



Select Committee on the European Union

Uncorrected oral evidence: Scrutiny of Brexit Negotiations

Wednesday 23 January 2019

4 pm

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

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Questions 1 - 15

Witness

I: Rt Hon Stephen Barclay MP, Secretary of State for Exiting the European Union, Department for Exiting the European Union.

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Examination of witness

Stephen Barclay MP.

Q1 The Chairman: Secretary of State, I think this is your first visit to the Committee. You are very welcome. We will not give you an easy time, but I assure you that we will enjoy and benefit from a constructive relationship, which is what we appropriately seek. We are not unaware of some rather considerable current challenges, and we understand that, but it would be helpful to us if you could begin to steer us to where we have got to, where we may need to go, and areas to which we will be giving attention. I hope very much that this initial session will not be the last and that we can keep in regular touch during these times.

Is there anything that you want to say initially? If not, we will start; it is up to you. We have a big list of questions that colleagues want to come in on.

Stephen Barclay MP: I think the last appearance by a Secretary of State before the Committee was in August. My view, certainly in my previous roles, has always been that there is a wealth of expertise here and, looking at the cast list, I see that is self-evident.

I would very much like close engagement with the Committee both in the formal scrutiny process and, if the Committee were willing, on a more informal basis, by meeting Members of the upper House bilaterally and in small groups. There are different networks in the Committee and different sectors of expertise, it would be hugely helpful for us as a Parliament to have much closer engagement, and it is something I would be keen to facilitate.

Q2 The Chairman: That enables me to say one thing and to page something else. First, that is a very welcome tone, and we appreciate it immensely. Secondly, by way of the record, and you will be as sensitive to this as the Committee is, there are obviously different formats. This is a public session; it is being recorded, and we will do a transcript. You know the rules of engagement and are familiar with them, as are my colleagues. If you wish to talk to Members on a private basis about specific things, we are open to facilitation of that; you will not try to nobble us, and we will not expect you to, if you see what I mean.

If you are happy, we might proceed straightaway. I am not sure whether you are going to have votes in your House, but we would like at least to get an initial flow. By way of an opening question, I would like to ask for your response in the light of the 29 January Motion in your House about the current state of the Brexit process. If you like, we can go on from that to the next meaningful vote and look at the large number of amendments that have already been tabled or suggested. Particular topics are permanent membership of the customs union, which is being advocated by some Members of Parliament, legislating for no deal, seeking an extension to the Article 50 process and allowing for a second referendum.

My remaining Latin is rather small, but it extends to saying, "Quot homines, tot sententiae". There are a lot of opinions, and there are other variants. You have had a meaningful vote and you will be having another. Where are you in relation to the overall situation and the specific areas of concern being expressed in amendments in your House?

Stephen Barclay MP: Is it in order to take my jacket off?

The Chairman: Of course, if it is more comfortable. We would not like you to be in any way inhibited.

Stephen Barclay MP: Thank you. It is quite warm.

You raise a number of issues—the extension, a second referendum and the meaningful vote—and I am sure that colleagues in the Committee will wish to explore those in much more detail.

First, it is right and proper to recognise that the Government suffered a significant defeat. We need to take that on board, and it has been very much reflected in the response of the Prime Minister and her team in reaching out to the leaders of the other parties, or certainly those willing to engage, and to senior parliamentarians. There has been a programme over recent days of engagement by the Prime Minister, the Chancellor of the Duchy of Lancaster and others, meeting colleagues to get an idea of what the House is for.

As you said in your introduction, there are a lot of opinions, as is reflected in the myriad amendments. The fact that in the meaningful vote my right honourable colleagues the former Attorney-General Dominic Grieve and the former Foreign Secretary Boris Johnson voted together is probably an indication that the vote does not show what the House is for. It showed that the House was against that Motion. You will be well aware that the key issue that has come through from parliamentary colleagues from the vote was on the backstop. Again, we may wish to explore in more detail where we are on that.

Recent commentary shows that the approach taken by the Prime Minister was welcomed in the House on Monday: for example, waiving the £65 fee; accepting the John Mann amendment on workers' rights—obviously, amendments need to be called by the Speaker, but it is accepted in principle; and looking at how we engage with Parliament moving forwards and working in a different way with Select Committees, offering confidential briefings. There has been a response but, to quote Sir Ivan Rogers, this is a process, not a single event. One should look at the meaningful vote in that context.

There are certainly further discussions to be had with European colleagues, because it is clear that neither side wants a no deal. Again, we may wish to get into the issues of no deal, but I have been very clear that I do not see no deal as the land of milk and honey, as perhaps some do, such as the Member for Wokingham. No deal carries significant risk.

The Chairman: That is very much the view of this Committee.

Stephen Barclay MP: Indeed, and looking at previous sessions of the Committee I am very mindful of that. I have been in my role only for a relatively short period, but in my statements since taking it on I have been very clear on the risks of no deal. The Prime Minister's deal is probably the one with the most support, but clearly not sufficient support.

Therefore, the question is what we can do, with European colleagues, to address the principal concerns and reach out to the House on things such as those John Mann flagged, to address some of the wider concerns on the Opposition Benches as well. That is very much the process that we have undertaken.

The Chairman: We do not mandate the other place; it makes its decision, and you have to persuade it. You have touched on this matter this afternoon and have previously been quoted on it: the lower House needs to show what it is for as well as what it is against. I am interested in your take on how you do that. As I hear it, you are talking about a range of options, including, for example, private meetings as a chance for colleagues to express opinions.

You are also looking at a range of timings as to the possible sequencing of operations. Can you give us a bit more light and shade on how you will set about that? You will be sitting with your Private Office saying, "We haven't spoken to A and we ought to talk to B", and so forth. Themes may emerge, and then you will want to try them out on people. How is it working?

Stephen Barclay MP: There is an interplay of different issues. There is a legitimate question from European colleagues as to the UK ask that would get the confidence of the House. Clearly, the process at the moment is to work with a range of parties to establish that. To what extent are different groupings in the House willing to compromise, and what would they need? That shapes engagement with the European Union, because it needs clarity as to where the House stands. That has been very much the nature of the discussions we have had.

What has come through very clearly is concern about the backstop, which relates to two issues: the impact on the union specifically and the concern that what is, in essence, a temporary arrangement has the risk of permanence, as set out by the Attorney-General. The House has been asked to take on trust that it will not have permanence, notwithstanding that Article 50 by its nature is not permanent, but it could in effect be indefinite, as colleagues around the table know very well. That plays negatively into the negotiations.

Ultimately, there is an issue of trust for parliamentarians with the deal, or the withdrawal agreement. It is an issue of trust as regards the Irish Government's confidence that we will respect the commitment under the Belfast Good Friday agreement not to have a border, and an issue of trust for the European Union. The question is how we address that issue of trust.

It was a significant defeat, and we are very mindful of that, but we should not lose sight of the fact that there is a lot in the withdrawal agreement that colleagues on all sides of the House agree on. For example, the majority of colleagues in the House agree on the citizens' rights element. Secondly, some colleagues on my own side have particular views on the financial settlement, but the majority of the House recognises, and certainly it is my view, that if we are to go out into the world and trade, doing so on the basis of breaching legal obligations is not the best way to conduct those discussions. Respecting our legal obligations is important.

Thirdly, the Prime Minister's personal commitment to the union and to honouring the hard-won peace in Northern Ireland, secured by the work of many Members of this House, is very sincere. The issue that it boils down to is the temporary arrangement which, as the Attorney-General has set out, has the potential to be indefinite, and how we address that.

The Chairman: Can I come back on three points? You have been very helpful and full in your response. First, I want to be clear about your assertion that the Prime Minister's deal is the one that is most popular in your House. Is there any evidence for that, other than the number of people who voted for it? Have we missed some approach that would command a wider field, or are we just building on the *acquis*—to use the European phrase—of the Prime Minister's deal, the withdrawal agreement, and saying that we can tweak it? I am trying to get a strategic sense, if you know. Speaking as an expert—I declare my interest as an expert—do you really know the state of opinion beyond those who voted for the deal in the meaningful vote, and to what extent will you seek to tweak it and incorporate elements of a different approach?

