

# Select Committee on the European Union

## Oral evidence: Brexit: Gibraltar

Tuesday 23 October 2018

4.35 pm

Members present: Lord Boswell of Aynho (Chairman); Baroness Armstrong of Hill Top; Lord Cromwell; Baroness Falkner of Margravine; Baroness Harris of Richmond; Lord Jay of Ewelme; Baroness Kennedy of The Shaws; The Earl of Kinnoull; Lord Liddle; Baroness Neville-Rolfe; Baroness Noakes; Lord Polak; Lord Risby; Lord Soley; Lord Teverson; Baroness Verma; Lord Whitty.

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Questions 27 – 35

### Witnesses

[I](#): Hon Fabian Picardo, Chief Minister, HM Government of Gibraltar; Michael Llamas QC, Attorney-General, HM Government of Gibraltar.

## Examination of witnesses

Hon Fabian Picardo and Michael Llamas.

Q27 **The Chairman:** I welcome you, Chief Minister Fabian Picardo, and Attorney-General Michael Llamas, with whom we are very familiar. It is always a pleasure to see you. All I need say at this stage in welcoming you to this public session of the Committee is that one reason why we can hold the meeting in this way is that the negotiations have been satisfactory as we see them. It must be so, because the Prime Minister told us so yesterday in her Statement.

The simplest thing is to invite you to comment on the state of play, including any political factors that may have influenced bilateral relations with your neighbours in Spain, and any particular applications to the transition period. As you will appreciate, colleagues will want to ask about the detailed arrangements, not all of which have come out yet. But if you could set the scene in general terms, that would be very helpful.

**Hon Fabian Picardo:** Thank you so much for continuing to take an interest in matters related to Gibraltar, particularly at this difficult time. I bring with me the Attorney-General, but not the Deputy Chief Minister, who unfortunately is in Strasburg today and unable to join me. He is addressing a cross-party group of Members of the European Parliament. It is equally important that we continue relationships with that body, both now, while we remain with the United Kingdom members of the European Union, and in future, so that they remain fully informed of what is happening in Gibraltar.

Also with me today is the Collector of Customs in Gibraltar. The last time I appeared before you, you took a keen interest in how customs matters work in Gibraltar, and I thought he should be with me in case I need to consult him on any question that might be put to me. Providentially, the Minister for Equality in Gibraltar was in Parliament today on Commonwealth parliamentary business. She is also with me this afternoon.

It has been a complex period since the beginning of this year, when we first started to engage discreetly with Spanish colleagues on the important issues that we seek to resolve in order to ensure that the transition period, which I hope the United Kingdom and Gibraltar will jointly enjoy as we leave the European Union, leads us to a positive future relationship with the European Union. It should not be a fraught period, which could result in further disputes that make the future harder to achieve.

In discussions with Spanish colleagues and with colleagues from the United Kingdom team negotiating the United Kingdom's exit from the European Union, we have been able to come very close to final terms on a protocol and adjacent memoranda that deal with a number of issues, such as police and customs co-operation, the environment, issues relating to tobacco and, in parallel to that, matters relating to taxation, which will be the subject of a separate agreement.

One key issue is that relating to citizens' rights and how we can flesh out these matters a little in the withdrawal agreement. These are in relation to what is unattractively referred to as the "stock" of people who have been enjoying acquired rights under the treaty, and how we protect those rights, both during the transitional period and beyond it, into the future.

I think it is fair to say that the protocol is fairly final, and we have developed memoranda of understanding, which in some instances are agreed and in others are still not finally agreed. We have not yet been able to come to a final agreement on matters relating to tobacco and taxation in particular.

I want to make clear that the Government of Gibraltar wish to reach final agreement with Spain in respect of those two areas. Alfonso Dastis, when he was Foreign Secretary of the Spanish Government, referred to those areas as "irritants" that had plagued the relationship between Gibraltar and Spain for some decades, in particular while we were all members of the European Union.

I immediately adopted that definition, because I believed that it was absolutely right; they were irritants that the Government of Gibraltar wanted to see dealt with as much as the Government of the Kingdom of Spain might want to see them dealt with.

So our disposition continues to be one of trying to resolve the final issues between us in respect of memoranda that deal with practical arrangements on tobacco pricing and taxation matters.

The issue of taxation will not be in a memorandum of understanding. Under Spanish law, if they enter into arrangements in respect of tax, they have to do so by way of international treaty in order that it affects definitions in Spanish law in the appropriate way. That may take a little longer to finally agree.

I hope this has been a good overview of where we are.

**The Chairman:** That is very helpful. Trying to sum it up—I am not a great person for soundbites—it sounds as though there are two areas of concern, and I think there were always two when we reported earlier and when we came to visit you in Gibraltar.

One was whether your interests are sufficiently listened to, and, secondly, whether they are understood in the sense of the distinctive situations that you have mentioned. Would the answer to those two questions broadly be yes?

**Hon Fabian Picardo:** They would not be just broadly yes, but you are right that those were the issues that concerned us when I first appeared before you. It is very clear that we have been listened to and fully involved in the process of negotiations in so far as they relate to Gibraltar, and our concerns have been fully understood.

When the Prime Minister said that Gibraltar would be fully involved in the negotiations, it was not just a soundbite; it became a reality. Engagement occurred through the Joint Ministerial Council on Gibraltar's exit of the European Union, which is a body that meets quarterly. It also occurred directly, politically, between me and my political interlocutors in London.

