or confusing resolutions, it is quite convenient for the Government of the day to choose whichever one it likes and say, “Well, this is the one we like, and we don’t like the other ones.” It is worth thinking through why we do amendments that funnel down into motions in the way that we do.

I would also say, as a matter of precedent, Government Members should also bear in mind that if this change happens at this point, and if there is a change of Administration, with John McDonnell or Jeremy Corbyn or whoever is in charge, this is very much the sort of precedent that will be pursued by a Government of the day wanting to take its motions first in relation to other amendments. These things can have echoes into the future.

Chair: But the procedures belong to the House, so this Government cannot force the House to do anything that it does not want to do. What we are trying to do as a Committee is come up with recommendations that hopefully will find support across the House and will answer the concerns of many colleagues.

Q36 Sir Christopher Chope: Can I ask you about a subject that we have not yet discussed this afternoon? Do you think there is any scope, or do you think it desirable, to separate out the two elements of section 13(1)—namely, the withdrawal agreement and the future framework? In a sense, one is a treaty, and one is a promise of a future treaty. The two are not linked legally, or enforceably, so it seems. Is there something to be said for having two separate elements of a motion—or motions—or a debate?

Mr Leslie: I was listening to Mr Grieve’s evidence about whether amendments necessarily invalidate this particular approval motion. I am not sure, actually, that all amendments are the same. I can certainly think of textual amendments that would not invalidate the motion. I can think of consultative amendments that would not invalidate it.

Similarly, I was also thinking about the fact that the point of section 13 was specifically related to a ratification process to come. Of course, that does relate more to the withdrawal treaty than it would to expressions of the House’s opinion in respect of, for example, future trading relationships post exit day. It might be possible for an amendment to be passed on the approval motion that expressed a view about the future trading relationship that would not necessarily invalidate in statutory terms that particular motion.

I am sceptical about separate motions generally, because of the fact that they are not legally binding, and you can get into this smorgasbord



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arrangement where the Government of the day say, "Well, I like that one, I don't like that one, I quite like that one, I'll adopt that one, and I can ignore that one." I think I still prefer the leverage that amendability applies as you funnel down, as I say, to that point.

It can be awkward for the Government. Frankly, if the Government had intended that a particular form of motion were necessary, it would have said so in section 13(1). It just said "a motion". That was it. It is our normal understanding of the motion, as I understand it, in Standing Orders. I think we have to take it as the statute sets it out.

- Q37 **Sir Christopher Chope:** To deal with your point about the possible amendments, do you think it would be possible to amend the two parts so that they were linked together and so that, for example, the payment of money under the withdrawal agreement was contingent upon the political declarations in the annexe being delivered in a timely fashion? Unless and until that had happened, the money under the withdrawal agreement would not be payable. Might we be able to have an amendment along those lines?

Mr Leslie: The Executive look after their own concerns. As parliamentarians, we have to put Parliament first. Personally, I do not think we should be constraining Parliament just to suit the Executive's point of view, but it is my understanding that the withdrawal treaty is likely to contain elements including the financial process, citizens' rights, the Irish border, and those kind of questions. I am sure the Government would argue that amendments that fettered the clarity of the motion in those respects would cloud whether approval had been given, but ultimately, in a sense, that is kind of the Government's problem. Don't forget: we are not all just talking about one motion. With a little tweak of the words, it is perfectly in order for the Government to keep bringing a motion back for approval.

Say, for instance, the approval motion is amended, and the Government are not particularly happy with it. They could respond to whatever amendment came along. It would also be possible for them to seek a fresh motion under section 13(1), so the Government have a lot of options at their disposal for this. They are not particularly being backed into a corner here, although I suspect the Government would like to make it out like that. It is Members of Parliament whose options are very limited, especially if we do not have the ability to amend prior to the motion being taken.

- Q38 **Mr Wragg:** I have asked a very similar question of all three witnesses regarding people's understanding of the word "meaningful", and it is not a flippant question at all, because clearly people have different interpretations of it. What is your view on it?