Stephen Barclay MP: That goes to the heart of the issue and to the nature of the discussions we have been having with colleagues across parties. There is almost a question within your question. Some may ask whether the majority of the House agrees about the customs union; that may be the question within the question that you are driving at. First, if one pivots to a solution, one has to be cognisant of how many people one loses by moving in another direction. It is not simply a question that relates to your role in the Commons in the past.

The Chairman: It is a bit like a Rubik's cube: you think you have cracked something and then find that you have created another problem.

Stephen Barclay MP: You may gain a number of votes from one quarter, but that does not mean that you will not lose them from another. One needs to look at that.

Secondly, there are certain issues that people will continue to campaign for, come what may. If someone is committed to a second referendum, they will maintain that position come what may. It is not as binary a set of options as it might be.

One should not look at it purely in terms of the vote, as a single event, because the vote has to be ratified, as members of the Committee know all too well.

The Chairman: And that could be a problem.

Stephen Barclay MP: The withdrawal agreement Bill, which needs to go through the House, is a significant piece of legislation. As former Whips in the Room will know, it is a Bill with significant scope. It is not simply about passing the vote; one needs to ratify it in the Bill, and one needs to think about building a coalition of colleagues who can do that.

The Chairman: I want to touch further on timing and sequencing. To go back to your earlier remarks, I sense that you were saying that we need to talk to Members of the House of Commons and, by inference, as the Prime Minister said, to those within her own party, as well as those in other parties, who are not necessarily always engaged in this. Then you talked about the European dimension, and the Europeans needing a clear position to understand what Britain wants. While those things can go on in parallel, you might give us a flavour of the extent to which you need to sort one before you approach the other and the need to brief one on what is happening in the other. That is one point.

I could present the second point by saying that there are those who criticise the Government's position at the moment by saying that they are trying to run down the clock to 29 March to bolster support, possibly in the hope that it will concentrate minds. To what extent is that the approach? The two questions are: who do you talk to and in what sequence, and, secondly, will it vary over time and is there a conscious effort to take it a little further before we have to come to the point?

Stephen Barclay MP: To take those in turn, there is obviously a degree of overlap in the sequencing, because conversations will be had naturally. Indeed, conversations overlap not just on the deal but on any no-deal preparation, so it is not even binary in that sense.

To go to the crux of your question, it is more the former—what will the House agree on—because, in essence, that is the European demand itself. From a European point of view, it is reasonable for them to say that, if they were to look at making a movement, they want to know that it would command the confidence of the House. Sequencing-wise, it is more the former, but, obviously, there is a degree of overlap.

On the question about the extent to which the Government are allegedly running down the clock, absolutely not. You may say that I would say that, wouldn't I?

The Chairman: I could not possibly comment.

Stephen Barclay MP: The reason I say not is the point I referred to a moment ago: we have to pass the withdrawal agreement Bill. If we cannot secure a deal, the default option is a no deal, which itself requires preparation in legislation. We may go into that in more detail. From a

government point of view, the sooner we can get clarity, the better; it is the best way to mitigate the risk of no deal, particularly for businesses that face the question of what spending to commit and how they prepare. It is extremely important to our business community that we give them as much certainty as possible as soon as possible. I am firmly of the belief that the best way to give businesses certainty is a deal, and the sooner we can do that, the better. There is significant investment within the business community that is ready to be unleashed if we secure a deal.

If we find that we cannot secure a deal, the House in essence has the question of whether to have a no deal or to revoke. Again, we may get into debates about extension, but in essence looking at the court judgment I would say that revoking is unconditional and unequivocal—cancelling Brexit. There may be some people who would be quite happy to see that happen, but personally I think it would be democratically damaging. That would be the choice that we faced in that scenario, so it is in our interests to get clarity, but more to the point it is very much in the country's interests to get clarity, in a deal or no-deal situation. The sooner we can get that, the better, which is why it is not in our interests to run down the clock.

The Chairman: Thank you for that. It is helpful. Before handing over to colleagues, I have one comment, and I shall assume that silence gives consent, or at least that you recognise the point, because I do not want to labour it.

Apart from what you might call the politics of the issue, which you can hardly fail to notice, there is a huge administrative task. Your predecessor, Secretary of State Davis, memorably said that you could see the whole Brexit issue from space. That relates to the legislative requirement, which you identified, but also to awareness notification and possible secondary agreements, litigation, private sector contracts, and so forth, which the business community has to be aware of. Indeed, the country and its citizens generally are going to be affected by these things. Is that a factor in your mind?

Stephen Barclay MP: If the business community moves personnel, once contingency plans are triggered it will be very hard to pull them back, if at all, as members of the Committee with huge business experience will be aware. That is an issue. This may be more for a section on no-deal preparation, but, in the event of no deal, personnel in Whitehall will be moving around.

Those are real-terms, real-life consequences, which is why I do not buy into the narrative that no deal and a shift to WTO rules is a painless option. There is a significant administrative task involved. That segues into an opportunity to pay tribute to the Civil Service, because a phenomenal amount of work is being done, and we have some very high-calibre people working on this. It is appropriate to acknowledge that, because, as you say Chair, it is a huge task as we prepare for a landmark occasion.

The Chairman: Some of us with experience will be very grateful to you for that, and I am sure that people who work to you will be very grateful that you put it on the record.

Stephen Barclay MP: Thank you.

Q3 **Baroness Armstrong of Hill Top:** As a former Chief Whip, I would not want to be looking at the prospect of getting a deal agreed and then passing legislation in such a short time. The Prime Minister has said that she wants the manner in which the Government engage with Parliament to change, and this is all part of it. What did she mean by that? You have said some things. Can you spell them out a little more? Can you be clearer with us about when you will take a decision that actually we have gone as far as we can?

Stephen Barclay MP: As a former Whip but not a Chief Whip, I know that the numbers in Parliament create their own challenges. Perhaps the best way of answering the question is to give an example. I do not think that humble Addresses asking for documentation, such as legal advice, are the best way for the House to proceed. It is important, for the reasons the Attorney-General set out, that the law officers can give timely and candid legal advice to Ministers in the way that has traditionally been the case.

There is a lesson for the Government to learn from that about how to give Members of Parliament more visibility. Is it about looking at committees that operate effectively? The Intelligence and Security Committee has on it very senior Members of the House of Commons as well as some Members of your House, and obviously looks at very sensitive issues. Do we look at confidential briefings? How do we do that? Do we work with Select Committees?

I had four years on the Public Accounts Committee. What always struck me was the contrast in the way a committee such as that worked with how the Chamber operates. Select Committee reports are at their most effective when they are agreed; committee members tend to work in a more consensual manner and are able to bring in expertise to look at something in detail, whereas in the Chamber sometimes we have debates with a time limit of six minutes for speeches. Members may have domestic pressures in their constituency, and their speeches are mindful of that, whereas a Select Committee may have a bit more space and expertise.

On your question as to how we would operate differently, I think it is about learning from the first phase and looking at how we engage with the House in a different way, such as in confidential briefings and working with the Select Committees, rather than having a humble Address as we had in the first phase.

Baroness Armstrong of Hill Top: What about timing? When are we going to know that this is it?

Stephen Barclay MP: Obviously, the Government's priority is the deal; we have been explicit about that. There is often discussion around no deal, where we have an operational focus, but our priority is a deal, which is the best way to mitigate that risk. In the timing of certain things, as you know far better than pretty much anyone else, the Speaker has an important role to play, because he will determine which amendments are chosen.

As the Chair said, there are myriad amendments before the House, such as the one from the Member for Beaconsfield, who wants a vote every Tuesday on issues, with changes to Standing Orders. We may get on to this later, but my concern is that some of those changes are quite significant constitutional changes that stretch far beyond Brexit and which I do not feel have been debated in full, given their wider ramifications.

To go to the heart of your question, we are keen to get a decision as soon as possible, but, obviously, we need to establish with the House where we are and establish with European colleagues what is deliverable.

Baroness Armstrong of Hill Top: Is the Bill ready?

Stephen Barclay MP: Which Bill?

Baroness Armstrong of Hill Top: The withdrawal agreement Bill.

Stephen Barclay MP: There is significant work on it. We were hoping to bring it forward after the meaningful vote. Clearly, that was not the case, but a huge amount of work has been going on, and it is ongoing.