In particular, it occurred at the technical level between officials of the Foreign and Commonwealth Office, of DExEU and of the Cabinet Office. They have worked hand in glove with my officials and me over the past 12 months to understand our concerns, to give voice to those concerns in the context of the wider negotiations, and to ensure that Gibraltar could represent itself in the context of the parts of the detailed negotiations that involved Gibraltar specifically.

**The Chairman:** Thank you very much. There is one fast ball; I know this was a difficulty, and it is self-evident if you travel through Gibraltar Airport. Can you fill us in on the current state of discussions with Spain in relation to the airport? Where have we got to on that?

**Hon Fabian Picardo:** Unfortunately, we have a status quo in that respect. There has been no progress in relation to Gibraltar Airport. I will give a quick potted history of where we were.

In 1987, Spain insisted that air liberalisation and other EU measures relating to air transport should not apply to Gibraltar airport unless she was able to share the use of that airport. This relates to Spain's view that there are two claims to Gibraltar: one claim to Gibraltar and its city and garrison, and another to the isthmus, which is the location of the airport.

In that context, an agreement was made in 1987, against the wishes of the people Gibraltar, between the United Kingdom and Spain. This suspended the application of the EU acquis to Gibraltar airport until Gibraltar's Parliament accepted that agreement, which was not going to happen.

In 2005 and 2006 under the trilateral forum, the Cordoba arrangements in respect of the airport were entered into. Instead of talking about shared use, they talked about enhanced use. Those arrangements led to Gibraltar building an £84 million terminal to comply with its obligations under the Cordoba agreement. Unfortunately, Spain did not comply with its obligations to build a small entrance to the larger terminal that Gibraltar had built, and in 2011, when the Partido Popular was elected into government in Spain, the Spanish Government once again introduced a suspension clause into all measures after 2011 relating to air transport to exclude Gibraltar.

So there are measures after 1987 that were suspended under the original 1987 agreement, measures after 2006 that applied automatically to Gibraltar airport, and measures after 2011 that once again were suspended under the Partido Popular regime.

You will see the status quo reflected in the arrangements that have been made. The measures that have already applied to Gibraltar airport will continue to apply, but there will be no further application of new measures unless there is an agreement between the United Kingdom and Spain that that should be the case. Of course, the position of the people of Gibraltar is that we have already entered into an agreement—the Cordoba agreement—with the PSOE Administration in Spain. We remain ready to perform in respect of those arrangements—in fact, we have spent money to perform our side of the bargain—but we will not renegotiate an agreement on which we have already spent money in ensuring our compliance.

**The Chairman:** Thank you. It was very useful to have that clarified. I have one point to ask which I hope might be less problematic. Can you confirm to us that Spain has now accepted that any transition/implementation arrangements that apply under the withdrawal treaty to the United Kingdom will, by the same token, apply to Gibraltar for the duration of that transition/implementation period?

**Hon Fabian Picardo:** The statements of the current Spanish Foreign Minister, Senor Josep Borrell, before the Spanish Parliament's foreign affairs commission last week were to the effect that the protocol that provides for Gibraltar's inclusion in the withdrawal agreement and its transition period, in keeping with the definition of the territorial ambit of the withdrawal agreement that appears in the definition section of the withdrawal agreement, is now all in green.

I took that to be a reference to the press conference by the former Secretary of State for Exiting the European Union, the right honourable David Davis, and Michel Barnier before the summer, when, you will recall, they illustrated the measure of agreement—I forget what percentage we were at then—in respect of the whole withdrawal agreement by showing green text and in some parts yellow text.

Senor Borrell said last week that, as far as Spain was concerned, the protocol and the territorial ambit of the withdrawal agreement covering Gibraltar were in green text and that it would be reopened over the dead body of his officials. I took that as a positive signal.

That was further confirmed by Prime Minister Pedro Sánchez of the Spanish Government in Brussels last week in the context of his press conference after the General Affairs Council, where he confirmed agreement in respect of Gibraltar with the United Kingdom.

Q28 **Baroness Kennedy of The Shaws:** My question picks up on that. You mentioned the comments made by Josep Borrell, the Spanish Foreign Minister. Reference was made to the Gibraltar protocol of the withdrawal agreement and the question of the five memoranda being separate. I want you to describe what measures will be included in the protocol and how it is distinct from the memoranda.

**Hon Fabian Picardo:** Thank you, Baroness Kennedy, for the opportunity to clarify that, as well as the different status of those two documents. The protocol is like the protocol on Northern Ireland and the protocol on the sovereign base areas in Cyprus. It is an agreement between the United Kingdom and the European Union annexed to the main agreement between the United Kingdom and the European Union, and it will have the full force of international treaty law.

The memoranda are different; they are not raised to the level of international treaties. They are in effect practical arrangements in respect of the irritants that we have been discussing. The protocol, which has not yet been published—and I must not, by dint of the evidence that I give today, be the one in effect to publish its terms—refers, through recital, to the current status of Gibraltar's membership of the European Union under the Treaty on the Functioning of the European Union, which of course is a differentiated membership to that which the United Kingdom has today and is therefore worth reciting.

Then it sets out the areas that require fleshing out in the context of Gibraltar and our geographical reality next to Spain—in particular, issues relating to citizens' rights and, no doubt more clearly than I have set out today, issues relating to the airport and the different levels of application of European law as it is today to the airport. It then recites the fact that there will be arrangements in respect of co-operation between Gibraltar, Spain and the United Kingdom on matters relating to taxation, tobacco duty and so on. It neatly reflects those things in the context of the agreement. Separately, the practical arrangements that relate to those matters are set out in the memoranda.