Mr Leslie: I think a meaningful vote has to be an amendable motion. I do not believe that post-hoc processes are genuinely amendable, because what you are suggesting in that circumstance is a fresh second series of motions and so forth. Certainly, there are degrees of meaningfulness, and



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some Members may wish to say that “take it or leave it” is pretty meaningful. I would say it would be even more meaningful if, as Members, we can look at the nature of the motion, adapt, amend, improve and refine. That is our process through the course of our deliberation, because issues can come along, and sometimes, somebody will come up with a great idea that has not necessarily been thought of, and then we move and are flexible. That would be the ultimate more meaningful process.

- Q39 **Mr Wragg:** Okay. As you say, that is obviously at variance with different people’s interpretations of that, but you mentioned that we should perhaps be concerned that this might be a precedent that others may wish to follow—presumably with malign intentions, as you indicated in your—

Mr Leslie: Well, they may be perfectly beneficial intentions.

Mr Wragg: Indeed, but is not the difference here—and I might take the guidance of the Chair on this point—that the process for a so-called meaningful vote has been legislated for within the Act? The process has been legislated for there.

Mr Leslie: Not all of the process.

- Q40 **Mr Wragg:** But it is not relying on convention, is it? If the Chair wishes to guide me on this point, I would be—

Chair: Just crack on.

Mr Leslie: No, because section 13(1) does not talk about anything other than “a motion”. We know—because we have hundreds of years of experience in this place—how we dispose of Government motions. What is unusual is an attempt by the Government and the Secretary of State to come along, for reasons we can all imagine, and try to turn that process on its head. I do not think that would be proper; I do not think it would be fair to Parliamentarians. I think it would be giving an advantage to the Executive position, and there are massive potential constitutional consequences for doing so.

Dominic Grieve was right to say that we have these processes so that the minority who are defeated in a circumstance say, “Fair play. The majority should have their way. The rules were the rules, and we disposed of issues as they were.” If it looks as though it is stitched up and fixed up, there will be big consequences for people’s respect for the outcome of that.

- Q41 **Nick Smith:** I do not know what the odds are at the bookies about the possible defeat of the Government on the meaningful vote, but say that vote was lost. I can understand your concern about a smorgasbord or pick-and-mix set of separate motions lying underneath it that we could all buy into or not, but some issues are more prominent than others, so do you think there is any value in, say, membership of a customs union, and do you think there is a majority here for that?

Mr Leslie: We have tested that proposition a few times over the past 18 months or so, and it has grown in support; I think there was only a



handful of votes in it before. This is a very finely balanced Parliament. The reason we are here talking about this today is that the Government know the process is finely balanced. So yes, I think there are lots of things that are not set in stone. Some people will say that, from a Government point of view, putting it as an ultimatum in a take it or leave it arrangement would give them an advantage over a bunch of tired and exhausted MPs who might just think, "Oh, I want this process over." However, this is too important for us to get tired and exhausted about. There are lots of specific issues that Members should be allowed to raise and propose, and, if there is not a majority, the amendments fall. Unpicking and trying to throw in the bin hundreds of years of carefully refined, gradual constitutional practice and the way we have disposed of Government motions would be a massive mistake at this point.

- Q42 **Mr Bone:** According to a leading bookmaker, it is evens whether there will be a deal or not. I know you listened to the previous evidence, so you heard the view—I think this is what the Act says—that there has to be a clear decision one way or the other on the proposition, without any amendments. If it fails, it is clear what happens afterwards because that is laid down in the Act. Are you not in any way attracted to the idea of having these motions before that main vote so that the House is informed, but you still have a clear vote on the actual motion?

Mr Leslie: I would prefer amendability so that we can funnel to a single conclusion of the House, because it is all to do with the words of the motion and textual changes, as amendments are normally done. I am not sure how a series of motions prior would be selected. I am not sure how or what the limit would be. I worry also about the legal standing of those motions because the Government could say, "We like this one because it has legal force, but the others don't." The main principle is that it is done prior to the Government motion. Whether it is in motion form or an amendment form—I personally prefer amendment form—I think that would be better.

I do not necessarily agree with you that section 13(1) of the Act absolutely rules out amendability. I don't believe that is the case. It signals that approval should be given to the withdrawal treaty. The words in which that approval is given are not specified in the Act and therefore the House has the ability to make amendments to those words.

- Q43 **Mr Bone:** Isn't the problem the treaty bit? The treaty cannot be changed just by us. It would have to be changed by the EU, so therefore you must have a clear vote on that treaty. Isn't that why the amendability of it isn't possible?