Q4 **The Chairman:** As the shop steward of the Committee for the moment, can I ask you to comment on your engagement with the House of Lords? Being charitable, or careful in my words, it would be fair to say that we have not always had a complete relationship with some of your predecessors. In any case, we are deferential to the will of the elected House in this process. Would you find it useful to pick our brains from time to time? Can you give at least some thought as to how that might best happen, without compromising the other parts of what I acknowledge is difficult?

Stephen Barclay MP: First, I am very keen to commit to a step change in that relationship. To go to the heart of it, the Lords has an advisory role, and there is a huge opportunity to work much more closely. In politics, show is sometimes more important than tell; as a Minister in the Health Department, I wrote to every member of the Health Select Committee and met pretty much all of them bilaterally, and as a Treasury Minister I wrote to every member of the Treasury Select Committee and met most of them bilaterally.

It is easy to come to a committee and say that I want to work differently; sometimes it is more effective to say how I operated in previous ministerial roles. As a Treasury Minister and a Health Minister, I engaged very closely with Members, although in the Commons more than the Lords. I am extremely keen to work on that. Obviously, you have a

formal scrutiny role, and I recognise that, but there is scope to look constructively at other ways of engaging.

The Chairman: Thank you. For the record, I point out that, although we do not represent, because that is not our purpose, we have a significant component of Members from the devolved Administrations here, and we have machinery, together with the Commons, for consultation on the Brexit situation, led by the Senior Deputy Speaker here, in which I participate on behalf of the Committee.

Q5 The Earl of Kinnoull: To follow the theme of engagement, Secretary of State, could you describe to us how engagement is going to change for the devolved Administrations? There has been a series of rather ad hoc meetings, and we have had reports of those, but things are going to happen at speed now, so it seems that you will need to change the way of engaging with the devolved Administrations to cope with the extra speed. Furthermore, there is engagement with the overseas territories and Crown dependencies, particularly Gibraltar. Perhaps you could comment on that at the same time.

Stephen Barclay MP: The challenge is how we have quality rather than just quantity. To underpin my personal approach, my very first meeting in my role as Secretary of State was with the devolved Administrations. I prioritised that, to underscore the fact that I want to engage, but there is the fact that the Scottish Government refused an LCM, so the question is how we work more effectively. There has been quite a lot of process, with 15 JMCs, with the respective Scottish Government and Welsh Assembly representatives. There has been no shortage of contact, but there has been concern from the devolved Administrations as to how we operate. That is something we are looking at and talking about with them.

From speaking to colleagues about the situation and how we improve it, I think to some extent there is tension between what you share with the House here and what you share with the devolved Administrations. Obviously, there is a timing issue if you share with one and not the other, so it is about how we bridge that. But we are talking to them; the Prime Minister met the First Ministers a couple of weeks ago, and I joined that meeting. There is an active programme to look at how we get a better relationship.

The Earl of Kinnoull: What about Gibraltar?

Stephen Barclay MP: I used to work with Fabian when I was at the Treasury, because financial services and Gibraltar's access through the UK market are key areas of importance for Gibraltar. From a regulatory point of view, we have to strike the right balance on that. We are working very closely with the Gibraltar Government. My ministerial colleague, Robin Walker, was in Spain on Monday, a couple of days ago, as part of that dialogue. There is a very close relationship. I saw the Chief Minister when he was over in December briefly, and Robin Walker had a more detailed meeting. There is a lot of engagement with the Chief Minister of Gibraltar.

The Chairman: You will be aware that we have had a close working relationship, although in no sense a client relationship, with the Gibraltar Government. We are going to see them again very shortly, and we will keep in touch on that.

Stephen Barclay MP: The Chief Minister is hugely supportive of securing a deal.

The Chairman: That is a very helpful briefing to my colleagues. To pick up two little points from what was a very illuminating response, first, when you talk about contacts, it means looking at the problems in parallel, at both ministerial and official level. Thank you for that assurance.

The second point is on the distinctive position of Northern Ireland. We will come to the backstop and Northern Ireland issues at the moment. I would like to look at representation and engagement. Given the situation with the Northern Ireland Assembly, there is nobody to come to our machinery other than officials, with whom we like to keep in touch. There is a presence in this House of a number of people associated with Northern Ireland or who have carried out serious political representation there. How do you see the parallel process in relation to Northern Ireland, given the handicap, if I can call it that, of the present difficulty with the Assembly?

Stephen Barclay MP: There is a shared commitment, so there is a common outcome. That has been very clear in the Taoiseach's comments; his precise comment was that in no circumstances would there be a border, full stop. The Prime Minister's commitment to having no hard border has been extremely clear, so there is a common objective. We are engaging actively, not just with our confidence and supply partners but with others. I am not sure that it is necessarily appropriate to list those I have been meeting, but I assure your Lordships that I have had a number of bilateral meetings with Members of your House who have expertise in these matters, to listen to their issues.

It is important when one looks at the Belfast Good Friday agreement that we are cognisant of what underpinned it: the importance of mutual consent, the bottom-up nature of the agreement, and how therefore we ensure that the way forward respects, maintains and stays true to that hard-won peace. People such as Lady Hermon have spoken very passionately and well in the House on those issues, with significant force. We are engaging widely, because to a certain extent that is the dominant issue that has emerged. The solution needs to be one that has the confidence of the community in Northern Ireland. The tragic events of the weekend provide a focus for the significance of these issues.

The Chairman: For the record, I should say on behalf of the House and the Lord Speaker, given my position, which enables me to do it, that I was invited to attend the centennial celebrations of the Dáil, so I have had some recent conversations on the matter, and we are grateful for that assurance and perspective.

You will not be surprised, Secretary of State, that at this point we go on to some of the difficult issues of the current agreement, and areas of concern you have already identified.

Q6 Lord Risby: The desire and commitment of the Prime Minister to move into further discussions and negotiations with the European Union, particularly on the backstop, has been made clear. Are there other areas of significance that she would wish to explore further in those discussions?

Stephen Barclay MP: What has come out from colleagues, and the media comments of a wide range of colleagues have shown, is that the backstop is the predominant issue. Given the Committee's expertise, you know that if one wants a deal there have to be the winding-down provisions of a withdrawal agreement, and that requires a backstop. We have a big debate in Parliament on the different types of deal that colleagues may want, but underpinning that is the issue of the backstop.

There was movement on the backstop ahead of the vote, but it was not persuasive. We might come to why that was the case; there was movement at the December Council, for example, and in the letter from Presidents Tusk and Juncker about how the next phase of discussions will start more quickly and finish earlier. The crux of the issue on the backstop is that, in essence, it is a temporary arrangement that the Attorney-General says has the risk of being permanent, and the House is asked to take it on trust that it will be temporary. In essence, that is a concern. Safeguards are already built in, but the issue on the backstop is the primary one.

We have not been short of time debating other issues of concern in the Chamber, so you will have heard colleagues talk about the conditionality of the financial payments, for example, as well as issues to do with the union and the reach of the ECJ. The other arguments are well rehearsed. My reading of it, and indeed the public statements of a number of colleagues, is that there is recognition of the need for compromise. It is the backstop that, time and again, is the paramount issue.

Lord Risby: Could you shed light on something that seems to have emerged in the last day or two? A comment was made, I believe by the European Commission, that inevitably a no-deal situation could result in a hard border. As you correctly said earlier, whether it is the Republic of Ireland, the European Union or the United Kingdom, nobody wants that, but that seemed to suggest a departure in the attitude or observations of the Commission, and indeed caused a certain reaction in Dublin. Could you shed any light on it? As you say, the backstop is absolutely crucial. If some new thinking is emerging in Brussels, for whatever reason, it would be very interesting for the Committee to know your view.

Stephen Barclay MP: Like you, I saw what was said by Margaritis Schinas, the European Commission's chief spokesman, who, as you correctly identified, made that comment. I draw your attention not just to what the Taoiseach said but to what President Juncker himself said. When

pressed on whether we can trust the EU and the Republic of Ireland not to introduce a border, he was unequivocal; he said yes. He was absolutely clear in his commentary. There are others. Heiko Maas said, "Some people call us stubborn, but the truth is avoiding a hard border in Ireland is a fundamental concern for the EU, a union that more than anything else serves one purpose—to build and maintain peace in Europe". This is something that many leading people in the European Union have been very clear about. Certainly, it is the Irish Government's position and that of the UK Government.