The fifth memorandum is not quite a memorandum; it is a tax treaty between Gibraltar and Spain on how we resolve matters relating to disputes about the location of taxpayers and domicile and so on.

Q29 **Lord Risby:** First, may I congratulate you on a considerable achievement, and not only the achievement per se but the manner in which it was undertaken, which has been really professional.

I turn to two areas that you have mentioned which you consider to be work in progress. The first is the question of taxation and the differential levels that exist between Spain and yourselves, which have always been a source of some concern and irritation. Can you add anything more? I know you said that these are matters for further discussion, but is there anything more that you can add to our thinking or understanding of this process?

**Hon Fabian Picardo:** Thank you for your kind words of introduction. I think it is fair for me not yet to disclose what is in those memoranda, because they are still under discussion, but it is equally fair for me to tell you what is not under discussion and not in the memoranda.

Something that is certainly not under discussion is the rate of corporate taxation applicable in Gibraltar. A key issue which the United Kingdom has defended in its membership of the European Union and indeed

internationally is that a harmonised rate of tax should not be set other than by the relevant sovereign Parliament. This goes to the key issue of no taxation without representation and who determines what the rates of tax should be.

An international view of what a harmful rate of tax is and where it starts is set out by the OECD. The corporate rate of tax in Gibraltar, at 10%, is above the rate that the OECD considers harmful. We are not negotiating that rate of tax with Spain or, indeed, with any other third party, and the United Kingdom reserves to itself the right to determine what its corporate and personal rates of tax should be. If we had entered into a process of seeking to negotiate our rates of corporate tax at the moment of leaving the European Union, I would have thought that, far from taking back control, we would be handing it over in a way that would be unacceptable to everyone.

That is not to say that we have not had positive engagement with our Spanish counterparts in respect of the areas where we think that we can work together as neighbouring tax authorities, where we can resolve issues relating to domicile and where we can work together in a way that I think would be unprecedented and mutually beneficial.

**Lord Risby:** I would like to move on to the next area where you say there is work in progress. Here I plead guilty, because I have had the odd cigar in Gibraltar. You have considerably increased the cost by increasing the tax revenues, but this issue always remains with Spain—the question of tobacco smuggling. Do you feel that you can add anything more? I know that this is a case of work in progress, but this has always been a source of contention.

**Hon Fabian Picardo:** As you rightly say, I am very unpopular with smokers in Gibraltar. My Government brought about a ban on smoking in public places and I have raised the duty on tobacco, with the collaboration of the Collector of Customs, who is here with me today, by 148% in the past seven years.

There is a legitimate market in tobacco and an illegitimate or illicit market in tobacco. We have to ensure that we do everything possible to prise Gibraltar out of any role in the illicit market in tobacco and ensure that it does everything it can to demonstrate that it is doing a piece of work that stands up to international scrutiny in that respect. That does not relate just to price; it also relates to other measures that you put in place to control that business.

I think you will find that in the past seven years, and indeed before my time—the former Administration—we have been putting measures in place in Gibraltar that are probably the toughest in the world when it comes to the ability to purchase tobacco and to be in possession of tobacco.

With Spanish colleagues, we have tried to work on a differential of price that will address the issue of the illicit market in a way that is more

proactive and will be in keeping with the Statements I have already made in the Gibraltar Parliament. As far as I am concerned, the price of tobacco in Gibraltar is on a permanent escalator; it is going nowhere but up.

**The Earl of Kinnoull:** Carrying on along the same lines, I read your Statement to Parliament on 18 October. It fizzed with energy. Clearly you had done a huge amount of travelling and had been negotiating until “umpteenth o’clock” in the morning on a number of nights. Along with what Lord Risby has said, I, too, congratulate you on that.

I want to turn to your press release of 14 October, in which you describe the five areas that will be the subject of additional documentation. You say: “These will be time limited, where necessary, to the end of the transition period”, which is December 2020.

I wonder whether you can give us a bit of further colour on that; otherwise, we will have another cliff at the end of the time-limited period and a further lot of things to negotiate.

**Hon Fabian Picardo:** Yes. If I may say so, all the work that we have undertaken, which you have referred to, has been undertaken not just as a Gibraltar team but in partnership with the teams I referred to from the FCO, from DExEU and from the Cabinet Office. Our energy, engagement and enthusiasm has been matched by that of our British colleagues.

I sometimes read criticism of officials who have been conducting negotiations on behalf of the United Kingdom. I must tell you that this is the most unfair criticism I have ever read. One individual who is often held out unfairly for criticism is the Sherpa for the United Kingdom who, as far as Gibraltar is concerned, has done nothing but a magnificent job in assisting us to ensure that we deliver the results we hope to deliver as part of the wider UK-EU withdrawal agreement for the people of Gibraltar. I am of course talking about Mr Robbins.

In the context of the memoranda and the question that you put, it is important that we understand what we are trying to do in the memoranda. Neither Spanish colleagues, nor colleagues in the United Kingdom or Gibraltar delegation, thought we should overreach ourselves and end up negotiating future arrangements at this stage.

As we know, the position of Task Force 50 in the European Union—and indeed that of chief negotiator for the EU, Michel Barnier—has been that at this stage the only things being negotiated are the withdrawal process and what happens in the context of holding the ring for the period of transition. We are not in the process of negotiating the future; as you rightly point out, all the things that we are agreeing with our Spanish colleagues, if these memoranda end at the end of the transition period, *de facto* will be up for grabs again.