Mr Leslie: That is what the Government would seek, because they want to then proceed to the implementation Bill, which, by the way, is perhaps an even more meaningful way of moving through the ratification process and then the CRAG Act arrangements, and that is where the ratification comes. It is not just from the motion stage. The motion is certainly a gateway through which things then happen, but I do not think we should be precious about it, especially given that the Government can bring fresh



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motions if they do not get exactly the form of words they want at their first attempt.

- Q44 **Chair:** On the legal standing, according to the Institute for Government, if Parliament amends the motion to approve the deal, the Government will not be legally obliged to do what it asks, so amendments to the Government motion do not have legal standing in the sense that the Government are required to act on them.

Mr Leslie: I would accept that. By and large, motions do not have legislative force. That is right, but in this case there is a pretty high moral imperative on Ministers. If the House expresses its view on a particular amendment, it would be very difficult for the Government to brush that aside.

- Q45 **Chair:** I worry that we will get to a stage where all our constituents sitting at home waiting for the big vote to come through will perhaps never get to see the big vote because it does not happen. That is just a concern. We did not make this inquiry up ourselves. We were asked to do it by the Brexit Select Committee. We wrote to the Government asking for evidence, and we have collected evidence.

Mr Leslie: Would that be the choice of Members of Parliament, who are ultimately sovereign in this matter? If they choose to make a resolution in that form, the Government have to respond to it. We are not here for the convenience of the Executive; we are here to make decisions as we, collectively, see fit.

- Q46 **Chair:** That is absolutely right. The House could pass an amendment, and the Government could say, "Okay," and go off and try to sort it out—

Mr Leslie: And bring back another motion.

- Q47 **Chair:** Yes, but the EU might say, "Terribly sorry. That one's not on the table." Going back to Peter's point, bearing in mind that amendments and motions are not legally binding, could you entertain a series of motions being put discretely before the yes or no vote on the deal?

Mr Leslie: As I say, the main principle is that it is prior to the Government motion. I worry, though. I was there—I am that old—when Robin Cook, I think, took through that series of seven motions on Lords reform. Many of you were just a twinkle in the parliamentary eye at the time. I remember that it was widely ridiculed. It was not a happy precedent for how Parliament should act, because everything was voted against and all sorts of things came up. The novelty of that didn't really take into account the hundreds of years of reasoning about why we come to decisions in the way we do. As good gradualists and advocates of our wonderful unwritten British constitution, I hope we all respect the wisdom of our forebears and why they came to the procedures we have—notwithstanding the excellent judgment of the Procedure Committee on most occasions.

Chair: But the truth is that you're not that old, are you? You got into Parliament at 24 in 1997, so you are younger than many of us here.



Mr Leslie: It is amazing what vitamins can do.

Q48 **Sir Edward Leigh:** Do you agree with Mr Letwin that if Parliament rejects the deal, the Government wouldn't be obliged to proceed straightaway to a no-deal situation? If Parliament produced an amendment or a motion that got a majority, the Government could then renegotiate on that basis. Is that possible, do you think? I am not saying it's desirable; I am just asking a straight question.

Mr Leslie: If all amendments fell and the Government's motion fell, we know what happens, because section 34 kicks in. We are into a Government statement and a neutral motion. It is pretty unclear what would happen in those circumstances, because the House would be asked just to take note of the matter or consider it. In reality, I suspect, the Government would have to generate some other form of proceeding.

Look, if Parliament—if MPs—wants to add an amendment relating to less money being paid, requesting an extension of article 50 or whatever it may be, it would be very difficult for the Government to ignore that and just go straight through its ratification processes. It was after very many days of deliberation that we came to the wording in the Act. Unusually, we have part of our process enshrined in legislation, but all it says, of course, is "a motion". I personally think we should take that as read and not tinker excessively with it.

Chair: Okay. Thank you very much for your time. Again, Chris, sorry for keeping you waiting. This Committee never gives the Government an easy time. We like to think that we often save it from itself. When it is not acting in the interests of the House, we try to ensure that it does act in the interests of the House. I hope that reassures you. Thank you very much. We are now going to meet in private, so we will clear the room.