Q7 Lord Risby: In the process under way, it would be very interesting for the Committee to know at what level discussions are taking place in Brussels at the moment. Is it at official level? Are you going there and being involved at this point?

Stephen Barclay MP: First, the chief negotiator for Her Majesty's Government has always been the Prime Minister, and that remains the case. In the current phase, the key issue is to establish what carries the confidence of the House, and that has a natural domestic focus. As the Committee knows, UKRep and our representation out there are the usual channels through which discussions take place, and I am regularly in discussion with the Prime Minister. That is the process in place at the moment.

Lord Ricketts: The old diplomat in me wants to get a bit more of a sense of the negotiating dynamic in those discussions. The Prime Minister said that after next Tuesday she would go back to Brussels and reopen the issue. What sort of response are you getting from EU member states and the Commission to that prospect? Are you getting signals that, if the Prime Minister does that, they will have a list of their own issues that they want to reopen with us?

Stephen Barclay MP: The diplomat in you will know that those are delicate discussions, and due process needs to be followed. In a public forum, there is a natural constraint on the level of detail one can go into.

In response to the Chairman's opening question, what is very clear is that there is a desire on both sides to avoid no border. Significant capital has been invested on both sides in the deal. Therefore, there is a shared objective to deliver a deal, but one that obviously is deliverable and acceptable to Parliament here. There are discussions with colleagues in the Commons to establish what that requires, which then shapes the discussions we have with EU colleagues.

Lord Ricketts: Obviously, you do not want to go into the negotiating detail, but is there any sign of openness on the EU side to a further discussion involving further changes in what was agreed?

Stephen Barclay MP: The EU has been clear: it wants to be clear what the UK ask is. Those are public comments that have been made.

Lord Ricketts: Not unreasonably.

Stephen Barclay MP: Not unreasonably. Therefore, that predisposes to the fact that there is a discussion to be had. I come back to the point that no deal has consequences for the United Kingdom, but we are not alone in those consequences; not just for Ireland but in a number of other countries one can list, they are not insignificant. I think, therefore, that there is a common interest in securing a deal.

The Chairman: We want to come back to Northern Ireland and the backstop in a moment. On the generality of the return to negotiations to look at the deal, can we have your assurance that, on the whole, the signalling apparatus is functioning and that, given the pressures, we will be able to convey or receive a coherent position from the European Union in adequate time to resolve the issues?

My concern is simply that we are operating separately, for the reasons you identified, including those of confidentiality and interest, and that needs to happen, but you need to be able to bring the understanding together at some stage, and you need resources and possibly some time for that. Can you give us a flavour? Is it something you are aware of and that we can probably manage?

Stephen Barclay MP: Yes, it is. Indeed, on Monday the Prime Minister was pressed on that issue by the former leader of the Conservative Party, Iain Duncan Smith, and she was very clear in her reassurance in respect of my engagement on that. Clearly, on both sides, the importance of the issue and of timing is recognised, and those discussions will obviously move forward, but we need the clarity.

Q8 **Baroness Noakes:** You have clearly identified the backstop as the major stumbling block in relation to the withdrawal agreement. You have already noted that the additional wording from President Juncker cut no ice with your colleagues in the Commons. Where does that leave the backstop? Are the Government looking either at seeking some form of time limit for the backstop or at the ability unilaterally to exit the backstop? Leaving the backstop as it is does not seem a feasible way forward.

Stephen Barclay MP: It is worth focusing on the fact that the backstop is in neither side's interest, because it breaks the four freedoms, and there are issues in relation to its compliance with Article 50 and with how future trade agreements with the EU will meet the geographical remit. There are issues for both sides. President Macron's comments on fishing illustrated that there are difficulties with the backstop for both sides.

Sometimes the vote against in the first vote can be overplayed. Some of those concerns, and some of the movement in the December Council and President Tusk's letter on starting and finishing phase 2 and the ratification, were played out in the first vote. A number of parliamentarians had clearly stated how they were going to vote in that vote. Sometimes, from an opposition point of view, if something looks as if it will be lost by a margin, Opposition Members may be less willing to vote for it. One should not say that the size of the vote means that none

of those issues on the backstop had any effect; it is worth bearing that in mind. At the same time, the size of the vote means that it was still a material concern.

Myriad solutions are floated in the media on how one would address the issue. Clearly, that goes to the crux of the discussions we are having with a range of colleagues, and it will go to the heart of the next stage of discussions.

Baroness Noakes: It is not so much about discussions with colleagues, because I am sure that you will hear from your colleagues that they want some changes in the backstop. It is a question of whether the Government are taking proposals to the EU to seek those changes.

Stephen Barclay MP: I have already alluded to the fact that we are having discussions with a view to taking changes to the EU to discuss with it. In essence, that is the question the EU has posed to Her Majesty's Government, to establish what will carry the confidence of the House.

Baroness Noakes: Is it likely that the Government will take proposals to deal with the elements of the backstop that your colleagues found unacceptable, relating to the inability to escape from the backstop? Are you likely to take requests for changes to deal with those points, or more assurances that people want it to be temporary?

Stephen Barclay MP: The Prime Minister has been very clear in the statements she has given in the House that the dominant concern of Members of Parliament is the backstop, so in our discussions with the EU that is the key point we need to discuss. Then we need to think creatively—I think that was the phrase the Prime Minister used—about a solution that addresses concerns such as those our confidence and supply partners have set out, and some of the wider concerns. At the same time, it needs to recognise concerns from the perspective of the EU, particularly around any risk of a hard border. That is the balancing act, and that is what we are in discussion about.

Baroness Noakes: But not discussions with the EU.

Stephen Barclay MP: We have already covered the point that there are discussions with the EU. Part of that is, first, to establish what will carry the confidence of the House.

Baroness Noakes: Have the Government explored with the Republic of Ireland whether a bilateral agreement could deal with some of the issues related to the operation of the border?

Stephen Barclay MP: Some of that has already played out in the issues around that, but the point is that we are having the discussions. As I said to Lord Ricketts, we are having a number of discussions with parliamentary colleagues. We want to establish what will carry the confidence of the House and discuss with European colleagues what will enable them to address their concerns from a hard border and single-

market perspective. Those are delicate discussions, but they are being very actively pursued.

Baroness Noakes: My last question relates to the proposals that the Prime Minister announced earlier in the month about involving Stormont in backstop decisions. I believe they were roundly rejected, particularly by the DUP. Are those proposals still on the table, or have they disappeared?

Stephen Barclay MP: No, they are still there. Part of a paper that we put out in the week of the meaningful vote was about the Stormont lock and how any new law would require consent from Stormont. It looked at how we might approach things from a Great Britain as well as a Northern Ireland perspective and some of the regulatory issues.

It is worth remembering that there have been issues that were dealt with differently, such as animal health in 2001. There is the famous comment of Reverend Dr Ian Paisley, who said that the people may be British but the cattle were Irish. There was a solution then. The concern might be that that was for animal health and not for a wider regulatory remit, but it goes to the nub of the issue. In answer to your question, yes, those issues were set out in a paper and that paper still stands, but it is part of an evolving picture.

Lord Liddle: In December 2017, we signed a firm pledge with the EU that there would be no hard border in Northern Ireland. In the European Union (Withdrawal) Act, the Lords put an amendment, which the Government accepted, that in no circumstances would there be a hard border in Northern Ireland. If the backstop is to become temporary or there is to be a unilateral exit mechanism from it, what alternative assurances in legal form are the Government prepared to give that would ensure that there is no hard border in Northern Ireland?

Stephen Barclay MP: My Lord, you said "if" the backstop is to be temporary. Under Article 50, it is temporary. The question that arises, which goes to the crux of the Attorney-General's advice, and in essence is what lay within that advice, is that it is about the balance of risk. That is the interpretation I take, which is different from that taken by my predecessor, who is an extremely impressive and talented parliamentary colleague. He felt that, in a balance of risk, the backstop was not temporary and would be indefinite. The Attorney-General's view, which I share, was that, in a balance of risk, these things tend to be political, and any future economic partnership would offset it. It is a judgment, and sensible people can come to a different view.