That position is not an uncomfortable one to the Government of Gibraltar because we must have something to bring to the table in the context of those arrangements. But let us understand that it would be nonsensical



to enter into an international tax treaty that is signed in 2019, comes into effect in 2020 but ends at the beginning of 2021.

On taxation, for example, we are not looking at a time-limited commitment. On citizens' rights, we would not be able to look at a time-limited commitment in respect of stock because, as you will know from your scrutiny of the withdrawal agreement, those will be enduring rights which stock citizens will be able to continue to enjoy indefinitely. We will need to continue to monitor whether they are able to enjoy those rights, without impediment, indefinitely.

There are other areas that we are dealing with, such as the environment, police and customs co-operation, and matters relating to tobacco, where we are not saying that the arrangements will end at the end of the transition period but rather that they may do so.

It is important that we all realise that we need to stay positive and work together in the future. No one should think—I have heard siren suggestions of this in some of the more exotic parts of the Spanish political spectrum and media—that what is up for grabs in the context of the negotiation of the future is the sovereignty of Gibraltar.

I say good luck with that to anyone who thinks they will even be able to put that on the table while I am in the room.

**The Earl of Kinnoull:** You are very clear on that. I have one tiny point of clarification and one additional question.

On the things that will need a permanent solution, will the process for getting to the permanent solution be bound up in the overall UK-EU process?

**Hon Fabian Picardo:** I think that is right. If you look at the structure, it is all about the UK-EU agreement, and this is a part of it.

**The Earl of Kinnoull:** The bit that is of great interest to us concerns the police and customs co-operation, which I think has been one of the irritants before. Could you finish on this question by giving us a bit more colour on how you see the future of those discussions going so that we end up with something enduring?

**Hon Fabian Picardo:** If I may say so, that is an excellent question, because it reflects the reality that we have been faced with, certainly in the time I have been in government and, I am sure, before my time. Coppers and customs officers know how to get on with each other, whether there is a border between them or not. They have been doing so in the context of Gibraltar for many decades. Police officers from the Royal Gibraltar Police and customs officers from Her Majesty's Customs in Gibraltar have strong relationships with their colleagues across the frontier—in the Policia Nacional, the Guardia Civil and the Servicio de Vigilancia Aduanera.

Unfortunately, the man bites dog incidents when they manage to fall out are the only incidents that make the front page. If they fall out once every five years, that is a front page. Nobody bothers to publish the work that they are doing together the rest of the time. Those notoriously unable to reach an agreement in this period have been the politicians.

I hope we can now reflect in a memorandum the reality which more sensible police and customs officers have been able to ensure has prevailed, and which politicians have never managed to reflect in a memorandum in the past. The reality is that we have very positive levels of co-operation and engagement to be able to plan and strategise how to prevent criminals who may be operating in the region from somehow using cross-jurisdictional conflicts to get away with any offences they might seek to commit.

**The Earl of Kinnoull:** That discussion is now over. You have had the discussion to create the memorandum, but we are not allowed to know more.

**Hon Fabian Picardo:** Yes. I should say that there are still bits of text that cut across all the memoranda and that are not yet agreed. But all the operative texts in respect of that memorandum, the substantive texts, are agreed.

**Lord Whitty:** I would like to pursue Lord Kinnoull's point that much of this could end at the end of the transition period. The lead-in to what happens after the transition period is the political declaration that should be agreed at the same time as the withdrawal treaty. We have not as yet seen any definitive text of that from either side, but do you have any hopes or anxieties about the political declaration?

In other words, if it was in one form would it raise anxieties in Gibraltar whereas other forms could alleviate that? That decision, if things goes to plan, should be before Christmas.

**Hon Fabian Picardo:** My understanding is that it is a non-geographic statement of intent about the future. Therefore I am comfortable about the situation. I would just refer to the fact that there was a recent statement by the new leader of the Spanish Opposition party, a gentleman by the name of Pablo Casado, who tweeted that Gibraltar should expect to enjoy no more than the relationship that the United Kingdom will enjoy with the European Union in the future.

I thought this was a good statement of the position that all parties understand is likely to be the starting point of the discussion about the future, although I would still say that it would be as much in the interests of Spain, particularly the people of Spain who live around us, that the differentiated status of our current membership of the European Union should be reflected in some way in our future relationship with the European Union when it comes to be negotiated with the United Kingdom.

**The Chairman:** The only memorandum that we have not touched on at

all is the one on the environment. We do not require an essay, but if you have any comments on that before we move on I would be happy to have them.

**Hon Fabian Picardo:** Thank you. “There is no Planet B”, were the words of President Macron some months ago, and I think those words will resonate through the generations. For many years, Gibraltar has wanted to co-operate with Spanish colleagues in respect of the immediate environment around Gibraltar. We have concerns about air quality and water quality. The management of the marine habitat around Gibraltar and the neighbouring Spanish coast has been a constant source of friction, born principally from the failure of Spain to recognise British Gibraltar Territorial Waters. I hope that by co-operating, without any party conceding any part of its views in respect of the wider issue of sovereignty, we will be able to avoid some of the frictions that have unnecessarily arisen in the past.

Q30 **Lord Jay of Ewelme:** Chief Minister, may I congratulate you, first, on the progress that you have made. It is really encouraging. Secondly, Lord Risby will forgive me if I congratulate you also on being unpopular with smokers in Gibraltar. That seems to me an excellent thing. Finally and more seriously, I welcome very much what you said about Olly Robbins. It is very important that that is said and registered, so thank you for that.

