

Procedure Committee

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

Wednesday 6 February 2019

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

Questions 272-364

Witness

[\[1\]](#): Chris Heaton-Harris MP, Parliamentary Under-Secretary of State, Department for Exiting the European Union.

Examination of witness

Witness: Chris Heaton-Harris MP.

Q272 **Chair:** Minister, thank you for coming to see us. We have two areas to cover with you: first, the transposition of international agreements that were originally agreed through our membership of the EU into UK treaty law; and secondly, the progress of statutory instruments, the sifting Committee, the workload, and how confident you are that things are happening at the pace at which they should be happening.

We received a letter from the Secretary of State with regard to international agreements. It came as somewhat of a surprise, because this is something we were unsighted of. Just give us an indication, if you can, of how many of those international agreements are out there, and what the timeframe is for getting them into domestic law, if that is the right description.

Chris Heaton-Harris: First, thank you very much indeed for the invitation to come to talk about these things. I think you received that particular letter because it was being sent to the Chairs of the Exiting the European Union Committee and of the European Scrutiny Committee; it seemed polite to ensure that you also had sight of it. I believe that is the letter you are talking about—the one of 26 January.

Chair: Yes.

Chris Heaton-Harris: Cool. We are making reasonable progress on international agreements. Last week, we signed two with the United States, covering trade in wine and in spirits; and three related to agreements with Chile and the Faeroe Islands, and the eastern and southern Africa economic partnership agreement. On 30 January we deposited instruments on the accession to the common transit convention. On 25 January, we signed two with Switzerland, on insurance and road transport. There is a steady list.

The Department for International Trade is obviously doing most of the international trade agreements, and in general my Department covers most of the other international agreements that have an element of being negotiated through our membership of the European Union or an element of being a member of the European Union within them, so that they need to be modified to be correct. Some of them—a lot of them—do not need to go through a process. That means they do not need to be ratified by the CRAG process, so a number will just have explanatory letters or memorandums of understanding signed; the others all need to go through the CRAG process.

Q273 **Chair:** You provided us, kindly, with an indication of how many SIs might come out of the EU (Withdrawal) Bill and so on. How many of those agreements are floating around out there, waiting?

Chris Heaton-Harris: In total, probably fewer than 80 now.

Q274 **Chair:** What is the procedure for parliamentary scrutiny of those



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agreements?

Chris Heaton-Harris: It all depends on what sort of agreement they are. The big trade agreements absolutely need to go through the CRAG procedure—once they have been initialled and signed, to be laid before the House for 21 sitting days. There is obviously scrutiny—I believe that the Secretary of State for International Trade is before the International Trade Committee today, being asked questions on these very subjects.

Q275 **Chair:** We are not trying to come up with trick questions, but the clock is ticking. We did a rough, back-of-the-envelope calculation, and about 29 sitting days are left before 29 March. Obviously, the Government can insert more sitting days—plenty of weekends and Fridays remain unfilled—but if we take those 29 days, most or many of those agreements have to be laid within eight sitting days.

Chris Heaton-Harris: Yes.

Q276 **Chair:** Are you confident that they will be?

Chris Heaton-Harris: Yes, we are confident that the majority of them will be laid in good time for that.

Chair: “In good time”—so really—

Chris Heaton-Harris: Soon.

Chair: Tomorrow and next week.

Chris Heaton-Harris: Within the next week, yes. We are laying new international agreements almost every day—before the House, through the CRAG process—and announcing those that do not need it.

Q277 **Chair:** I have one last question on this before I hand over to Will. There is provision for Select Committees to get their teeth into these things and scrutinise them. Have you had representations from Select Committee Chairs champing at the bit, salivating over getting stuck into these and pulling them to pieces?

Chris Heaton-Harris: I believe the Chairman of the Exiting the European Union Committee has been enthusiastically policing this subject.

Q278 **Chair:** What about other Select Committee Chairs with other particular sectoral responsibilities?

Chris Heaton-Harris: Mr Benn is the only one who has written to me about these matters, but I am quite sure that Mr MacNeil is equally enthusiastic on behalf of his Committee.