Lord Liddle: With respect, it depends on having an alternative long-term commitment in place in the trade negotiations that there would be no hard border. What kind of long-term commitment are you making about future trade negotiations to ensure that there would be no hard border?

Stephen Barclay MP: That is my point. Article 50 says that it is temporary. It is not conditional; that is there. The question then is

whether you would get the future economic partnership in place. To a certain extent, that goes to how much weight one places on the political declaration, and to a certain extent there is a contradiction. We see that contradiction, for example, in the criticism that Lord Guthrie, a hugely distinguished figure, made about national security. Some people say that the political declaration has no legal force, and it is therefore discounted; others say that Article 94 is so binding that it applies more than being a member of the EU and it compromises our national security. I would say that those two things are contradictory.

The future economic partnership is a package with the withdrawal agreement. As the Attorney-General would say, there is legal wiring between the two, in that best endeavours apply. That is a term familiar to those who work in the courts, through arbitration, but the concern that many parliamentary colleagues have had is that the political declaration does not have the same legal weight as the backstop. What goes to the heart of that was that the way the talks were structured, at the request of the EU, meant that the backstop came before the economic partnership, but to a certain extent the future economic partnership is the mitigant of concerns about the backstop, and that goes to the nub of the debate on how permanent people feel the backstop is. In European law, under Article 50, the backstop is temporary.

Baroness Suttie: You said to the Lord Chairman that you have had some discussions with Northern Irish Members of this House. Have you been consulting or involving Northern Irish political parties that are not necessarily represented in this House, including those of a unionist persuasion?

Stephen Barclay MP: I have only been in post just over two months, so that engagement is an evolving matter, but it is there. I have engaged with more than one political party, if that answers your question.

Baroness Suttie: There are several Northern Irish political parties with elected MLAs.

Stephen Barclay MP: There are indeed. In answer to your question, there are more to engage with, and I am absolutely committed to doing so. If following this session you were willing to set up further discussions, I am happy to commit to them. To the extent that others have not happened, it has purely been an issue of diary and not of will, and I am very happy offline to have those discussions.

Personally, I find it hugely helpful to have such discussions, with a range of views. I was trying to suggest to the Chairman that it is very easy to say that we want to work differently, but it is more relevant to say that we have already started doing so and this is what we are doing. I am very keen to engage.

Baroness Armstrong of Hill Top: There is a real democratic deficit. Are you able to address that at all? Are you being allowed or enabled to address it? Not a single person in either House in the Palace of

Westminster represents the non-unionist position. Because there is no meeting of the Assembly in Northern Ireland, government will have to engage with the non-unionists.

Stephen Barclay MP: I agree, but perhaps I may be allowed to point out that both the SDLP and the Labour Party's sister party in Ireland support the deal and, in my understanding, have made representations to the Labour Party in the Commons on that point. I am very happy to engage with all parties, and the Prime Minister herself has engaged with the Westminster leader of the SNP, the leader of the Green Party and the leader of the Liberals. There is that commitment, although one particular leader has not been involved, but we do not need to get into that.

There are clear voices in Northern Ireland supporting the deal; the business community and Ulster farmers, for example, have been supportive of the deal. The sister parties of the UK Labour Party have been supportive of the deal, as I said.

When colleagues around the table asked about our ability to deliver a deal, what I was driving at was that there is a lot in the withdrawal agreement that many on all sides of the House can agree with. There was a specific issue. Sometimes I see in the media that we need to persuade 230 colleagues—former Whips here will have a wry smile, I am sure. Obviously, it is half that; it is not 230 but those who will change. It is important that we engage with all sides, which we are doing.

The Chairman: As a matter of courtesy, I should say that one or two members of the Committee have notified me that they may need to start sidling out at some stage; you will be familiar with parliamentary time. I assure you, Secretary of State, that it is no reflection on your attendance at the Committee, but they have been kind enough to let us know and we understand.

I am anxious to move on and be as succinct as I can; we have a lot of ground to cover in the next half hour or thereabouts. To move on from Northern Ireland, you said something of general application, and I would like to test you on whether I have understood it properly, and we will then ask you about the remaining issues that concern us.

On a number of occasions you have indicated, if not a distinction, at least a different emphasis between trust and the legality of the situation. If I read it aright, you are more or less saying that the political difficulties in which the Government now find themselves cannot be remediated wholly by a purely legal fix. It also requires a basis in a series of assurances on which people are prepared to suspend their disbelief or, to put it another way, follow the general steer given by the Attorney-General that on the balance of risk this is a reasonable issue we can trust you on. Is that the way you are approaching it?

Stephen Barclay MP: If I may, I would put it the opposite way around. Because there is concern about trust, people seek legal clarity. Expecting people to take the political declaration on trust, when the withdrawal

agreement has a different legal force, goes to the heart of it for many MPs I have spoken to. Given the fact that the backstop is uncomfortable for both sides, and there are issues, there is concern that it will be used as a sort of base point, or that there would be a lack of good faith in the negotiation because it is there as an end point. That is one of the concerns. Members of Parliament have made that clear in their speeches in the Chamber. It goes to the heart of the issue of trust.

Q9 Lord Whitty: Most European languages do not use the word “backstop”. It is referred to as a “safety net”, which sounds a lot less harsh, and might have been useful from the beginning.

My question brings us back to domestic politics. You said that, however we leave, whether we leave with no deal on 29 March or move into a transition period on that date, there is a whole programme of work needed in Parliament. You referred to the work done by the Civil Service and to the withdrawal agreement Bill, which itself will be a heavy piece of legislation, and, as things are at the moment, Members of Parliament in both Houses have not seen it in any form.

In addition, there are a number of other pieces of primary legislation that we have been told by Ministers need to go through before we leave the EU. I have asked this question, as have others, of Ministers in the Lords and of the usual channels. How are we going to get this through? Are you confident that we can get all those Bills through by 29 March in either eventuality?

The Chairman: It would be helpful in responding if you could give some flavour of the mechanism for determining priorities. Some things are essential and legally intensely important, and others can be put off. Do you have a mechanism for prioritising and saying, “These five we must do”, as you identified in the withdrawal legislation itself, for example? Although it would be nice to have something by 29 March, we can do it later, in the transition period, for example. Can you give us a flavour of that?

Stephen Barclay MP: I think, Lord Whitty, that you are dealing with the deal side rather than the no-deal side of the question.

Lord Whitty: I meant either situation. In a no deal, it is pretty obvious that we will have to have in place large parts of the legislation that is now being prepared but has not gone very far in the Commons or the Lords. Even if we move smoothly into a transition period, some of that will also be required. It would be useful to get an idea of the timescale and the prioritisation and sequencing.

Stephen Barclay MP: I shall take in turn what we would need in legislation with a deal and then a no deal. On your point about its being a safety net and not a backstop, as you know, language in Northern Ireland is always very significant.

On the deal legislation, the key issue is what legislation you need to pass to ratify the deal, because you need the legislation to ratify. The question

within that is that the House can always move more quickly with good will, so, once the House has spoken, to what extent would the House say that a decision has been reached? That shapes some of the conversations that I have had with some who currently oppose government legislation. They have told me that they would accept the decision once it was reached, because the House would have spoken, and they would not, in essence, have a guerrilla campaign.

There may be others of a different view. Obviously, from a government point of view, the approach of the opposition parties would inform that process, and the role of your Lordships would be significant. It might also be a question of what, if any, concessions were sought, and how they would impact on the debate. With a former Chief Whip sitting to my right, I can say that self-evidently it is a significant piece of legislation, and the timing is obviously challenging. The point is that the House, once it has reached a decision, will need to ratify it, which I think would be in the interests of both Houses.

To a certain extent, the picture for no-deal legislation is more nuanced. Certain legislation needs to be passed. I should have started my answer with the fact that a significant amount of legislation has been passed already. Last night, we passed the Healthcare (International Arrangements) Bill, which is hugely important for our ability to make bilateral payments in the event of no deal. We are talking about healthcare for 190,000 UK pensioners, so that legislation is extremely important. Across the House, people recognise that we need the ability to make those payments. Indeed, it is important for EU countries; 1.5% of the Irish health budget is from our NHS. I think it is £300 million net to the Irish Republic. Those are things that matter, and legislation is progressing.