I want to ask you how the Gibraltar Government have been, and are, co-operating with the Andalucian Government and with local authorities in the Campo in order to protect cross-border workers and defend the interests of communities on both sides of the border. How have those negotiations gone? Have they been easy, have they been complex, have they been fraught? How do you think they might develop in the future? I am thinking of this not just as a static but as a dynamic negotiation that will have consequences.

**Hon Fabian Picardo:** Thank you for your kind words. I should just add that I have a particular driver with regard to smokers because my mother-in-law is a smoker, so it is easy to see the fruits of my labours in that respect.

**Lord Jay of Ewelme:** I hope she is well.

**Hon Fabian Picardo:** Thank God, she is well.

**Baroness Kennedy of The Shaws:** I hope you are popular with her.

**Hon Fabian Picardo:** I think that our relationship with the Andalucian Government, the Junta de Andalucía, is a key question and it is right that we address it with you today. I met the president of the Junta de Andalucía, Susana Díaz, on 24 January this year. We have had a strong relationship with the Junta in the past and I think that it has become stronger since that meeting. We continue to be in constant contact, in particular about matters relating to cross-frontier issues, such as workers and access to health services in the region—things that matter to ordinary people. Too often, people do not understand how some of the

issues of dynamic alignment of the treaties that we talk about reflect on ordinary lives. A lot of what we are doing with the regional government of Andalucía goes directly to how people's ordinary lives are affected on a daily basis.

I can say with hand on heart that I think that the relationship with the Junta is now stronger than it has been for many years. There is a lot of what you might call digital diplomacy going on. I find that a lot of discussion these days—I am sure this is the case in both these Houses—happens by way of WhatsApp or similar mechanisms that ensure that parties are able to exchange ideas very quickly. A meeting is often just a manifestation of work done before, rather than a place where solutions are delivered.

**Lord Jay of Ewelme:** Looking further ahead, do you foresee those relationships continuing as they now are? Do you feel that they are on a good basis?

**Hon Fabian Picardo:** I think they are on a strong footing at the moment. I should say that the Junta de Andalucía is going through a process of election. The president called an election two weeks ago and I believe that there will be an election on 2 December. It is not possible at the moment, other than by reflection of the polls, to know what the constitution of the Junta will be after 2 December but, whatever its constitution, I certainly hope that we will be able to continue to enjoy a strong working relationship with that neighbouring administration.

**The Chairman:** As you will remember, when we came over we had a very constructive meeting with the Grupo Transfronterizo. It, too, is broadly content with how that has come out in the negotiations.

**Hon Fabian Picardo:** Some of the issues that it has been raising have been the key issues that have been addressed in the context of the discussions, so it will be broadly satisfied. It is important that we reflect that issues relating to border fluidity are fundamental to the Government of Gibraltar. We think they are important to citizens and not just to workers, and very important also to the cross-frontier group. That will be reflected in the final text, although I confess that I am not as happy as I thought I might have been about what the final text might say. However, I think it is more a technical impediment than an impediment of good will either on the part of the Commission or on the part of the neighbouring Member State or certainly Gibraltar.

**The Chairman:** I want to raise a small point about the cross-border recognition of professional qualifications. Those could include vocational qualifications as well as those relating to the conventional professions. Has that been part of the negotiations or is there further work to be done there?

**Hon Fabian Picardo:** It has not been part of the negotiations, but by putting your finger on that wound, you give me the opportunity to reflect on what the negotiation has been about. Professional qualifications are

dealt with under, I think, paragraph 2 of Chapter 3 of the withdrawal agreement. The whole withdrawal agreement will apply to Gibraltar. The only parts that we have been dealing with are those that are particular to Gibraltar and which arise from the fact that, as an Article 355.3 territory which was not part of the customs union and not part of the common agricultural policy or the common fisheries policy, there were differences that had to be reflected on the way out as they had been on the way in. Everything else that you see in the withdrawal agreement applies fully to Gibraltar, including the section on professional qualifications.

**The Chairman:** That is very helpful. Thank you. We go straight on to Baroness Neville-Rolfe's question.

Q31 **Baroness Neville-Rolfe:** Chief Minister, thank you for welcoming some of us to Gibraltar in March.

**Hon Fabian Picardo:** It was a pleasure.

**Baroness Neville-Rolfe:** It was a very useful and enjoyable visit. Is there anything that you would like to add to what you have already said about discussions with the UK Government in the context of the Joint Ministerial Council, including on the UK-Gibraltar relationship post Brexit? That will obviously be very important to your economy, as well as to the politics and indeed the security of Gibraltar.

**Hon Fabian Picardo:** I think that the Joint Ministerial Council in the context of Gibraltar has worked very well. When you came to Gibraltar, there was an opportunity to reflect how well the relationship was going with UK Ministers. I know that that does not sell newspapers and that it is only falling out that makes the front pages, but I cannot find a reason to fault the relationship that I have enjoyed with the Minister for Europe, Sir Alan Duncan, or Robin Walker, the Under-Secretary of State at the Department for Exiting the European Union.

We were able to surface very quickly at a time when Spain was being more belligerent than she had been before or has been since, two Spanish Foreign Ministers back. We were quickly able to service arrangements bilaterally between Gibraltar and the United Kingdom that would continue to allow Gibraltar access to the market in the United Kingdom, in services in particular, after the cliff edge that we might have anticipated on 29 March next year and throughout the transition period and to agree the mechanisms that would lead to that access continuing and being maintained and enhanced even after the implementation period. We are now doing a lot of work to finalise that at a regulatory level.