Q279 **Chair:** So as of yet there is limited enthusiasm? I am not saying that there is not enthusiasm out there, but it is limited?

Chris Heaton-Harris: I would say that it is targeted, rather than limited.

Chair: Targeted enthusiasm.



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Q280 Mr Wragg: The distinction between an association arrangement and, say, an economic partnership agreement is quite significant, yet the ability to scrutinise them appears to be the same. Am I right in saying so?

Chris Heaton-Harris: In a way, yes.

Q281 Mr Wragg: The agreement with Chile and the agreement with the eastern and southern Africa states are obviously very different documents, and I am sure that Mr MacNeil is thoroughly looking forward to the Chilean one landing on his desk. However, is it not an issue that the same amount of time and methods of scrutiny are provided for two very different documents?

Chris Heaton-Harris: I am not sure if that is correct. The process set out in the Constitutional Reform and Governance Act 2010 is there for good reason. Parliamentarians of the day decided that it is the appropriate process for the ratification of treaties and the scrutiny by Parliament thereof. While I completely understand the nature and the size of these matters, I tend to believe that Parliament does a very good job in scrutinising them.

Q282 Mr Wragg: Absolutely. I do not know if you are aware of this in your Department, but at the time that the European Union was agreeing these documents on behalf of the United Kingdom, what scrutiny took place? Did other Departments—clearly not your own—receive representations from Members of the House wishing to scrutinise them?

Chris Heaton-Harris: I do not think my Department has been involved in that particular process. However, from my five years on the European Scrutiny Committee between 2010 and 2015, I can tell you that that Committee thoroughly scrutinises, in great detail, just about every measure that comes out of the European Union.

If you recall the debates we had in this place on the Transatlantic Trade and Investment Partnership and the Comprehensive Economic and Trade Agreement—trade agreements, one of which was agreed by the European Union and one of which was not—and the EU-Japan agreement, which has only just come into effect, there were debates within the Committee, and the Committee requisitioned documents to go to a European Committee for debate. I believe, in the case of CETA, we had several debates on the Floor of the House. I think there has been a reasonable amount of scrutiny in the past of former agreements between the European Union, of which we are a part, and other countries.

Mr Wragg: Thank you.

Q283 Helen Goodman: I was not going to ask you about that, but you just said that you thought that the scrutiny was rather good. However, I recall that the TTIP document was not published. We all had to go into a private little room and sign our name, and we were only allowed to read it for 45 minutes at a time. Do you think that is a good system for parliamentarians to scrutinise documents?



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Chris Heaton-Harris: I suppose it depends what level the negotiations have reached at the time, doesn't it? The CETA debate—

Q284 **Helen Goodman:** That was the same process.

Chris Heaton-Harris: It was the same process because the negotiations were ongoing. The details had not been formally fully negotiated. It was an engagement with all Parliaments at the same level across the European Union. A domestic process did not ensure that. We were just playing our part.

Q285 **Helen Goodman:** Well, we will set to one side whether that was adequate or not. You say there are another 80 documents to come. How many are there in total, including the ones we have done and the next ones?

Chris Heaton-Harris: It is around 80, but most of them will not be agreements that need to go through the CRAG process. There will be lots of memorandums—

Q286 **Helen Goodman:** When do they have to go through the CRAG process?

Chris Heaton-Harris: You need 21 sitting days, so they probably need to be laid on the Floor of the House by 11 February.

Q287 **Helen Goodman:** Let me begin again. Of the 80, how many are being modified substantively, and how many are just having EU crossed out and UK written in?

Chris Heaton-Harris: The whole process is to try to have continuity of those agreements, so most of them will literally not be modified, but will be legitimate additions to our statute book without reference to European law, which would have no standing when we have left the European Union.

Q288 **Helen Goodman:** But at the outset, you said that some of those documents had to be modified.

Chris Heaton-Harris: Yes, to remove the references to European schedules, laws and so on within them, because they would have no standing when we have left the European Union.

Q289 **Helen Goodman:** And that is the only change that is being made. Sometimes that change might have a real effect and sometimes it might not.