You might push me and ask whether, notwithstanding that, there is sufficient time. That opens a question about risk appetite and what can be passed. Those are issues for the business managers, and they will look at them; they are discussions for the usual channels. That is part of the normal process.

Lord Whitty: It is not just a question of what you need for ratification; it is about what business and industry need to carry on their normal activities. To take the obvious example, the Agriculture Bill has only got to Committee stage in the Commons so far. That needs to be pushed through, or at least elements of it do, in the event of a no deal. Do you envisage, for example, using any form of emergency legislation in these circumstances?

Stephen Barclay MP: You may be driving towards Section 22 of CReG. If one were to float that, I am sure members of the Committee would be very quick to express their concerns. Of course, it is not just about the primary legislation; it is also about the statutory instruments, and your Lordships have recently taken a view in respect of some of those.

I hope I am being open and honest in saying that there is a challenge in legislation. Once the House has reached a view on a deal, the best way to mitigate the risk of no deal is a deal, and that deal requires ratification. In the bulk of what is in the withdrawal agreement, there are things that both parties agree on, such as citizens' rights and international obligations. The question is whether we can address the outstanding key issues, which the significant engagement led by the Prime Minister is addressing. In the event of no deal, we would need to prioritise what is essential, and there is a programme on that; in terms of showing and not telling, you can see that in the Healthcare (International Arrangements) Bill that was passed this week.

- Q10 Lord Polak:** International agreements are the lifeblood of the economy and vital to the welfare of families up and down the country. While you have been speaking, Secretary of State, your colleague Liam Fox has tweeted from Davos that the UK and Israel have just agreed in principle a trade agreement. How many rollover international agreements will the Government be in a position to enact on 30 March? What are the Government's top priorities in their programme of Brexit-related international agreements, and which agreements absolutely have to be in place by 30 March in the event of no deal?

Stephen Barclay MP: I shall start with the deal bit and then go on to the no-deal bit, as I did with Lord Whitty. First, there is no question but that Liam has been very active in this regard, with the huge amount of work that the Department for International Trade has done in preparing for Brexit. It is worth pointing out that Article 129(4) of the withdrawal agreement makes it clear that the UK will be able to negotiate and conclude new trade deals from exit day, bringing them into force from the end of the implementation period. Paragraph 17 of the political declaration also makes it clear, in the event of a deal, that the future economic partnership should facilitate trade and investment between the EU and the UK.

That is not just something being led by the DIT. This week I met the Australian Trade Minister, and what came out clearly was the Australian commitment to our common values and ties, so there is significant scope for trade deals. Clearly, in a deal scenario we would need to be mindful of the interplay of the commitments in trade deals and the relationship we strike under the political declaration with the European Union. There is a very strong desire for trade deals, and for the UK to play an active global leadership role, particularly if the United States were to withdraw from that space. That is certainly the sort of thing that excites me, as a Minister, and Liam Fox has been to the fore of that.

In the event of no deal, the assessment we made was that about 1,000 treaties had a relevance to exit, which slipped down to just under 400 with a direct impact, and a very low number—in the tens—of more material issue from exit day. George Hollingbery and the DIT have been getting those ready.

A couple of issues come into play with no-deal trade. We cannot sign agreements while still a member, so it is about how we align that. There is the 21-day notice for CRaG, and giving notice to the House. If that is under pressure, does one look at provisional notice, and how does one do that with the House in the most open way possible? To what extent are there other mitigations? How do we communicate with the relevant sectors? Sometimes there are geographical impacts, and, again, what risk mitigation can one put in place? But a significant programme of work has gone into that.

In the public sphere, the difficulty is that sometimes negotiations are by their nature confidential, as regards the rollover. The EU has been very clear that that is part of the discussions. Some of these things have to go through the Commission as well, so that is another dynamic, but I assure the Committee that there has been a significant programme of work from the DIT on the impact of both trade deals and no deal. Perhaps Liam Fox being in Davos, along with a number of my ministerial colleagues, underscores the sense of Global Britain that he is trying to drive forward.

Q11 Baroness Falkner of Margravine: It is very nice to see you in this Committee, having had you as our Minister in the Financial Affairs Committee. This morning, I heard an interview with Dr Fox from Davos. A problem that was very evident to us in that discussion was that the EU itself, as you have just commented, has a role to play. Under the third-country agreement, it has to notify third countries that they should continue to have a conversation with the UK and get prepared to roll over those deals. He was not really able to tell us how many of those have happened. The EU has said that it will not commence conversations with third countries and will not give them approval to start doing that with us until the withdrawal agreement is signed. The EU has, in effect, put a brake on that.

On the other hand, in the Chamber of the House of Lords right now, we are discussing the Trade Bill. As you know, on Monday there was an amendment to prevent further progress on that Bill until we make progress on the withdrawal agreement, so we cannot progress to Report. We have two days left in Committee, then we will finish Committee and be stuck. We are trying to understand how we continue the current level of engagement across all sectors—services, goods and everything else—with third countries, when we do not have the chapeau of EU agreements. Nobody seems able to give us an answer, so will you attempt to have a go where Nick Robinson and Dr Fox failed this morning?

Stephen Barclay MP: Liam has been engaged on these issues much longer than I have, so it would be remiss of me to suggest that I could answer something he has already covered.

There has been progress. The UK is a party to a number of international agreements through EU membership, such as nuclear co-operation agreements, and those agreements are done through the EU. We have signed a number of nuclear co-operation agreements. It would be unfair

to EU colleagues to suggest that there has been a block on all the deals being progressed, and that no deals have been able to progress. If one looks at the nuclear side, for example, that progress is there. It is an issue that UKRep discusses with EU counterparts.

Ultimately, I come back in all these things to the fact that there is a common objective on both sides, which is to avoid disruption to our business community, give clarity to our citizens and ensure that our security arrangements are maintained. Those things are in our mutual interest. At the heart of Lord Polak's question was how actively we are engaged. Obviously, DIT leads on it much more than my department, but it is very actively engaged and is discussing these issues with the Commission. Senior officials known to the Committee, Alex Ellis and others, are engaged on the issues. It is an area that government regularly focuses on.

Baroness Falkner of Margravine: Assuming that a significant number of agreements are outstanding by 29 March, are you seeking a rollover for an interim period, perhaps 90 days, until they are agreed—in other words, an emergency extension of EU cover? Is that one of the contingency plans you are looking at?

Stephen Barclay MP: One would have to look at the legal structure. In my response to Lord Polak, I was alluding to the fact that one starts with a significant quantum, which has been massively reduced. The number of live issues is significantly reduced. For those that remain, to go to the heart of your question, there are a series of mitigants. Part of that would be the extent to which agreement can be concluded, which obviously has an interplay with securing a deal. If one made a concession and then we had a deal, obviously we could not go back. There is a timing issue with the deal itself and then an interplay with the CRaG process and the need to deliver in 21 days. Then there is an interplay with the timing and how else one might mitigate. Again, there are different ways to do that. It would be a question of looking at each of the treaties, which the DIT has been actively engaged on, and a huge amount of work has been done to progress that.

The Chairman: For the record, I should advise you that this Committee, and its sub-committees, have pro tem, in the current situation, agreed to take on some of the work in relation to the scrutiny of international agreements, from our statutory instruments committee, for example, to spread the workload. We are all conscious of the weight of what needs to be done, and the importance of prioritisation and, if possible, simplification, while giving the necessary attention.

There are three topics that we would still like to handle with you, if we may. We have made a lot of progress so far.

Q12 **Lord Jay of Ewelme:** Secretary of State, we have talked quite a lot about no deal already, but I have one or two more points. I chair the committee here that deals with medicines and health, and it is clear from that that a no deal would be extremely undesirable, but that is probably

something we share with the Government.

On the assumption that no deal is still, alas, a possibility, how far do you think preparations in Whitehall have progressed? How comfortable do you feel with the position we would be in on 29 March, assuming we leave then? How far do you feel the Commission has been helpful in making certain that, together, we and it would be prepared if there were a no deal? There was news this afternoon that there has been some progress in Brussels on fisheries.

Stephen Barclay MP: You raise a pertinent issue for us in Whitehall, and one that the Prime Minister is very focused on. I chair a weekly meeting with Ministers on no-deal preparation.