Only yesterday at the celebrations of Gibraltar Day in London, Robert Jenrick, the Exchequer Secretary at HM Treasury, and Robin Walker from DExEU confirmed those arrangements and our joint commitment to the highest regulatory standards the highest standards of climate protection in the areas of both financial services and online gaming for the future. A little less out of that commercial/business environment, on matters relating to education and health, we are ensuring that the present

arrangements that apply between us by dint of the rules of the single market, of which we are both members, will continue to extend beyond our common membership of the single market by way of bilateral arrangements.

That really helped to settle the nerves of commerce in Gibraltar, as well as the nerves of many who were looking to the future and wanted to know that they would continue to enjoy the benefits of being able to come to the United Kingdom for university and tertiary education and for medical services that are not available in Gibraltar. We have agreed how that will continue to happen.

**Baroness Neville-Rolfe:** So you are sure that the system will work okay post Brexit, beyond implementation. I suppose the other question is: are the further assurances that you are seeking to get from the UK Government as the negotiations continue through the agreement phase and beyond in some of the areas that you have mentioned, such as citizens' rights and the irritants of tax and tobacco?

**Hon Fabian Picardo:** I am confident that I have seen nothing to suggest the opposite and that everything I have seen and that we have agreed reflects a very positive attitude that does not, in my view, store up problems for the future. As long as that good faith continues to be manifested by a UK Government of whatever political hue or colour, they will find willing partners in Gibraltar to continue those positive arrangements, and I have no reason to suggest the contrary.

You have asked me that question in particular, and I answer it in the positive, always conscious that we also need to continue to perform our side of the bargain.

**The Chairman:** There are two follow-up questions, one specifically on that. There will be, it is evident to this House, a need for further legislation to implement any agreement. That will be complex and intense work. Understandably and rightly, the focus of what we have been talking about, and the focus of the JMC (Gibraltar EU Negotiations), has to some extent been the external interface. There is also a domestic interface within the UK and in its relations with Gibraltar.

I would like to pose two questions on this. One is to ask about the extent to which you are in touch with government lawyers here about your legislative requirements. I am not clear whether some requirements are directly enactable or whether you would need to have a separate Bill to cover them, or about the extent to which the UK Government are giving assistance. It is the sort of question that we would also ask of the Crown Dependencies, but you are here and I wonder what your take is on it.

Secondly, we have a long and impressive list from the 5 March JMC meeting of agreements about access covering Gibraltar's interests vis-à-vis the UK. Are you satisfied that, on UK domestic legislation, those are going forward, or is this an area of some concern and one that we all need to watch to make sure that those assurances come through in

practice?

**Hon Fabian Picardo:** Thank you for both those questions. The first, with the Attorney-General sitting next to me, can be answered very favourably. We have seen that engagement between drafting counsels in Gibraltar and in the United Kingdom. We are ready to publish our Withdrawal Bill when the time comes and we understand the number of policy decisions that have to be made. Gibraltar Ministers have already started that process, unravelling some parts of the law that will have to be undone if we leave the European Union.

Again, the transition period will be an important cushion in respect of being able to do that in an orderly fashion. We do not have any complaints whatsoever on the engagement we have had there. The Attorney-General has been fully involved in discussions on what support Gibraltar might need.

On the second part of your question, we are already starting to see the practical implementation of the arrangements that we agreed in March. Some in relation to the Gambling Commissions of Gibraltar and the United Kingdom are ready; some on education and health matters I know are also ready.

Unfortunately, we had to cancel a JMC (GEN) last Monday because both our UK team and the Gibraltar team were in Brussels, in Rue Ducale, negotiating the final details, and it would have been impossible to get back in time to attend the JMC. Both sides are trying to get a date in the diary as soon as possible. I think we will see that a lot of what we agreed in March will start to surface now as practical arrangements are put in place.

Q32 **Lord Cromwell:** Good afternoon, Chief Minister. I am sure we all share your hope that everything will be positive with no bumps in the road. We also have to look at dispute resolution. I think you stated that a specialised committee will be set up under the UK-EU Joint Committee on Gibraltar and that that will be the recourse point for disputes. Can you explain to the Committee a little more about how that mechanism will work and what will be the roles and involvement of the UK, Gibraltar and Spain?

**Hon Fabian Picardo:** The specialised committee is one of the committees set up by the withdrawal agreement, all of which sit below the Joint Committee, which is set up as the main committee under the withdrawal agreement. So it sits in the hierarchy of those committees and will be in receipt of any concerns that arise in the context of the committees set up under the MoUs. God knows, we are taking back control, but we are doing it through a lot of committees.

There will be a process whereby any disputes are elevated in an attempt to avoid the breakdown of relationships through the committees, up to the Joint Committee. Article 158 of the withdrawal agreement is the one

that sets up the specialised committee, which will be between the United Kingdom and the European Union.

The composition of the committees is not yet finalised, but I expect that in the specialised committee we will want to see a lot of the practical resolution of any disputes. It is very likely that we will see representation from the relevant competent authorities in the lower committees so that there is no further escalation of disputes, so far as possible.

**Lord Soley:** I think I can now pass on my question.

**The Chairman:** We are moving on at a rate of knots, which is helpful. You have been giving very helpful and succinct answers. Coming to our last line of questioning, Baroness Falkner will initiate it and other colleagues may want to join in.

Q33 **Baroness Falkner of Margravine:** Chief Minister, you have talked about the desirability of an orderly withdrawal. I think everyone in the room would share that desire. You have also acknowledged the UK position that no deal is better than a bad deal. What are your preparations and priorities for trying to restore as much order as possible if there is no deal?