On the first point you raised, on medicines, the Secretary of State for Health and Social Care has been clear about the additional work that has gone in, not just by the department but by NHS England and others in the health family. It is clear from that, first, that the supply of goods is our priority; it is not just medicines but medical products, as you know. That generated a lot of media coverage, but with the extra ferry capacity that the Department for Transport has put in place, although it is not a panacea to all the supply of goods issues by any means, the area of prioritisation is on medicines. That is absolutely key, and the Secretary of State for Health and Social Care has been to the fore in making that point.

As a former Health Minister, I note that this is not a new issue. We always had a standing team in the department to deal with issues such as factory fires or supply of medicines. That was business as usual. Obviously, the scale of the challenge would be different, but supply is not a new issue.

Again, there is commonality of interests. At AstraZeneca, medicines are produced and supplied to the EU, so there is a desire to work constructively. We see that in the response of the French Government, through the emergency legislation they passed recently, and the statements about their own preparation from leading politicians in Pas-de-Calais and elsewhere.

You have considerable experience in this field, Lord Jay. As I said earlier, I do not start from the premise that no deal is not disruptive or that there are no challenges, but there has been significant preparation in the Department of Health.

On the wider points about how we are preparing in Whitehall, a huge amount of work has been done by officials in my department on no-deal preparation. That work has been ongoing for a considerable period. There has also been work in the Cabinet Office on civil contingency plans. There is recognition of the scaling-up of that; for example, last week we had a significant increase in our radio and social media advertising.

Over the summer, before my time, the department did a lot of work on technical notices and putting out information to businesses. It is one

thing to put out a technical notice, but it is another if engagement from the business community is not there. Part of the increase in our media connectivity, through social media and radio ads, is to increase awareness and business's own preparation. That goes to issues such as resource in Whitehall, and to what extent we need to move resource around. It is twofold: it is about the department's releasing resource, and identifying the names and skills of the people who are available; and about receiving departments identifying what it is. It is not simply about shifting the bodies; as you know, it is a question of how skill sets align with needs.

On no deal, a significant amount of preparation work has gone on, although I would not overstate it, because not all the no-deal preparation is in our control. It is about what third parties, businesses and others do, and about what other member states do. As was alluded to earlier, the Commission has a grip on that, so it tends to lead, but, in practice, some member states are more active bilaterally than others. We have seen emergency legislation in certain countries; and on citizens' rights, a number of countries have made very clear commitments to UK citizens. There has been movement from member states, and citizens' rights are probably the best example. A number of countries have made those commitments in public statements, but that is not to overstate the fact that no deal would be disruptive.

Lord Jay of Ewelme: We have talked quite a lot about it being the desire of nobody to have a hard border. If we were to leave without a deal and if we were to move on to WTO terms, and the WTO required us to have a hard border between an EU country and a non-EU country, would we in those circumstances find that there was pressure to put some sort of controls on the border between the north and the south?

Stephen Barclay MP: The Prime Minister has made a very clear commitment to there being no hard border, and she has set that out, as indeed has the Taoiseach. There is a common desire to address that and find ways to avoid breaching that commitment. The Prime Minister has been very clear on that.

Lord Jay of Ewelme: Finally, I have a small question about no deal and Gibraltar. No deal would, or so we have been told, have a significant effect on Gibraltar, and on relations between Gibraltar and Spain. What work is going on to ensure that, in the event of a no deal, those potential implications are mitigated?

Stephen Barclay MP: That is a very important point, and one that you raised in your article in the *House* magazine, Chair. You are absolutely right. We are very clear that we will never enter into arrangements that affect the sovereignty of Gibraltar in any way, and that has not changed in the issue of no deal. Following your article, I sought clarification on that point, as regards reassurance I could give to the Committee. I am very happy to give that reassurance.

The Chairman: Secretary of State, reflecting on the remarks that you

made from your own experience of the health department, and to pave the way for the next question, I happened this week to renew my regular medication. I have an owing note for one of four items, because it was not available at the time. I shall tell you tomorrow if it has not turned up, but I have every confidence that it will.

The important point is that it is not the first time that has happened. It is neutral for Brexit at the moment, but, if it became systemic, it would be a substantial problem for colleagues and citizens generally.

Stephen Barclay MP: The importance and primacy of health and medical supplies is absolutely recognised by the Cabinet. I pay tribute to Matt Hancock, who makes that point very clearly. A lot of work has gone into that. Exactly as you say, I suspect that sometimes things that might have happened as business as usual, or business that has difficulty, will be presented as a Brexit story. That is unhelpful, because there are legitimate challenges and, sometimes when things are overplayed, it makes it easy for people to say that legitimate challenges are not legitimate. As you say, sometimes things are attributed to Brexit that are not actually the result of Brexit.

The Chairman: You have been very helpful today, and we are moving towards the conclusion of our time. If you can let us have a few more minutes, I think we can complete our list of questions.

Q13 **Lord Cromwell:** Secretary of State, I would like to ask you about Article 50 extension. You said at the beginning that an indefinite extension would be unwelcome, and possibly a breach of trust, but what about a short-term extension? What would make that necessary, and what could trigger it? Given that the European Parliament will not sit until 2 July, would it not make sense to have an extension until, say, 1 July, to give a bit more room for us to avoid a no deal?

Stephen Barclay MP: First, the Prime Minister has been absolutely clear in her commitment to leaving on 29 March.

Secondly, Members of Parliament have been clear; they voted for Article 50, triggering it with a set timescale, and voted to put the date in the Bill. The will of the House has been expressed on that.

Thirdly, I feel sometimes that the way this debate is presented slightly takes for granted the fact that it is not a unilateral decision. Extending Article 50 requires the consent of the other 27 member states, and one does not know whether conditionality would be attached to that. We have just had a question from Lord Jay about Gibraltar. One does not know whether any form of conditionality would be attached, and what it would be.

Fourthly, there is a question about the interplay with the European Parliament elections at the end of May, which was at the heart of your question.

Fifthly, there is a question as to the dynamic in the European Parliament. There may be people who are less keen to see the arrival of lots of British MEPs, with the dynamics of people going for top jobs and how that would impact and play out. They may have a view on that.

Putting all those points to one side, there is a much more important point. Notwithstanding the strength of feeling there may be for some in the Committee about the referendum vote, it was the biggest vote in our country's history; 17.4 million people voted to leave. To go to the British public three years after that vote, particularly if we had a requirement for European parliamentary elections, and say, "Please vote for Members of the European Parliament", would be hugely damaging to our democracy. The commitment from the Prime Minister is to deliver on the timing. That means leaving, and that is what she has made very clear.

Lord Cromwell: Can we leave aside the European elections for a moment, and the relative public enthusiasm or turnout for them? It is an interesting but separate discussion.

Do you have any sense that there is political will among the other states for an extension if it gets us away from a no deal? If there is, would the Prime Minister perhaps reconsider?

Stephen Barclay MP: You ask what the Prime Minister's response would be, and the best way of answering that is to refer to what she has said. When the Prime Minister has been asked about that point, she has said that extending beyond 29 March would just prolong the uncertainty. The EU says, "Why extend? There is no deal and Parliament cannot decide what it wants", and we would be extending, as I said, into the European parliamentary cycle.

Some of my parliamentary colleagues have said, "Oh well, of course we could have a second referendum before the European parliamentary elections". I probably do not need to persuade the experience in this Room, but the point is that the first referendum, from start to finish, took 13 months. The debate on spending limits would be particularly lively this time, and the debate on the question—two questions or three—would be quite confused.

Lord Cromwell: I am not asking to have a second referendum; I am asking about extending the period for negotiation under Article 50.

Stephen Barclay MP: Sorry. What I was trying to drive at was that the European Union would not necessarily agree to an extension purely so that the UK can prolong its period of uncertainty. The Prime Minister has been clear in her statements to the House, and she repeated it on Monday. More to the point, Members of Parliament themselves, in triggering Article 50 and in passing the legislation to withdraw, put that date in statute. That is the date, and the Prime Minister has been very clear on that.

Q14 **Lord Soley:** Can I ask you about the political declaration and the

potential for an association agreement involved in that? We have not really discussed it very much, yet it seems to me that its potential for resolving some of the problems we face at the moment could be quite positive. I raised that in a meeting with two of your colleagues last week. We do not know where the Government are in their thinking about that or, indeed, in their actions. How do you see the political declaration and the potential for an association agreement panning out in the near future?

Stephen Barclay MP: I see the political declaration panning out as the framework for the negotiation, almost as a mandate or an instruction to the negotiating team. There is a huge amount that is positive in the political declaration. I would draw out two things. First, what underpins the political declaration are our shared values. Europe is our largest trading partner, and we want a good trading relationship.

The other thing that sometimes gets slightly overlooked in the political declaration is in paragraph 5, which sets out the momentum. One question about the political declaration is, "Ah, but are you going to be able to get on with the trade agreement? Does it give certainty?" Lord Macpherson has raised concerns in that regard, specifically about timing. Paragraph 5, along with the December Council and the Tusk letter, gives the opportunity to put some momentum into the process. There is further discussion to be had on whether that is an association arrangement, but the political declaration gives a framework to the talks.

Lord Soley: In that process, one possibility is that, if a timescale was put on the backstop, or the safety net, as my colleague rightly describes it, it could be involved in the political declaration and an association agreement.

Stephen Barclay MP: The concern that parliamentarians have raised is the different legal footing of the withdrawal agreement and of the political declaration. Despite my best endeavours—to refer to the best endeavours in the withdrawal agreement—that was not persuasive to colleagues, and it remains a concern. It goes to the point I sought to make earlier about what is a temporary arrangement under Article 50, without the certainty that a future economic partnership will come in, hence the concern of my predecessor and others about its indefinite nature. That is the crux of the earlier discussion with Baroness Noakes and others as to what can address that point.

The wider point about the political declaration is that it sets a framework and gives momentum. In answer to the Nick Macpherson challenge, I would draw attention not just to the fact that straight after the withdrawal agreement we can start the ratification—and that it can take effect ahead of ratification, which is what the Tusk and Juncker letters were saying—but to other things. Often there are six-week cycles in trade negotiations, because of the geography of North America, for example. We would not have that; there is no reason why we could not accelerate the trade rounds. We start from a position of common understanding, because of our nature. Often with trade negotiations, considerable time is

spent at the front end to understand the respective positions. I think one can address that.

I do not suggest that those are panaceas to the timing challenge, but sometimes when I read comments from somebody I respect incredibly, such as Nick Macpherson, that there is a certain timescale, I think it slightly underplays some of the other issues that are relevant.

Lord Soley: I am interested in the process. Many of the problems you face at the moment will not be solved quickly, and the political declaration, and an association agreement, if we had one, is how you carry things forward. I am puzzled that the Government do not seem to be saying much about that; it is almost as though you are either not thinking about it or you have thought about it an awful lot but are not saying anything.

Stephen Barclay MP: Do you mean how we look at trade-offs between the sectors in the political negotiation?

Lord Soley: You cannot trade off in negotiations, but, if the political agreement was passed tomorrow, for example, there would still be a lot of things in it that would have to be sorted out. It is the process for doing that, the procedure, that I am interested in.

Stephen Barclay MP: The issue that comes up with colleagues is that even if you started the discussion of the political declaration and phase 2 sooner, it would come back to the point of trust. They still fear the backstop being used and that the Europeans will not negotiate in good faith. It comes back to the issue of trust, and that is the point that parliamentarians raise time and again. How do they have confidence that if the backstop is there it will not be used in essence as a default?

The Chairman: Secretary of State, one major topic we would like to touch on is the continuing promotion of British influence within the European context. Before that, Baroness Falkner has a question that inheres to this issue. Then perhaps the two colleagues who are going to deal with the final topic will ask their questions together, so that we can get you away expeditiously.

Baroness Falkner of Margravine: To follow up on the question of trust, of course the European Union has in law a duty of sincere co-operation, so it is interesting to see that bona fides are simply not trusted.

My question is about the transition period. I may be wrong, but I seem to recall that the EU said that the moment after Brexit day, 29 March, if that is what it is to be, the negotiations could begin, even though we would be in a transition period. Am I right in that understanding of the future relationship?

Stephen Barclay MP: On the future relationship, what was set out by Presidents Tusk and Juncker in their letter to the Prime Minister was that, as soon as Parliament passed the meaningful vote, the phase 2 negotiation can begin. The change was that, previously, phase 2 would

start once the withdrawal agreement was ratified. That obviously had an impact both on the domestic timescale, because it is taking longer than originally intended, and on the European timescale, because of the European Parliament elections and how they then affect the Commission. There is a danger that there will be a delay on the UK side and then, in essence, a delay on the European side.

Baroness Falkner of Margravine: On the European side, they have said that they would work through the summer, because the change of Commission or the Parliament does not hold up the preparatory work. I am making your argument for you.

Stephen Barclay MP: I look forward to lots of meetings in Brussels in August.

Q15 **Baroness Neville-Rolfe:** Looking forward more optimistically, what work is there on the steps that the Government are taking to maintain UK influence in EU institutions and in other member states post Brexit? For example, an expert told us yesterday that UKRep might need to be much bigger, and better resourced with experts, as we become a third country. The Canadians and Norwegians we have talked to have well-resourced and impressive operations in Brussels. We are interested to know how you are preparing for the need to change the dynamics of the relationship.

Baroness Brown of Cambridge: What mechanisms of dialogue with the EU Parliament are you thinking about? Indeed, how would the devolved Administrations be involved? Secondly, and I hope that you will not take offence at this, as it is not meant to be a comment on your career, when does DExEU disappear and when are the roles of representation and trade to be handed back to the FCO and the DIT?

Stephen Barclay MP: The short answer to the last question is that these things are at the discretion of the Prime Minister; she decides when departments are replaced or merged. Sir Amyas Morse at the NAO always has strong views on the framework of Whitehall departments, when they move and so on.

On the architecture and structure of our approach, it is absolutely right, and important, to recognise that as a third party the relationship changes. Lord Ricketts is nodding; he absolutely gets that. It is something I have discussed with senior officials in the department and across Whitehall, and something we are actively looking at.

The change manifests itself in different ways, not just in the resourcing implications but even at prime ministerial level. The engagement is different, rather than happening at the Council. The relationship is different. I am cognisant of the issue; it is one that senior colleagues in Whitehall have been looking at and giving considerable thought to. You are absolutely right that the nature of the relationship will change in our interplay as a third party rather than a member.

Baroness Brown asked about the dialogue with the European Parliament. Personally, I have reached out to figures such as Guy Verhofstadt; I have had calls with him, and I think one is due shortly. We have dialogue with UK Members of the European Parliament and others. As we move into phase 2, the nature of the discussion will change, because we will move much more into the deep sectoral trade negotiations and the interplay will differ.

An area where the role of the European Parliament has been very helpful has been citizens' rights, on which it has a very strong view. That position is reflected in the stance we have taken as a Government in recognising the importance of EU citizens, whether in a no deal, where safeguards are in place, or in the withdrawal agreement Bill, where they are a key component of that legislation. I accept what Lord Whitty said about its being a significant chunk of legislation, but one of the most significant chunks is citizens' rights. That is a key issue for the European Parliament, and one we can engage with it on.

The Chairman: Secretary of State, as we move towards the close of the session, is there anything you would like to share with us beyond the comprehensive answers you have given? You are not required to.

Stephen Barclay MP: I have nothing further to add to my comments.

The Chairman: And there are no further questions. The Committee is very grateful. I think you understood that the spirit of the recent exchange about the future of your department was not an implied criticism of the answers you have given us. While we remain members of the European Union, I suppose it is almost in order for me to thank you for what could be called a tour de force. Even if I am not allowed to say that formally, I think you have done your best to express good faith, to use another term of art, in your responses to our questions. I realise that it is difficult and realise too the load that is on your department.

I remind you that, as this was a public evidence session, we will have a record. We will share the transcript with you to make sure that we have it down precisely.

It is well understood, and I think you are amenable to this, that we should have this kind of public transparent session from time to time. If beyond that, it is helpful to you to consult in whatever format you feel appropriate and on whatever basis, as long as we are clear what we are doing, we would be more than happy to assist in that process.

You have taken forward our understanding today considerably, and we are grateful for that. We look forward to further continuing contacts and would like to thank you. We have some deliberative business still to do after that long session, but I formally declare the public session closed with our thanks to you.