**Hon Fabian Picardo:** You are right: I have acknowledged that the position of the United Kingdom has been—to an extent, it has to be—that no deal is better than a bad deal. You cannot go into any negotiation saying the opposite. In the context of Gibraltar, for example, any deal that involved Gibraltar's sovereignty being in play would be considered by Gibraltar not to be worth the candle. No deal would be better.

We have had to keep these issues alive in the approach that we have taken. This has concentrated our minds on the need to have in place contingency plans to reflect that and be ready to move in the event that we find ourselves in that position. We will not relax our planning in that respect until we know that everything is agreed.

Another mantra that everyone talks about is that, "Nothing is agreed until everything is agreed". Given that everything is not yet agreed, we have to continue our contingency planning.

We have seen notices issued by the United Kingdom Government to businesses and individuals, some of which apply as much in Gibraltar as they do in the United Kingdom. Some have required modification for Gibraltar and we have issued specific notices in Gibraltar. We are also planning for what might happen on 29 March if there is no deal on that date in order to ensure so far as possible that people feel no difference in their everyday lives.

Here, Gibraltar is in a slightly better position than the United Kingdom for one reason, which is that we were never part of the common customs union. What will occur in the United Kingdom on 30 March if there is no deal, which is that goods will move without the benefits of the customs union, already occurs in Gibraltar today.



That does not require planning from our point of view in respect of our frontier interface with the European Union. But if there are negative effects at Dover and Calais, those could be reflected in what gets down to Gibraltar. A lot comes from the United Kingdom through the highways down to Gibraltar; we are planning to ensure we can get hold of anything specific we need.

I am not talking about a particular brand of a commodity that people might enjoy—if they have to do without Marmite or take a different brand of beans for two weeks, it will not kill them—but if there is a particular brand of pharmaceutical, for example, that we need from the United Kingdom, we must be able to get it. Gibraltar is not a place where we need to think about stockpiling foods or anything like that, but if you do need a particular brand of pharmaceutical we will ensure you can have it and that there will be a seamless provision of it.

I certainly hope that we do not have to advance our contingency plans further. For us, one of the key cut-off dates will be 1 January 2019. Our civil service and providers are ready to go up to the next gear of contingency planning after that date if there is no deal by then that we can all rely on to be in place by 29 March.

**Q34 Baroness Armstrong of Hill Top:** Good afternoon, again. Are the separate agreements that you have made with Spain, or at least the framework that you have arranged with Spain, dependent on the overall Brexit deal, and what would happen to them if there was no deal?

**Hon Fabian Picardo:** The short answer is that they are dependent on the existence of a withdrawal agreement between the United Kingdom and the European Union. That is why I made the point earlier to Baroness Kennedy that the protocol agreed between the United Kingdom and the European Union is an annex to the withdrawal agreement. The memoranda of understanding are referred to in the protocol, but they are not part of those arrangements.

They flesh out the practical arrangements that we have been able to agree with Spain—we hope that in the areas where we have not yet reached final agreement with Spain, we will be able to do so—that are in the interests of both parties. I hope that we will be able to ensure that they are our “no-deal deal” contingency, if that makes any sense. I would also hope that we do not have to reach the stage where we are scrambling to do a “no-deal deal”, and that everybody is protected by a UK-EU deal.

The idea of a “no-deal deal” might sound like a fanciful concept, but it would be a real pity to throw away the work that has been done, because it is not easy for Gibraltar and Spain to say that they have come to terms on things. It really represents a change in the relationship and a positive step in the right direction. I feel that the Prime Minister said so herself in her Statement to the Commons yesterday, and I would hope that common sense would also prevail in those circumstances between us and our neighbour.

At one stage, one Spanish diplomat said to me as an aside, and I thought it was an astute aside—I do not want to disclose anything that was said around the negotiating table— “This is one of the things that can help us to save ourselves and Gibraltar from the train wreck that might come if there is no deal between the United Kingdom and the European Union”. That is a figurative way of representing what I said myself a moment ago.

**Baroness Armstrong of Hill Top:** That is very astute, as you say, but it also represents part of the problem of what a bad deal would be, because a bad deal for the UK might not be a particularly bad deal for Gibraltar. The sticking point is Northern Ireland, and customs are not all of it, but they are a big part of it. As you say, you are already outside that.

I think we are in a position where we do not want to give you more difficulties with Spain than you might have, but also, quite honestly, we do not want to have to explain that this is a bad deal, when actually it does not affect Gibraltar very much.

**Hon Fabian Picardo:** I appreciate that and I think you are absolutely right, although we are part of the British family of nations, for good and bad—

**Baroness Armstrong of Hill Top:** I understand that.

**Hon Fabian Picardo:** —and we are leaving the European Union with the United Kingdom. But you are absolutely right to say that what appears to be the final sticking point ironically has little to do with Gibraltar’s current membership of the European Union.

**Baroness Armstrong of Hill Top:** Absolutely. That is put much better than I would be able to put it.

**Hon Fabian Picardo:** I must say that we feel a great deal of solidarity with the Prime Minister trying finally to square this very difficult issue. I am very pleased that she is doing that job and not me.

**Baroness Kennedy of The Shaws:** I think we would all say that.

**Hon Fabian Picardo:** Yes. People who criticise her do not realise the amount of energy that she has put into this and how difficult this problem is.

I also feel a great deal of solidarity with colleagues in Northern Ireland who rightly want to defend the Good Friday agreement, the benefits that have come from that and the peace that has flowed from that, and that there should be no controls at the border between the Republic and Northern Ireland, and that equally there should be no controls between two parts of the same United Kingdom. Thankfully, that problem is above my pay grade.

**Baroness Falkner of Margravine:** I wonder whether I have misunderstood. I just wanted a bit of clarification on the issue of the

separate memoranda of understanding with Spain. You have described them as your no-deal contingency plan. Is that legally settled now? In law, you and Spain have reached agreement, but those memoranda of understanding will stand in those five areas, irrespective of what happens?

**Hon Fabian Picardo:** The short answer is no. What I discern we are both saying is that we believe that these could be a safety net in the event that there is no withdrawal agreement between the United Kingdom and the European Union.

**Baroness Falkner of Margravine:** Could you elaborate just a little on that? How would they work?

**Hon Fabian Picardo:** The substance has been agreed between Gibraltar and Spain. That is why I say that it would be a real pity to see those agreements on the substance, which have taken us so long to sit around the table to consider, thrown away because there is no withdrawal agreement. We all know that we have agreed the essentials that will ensure that Spanish citizens, British citizens and all nationalities of the European Union who, for example, live in the area around Gibraltar and work in Gibraltar are in no way negatively affected by the absence of a deal. We talk about workers and commercial issues, and they matter very much, but so do the people who have families across frontiers and who wish to continue to see their families.

If we discern the possibility of having to say, "Right, it's now clear that there isn't going to be an UK-EU agreement", how do we ensure that these practical arrangements are given effect to despite that? The question that you ask, pointedly and rightly, is: is that a legal certainty? The answer is that it is absolutely not a legal certainty. I have said this on a number of occasions in the past 48 hours and I am becoming a bit repetitive but it is important to say it: common sense must prevail.

**Baroness Falkner of Margravine:** Indeed, but backstops may well need to be used. We all wish the 95% of the agreement that is agreed to stand, irrespective of whether there are outstanding issues. When do you think you will come to the view that you need to reopen discussions with the Spanish on giving legal certainty to those agreements? Do you have a timeframe in mind? "The clock is ticking", in Mr Barnier's famous words.

**Hon Fabian Picardo:** And he is right. The question is: when does the United Kingdom consider that it has reached the end of the road? When it does consider that it has reached the end of the road, part of our contingency planning will be not just logistic but, in partnership with the United Kingdom and the European Union, as well as Spain, a continuation of those discussions to see whether we can pick up the thread that we have agreed, which is part of the withdrawal agreement, and apply it for the benefit of citizens who are, in the context of the world that we inhabit, in Gibraltar and in the neighbouring Spanish region.

I certainly hope that we do not reach that moment and that the United Kingdom announces that it has a withdrawal agreement with the European Union. However, you are right to say that we have not yet reached that point, and therefore we have to be alive to the possibility of elevating this discussion into the potential for agreement.

**Q35 The Chairman:** Chief Minister, your final remarks about reaching the end of the road lead me to one final technical question on potential breakdown scenarios. It concerns flights. I am thinking not simply about air space in relation to Spain and Gibraltar, although that is one issue, but about, for example, the intervening air space outside the United Kingdom. That would presumably be quite a significant problem for you commercially, in the same way as you explained the situation relating to some of the overland transport of goods. It would also be a significant problem for your citizens in relation to access to services in the United Kingdom, such as specialist medical services. Have you done some work on that or are you concerned about it?

**Hon Fabian Picardo:** We have. The fact is that Gibraltar has not seen co-operation from Spain in the context of the Cordoba arrangement since 2011, and we have to an extent been made match fit by that reality. Today, Gibraltar's flights go only to destinations in the United Kingdom and to one destination in North Africa—Tangier. Therefore, there would not be a loss of flights as a result of Gibraltar not being part of a withdrawal agreement on aviation or if there were no withdrawal agreement covering aviation. To an extent, those issues are governed by the Chicago Convention, but international conventions are not in play in the context of what might or might not happen on 29 March next year. So we are fairly comfortable in that respect.

**The Chairman:** Thank you. Is there anything that you would like to say, Chief Minister, that we have not touched on?

**Hon Fabian Picardo:** I would just like to thank you for your continued interest in Gibraltar. You were very kind to give me the heads of the issues that you might consider with us. The Attorney-General has very helpfully set out in greater detail than I have been able to give you today some of the answers that I think might be helpful. We shall let the Committee have a written text that deals with a lot more of the technical detail, which you might find useful.

**The Chairman:** In winding up, Chief Minister and Attorney-General, I begin by thanking you very much for your attendance this afternoon. We will of course be preparing a transcript of this session, which we will share with you for any corrections on matters of substance.

But it goes further than that. You will have heard what some colleagues have said about their appreciation of your eagerness and efficiency in having reached an agreement in a fairly difficult political situation. We are aware, and remain so, not only of the sensitivity of your interests and the shared history that we have but of the very strong political view taken by your own residents at the time of the referendum.

We need not debate that now, but I think that we have a shared wish to make sure that your interests are fairly and appropriately treated. Given your history as a siege city, the fact that you were not stockpiling food was a matter certainly of some remark but also of some mild encouragement to us that things are not quite as bad as sometimes they seem.

In closing with those remarks, I reiterate the thanks of the Committee and say that we are well aware, as you have revealed in those very illuminating answers and in your offer of a further briefing, of your address of the matters and your appreciation of the way that they are being handled officially in London. We would ask you to keep in touch with us on continuing developments, such as the framework for a future political arrangement and the statements made, and so on.

This is not the end of the line for our mutual relationship, nor shall we lose our interest, which has been very much fortified by your answers this afternoon. Thank you very much. At that point, we will close the formal session.