Chris Heaton-Harris: Yes. As I am not—

Helen Goodman: Do you have any feel for that?

Chris Heaton-Harris: I am not in charge of the trade negotiations, but I do not believe the ones that have been tabled so far have been modified in the way that you are suggesting might happen.

Q290 **Helen Goodman:** But we have another 80 to come, and they might.



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Chris Heaton-Harris: They are international agreements and trade agreements. There are still a couple of aviation agreements that need to be signed.

Q291 **Helen Goodman:** Let us take the Chile one as an example, because William can wave it around. When we have the new Chile version, do we just take the document from the EU, process it in Whitehall and present it to Parliament? Or do we also, at the same time, have a conversation with the Chileans?

Chris Heaton-Harris: We have to have a conversation with the Chileans, because this is an agreement between the United Kingdom and the country of Chile itself.

Q292 **Helen Goodman:** That is what I had imagined. That being the case, if these countries want to insert a change—some long-standing thing that they have been discontented about—they have the opportunity to do that.

Chris Heaton-Harris: Yes, absolutely.

Q293 **Helen Goodman:** Is Whitehall flagging that up?

Chris Heaton-Harris: Most definitely.

Q294 **Helen Goodman:** Of the 80 to 100 of these documents, could you give us the departmental split—which Departments are dealing with them?

Chris Heaton-Harris: I would say around half are trade agreements that are led by the Department for International Trade. I can give you a more exact split in writing if you would like me to. Some are with the Foreign and Commonwealth Office and the rest are with my Department, the Department for Exiting the European Union. So the majority of the other half would be with my Department.

Q295 **Helen Goodman:** Correct me if I am wrong. The CRAG process involves you laying those documents before the House for 21 days and notifying the Select Committees so they realise they can have a look at them if they want to, and then, if nobody has done anything, they are approved—ticked off. Supposing somebody, a parliamentarian, has some questions, what happens then under the CRAG process?

Chris Heaton-Harris: There is an opportunity to ask for more scrutiny—well, not more scrutiny, but a debate. The reason we have written this letter is to flag to Select Committees before we get to the point of going through the CRAG process that these things are coming through.

The International Trade Committee is well aware of the trade agreement elements. There are others. For example, there is the general procurement agreement, which allows—or would allow, when we accede to it—British companies to bid for procurement contracts across the globe, all within that agreement. That is another one about which it has already been well sighted to Parliament that it is coming along the process now and will hopefully be entering the CRAG process in the very near future.



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They are not all international trade agreements with countries; they are a whole range of different agreements.

Q296 **Helen Goodman:** If everything is not laid before the 11th, and so can't be on the table for 21 sitting days before the 29th, we may have some legal vacuum for a week or two at the beginning of April. Is that right?

Chris Heaton-Harris: It is my hope and expectation that that will not be the case.

Q297 **Alison Thewliss:** You mentioned the spirits treaties with the United States. Are those now concluded?

Chris Heaton-Harris: Yes.

Q298 **Alison Thewliss:** What about the ones with Mexico?

Chris Heaton-Harris: I honestly could not tell you off the top of my head. Can I come back to you?

Q299 **Alison Thewliss:** It is of huge concern to me, particularly as a Scottish MP, that Scotch whisky's geographic indicator remains protected. The second that it is not, people will try to get through that another way.

Chris Heaton-Harris: It is genuinely well understood how important that is to the Scottish whisky industry.

Q300 **Alison Thewliss:** I am concerned as well that with the EU-Japan agreement, it may be easier for Japanese whisky to get into the EU than Scotch whisky, and if that were to be the case, that would be a huge competitive disadvantage for us. It would be good to get a bit more clarity on the situation with Mexico, and any other agreements that are still to come forward that affect Scotch whisky, because we have seen that there are other ones. It would be useful to know what those other 80 or so are and what they concern, because if there is a risk that—as Helen says—we run up to the date, we run out of time and there is a gap in legal protection, that is a gap the industry will not want to have.

Chris Heaton-Harris: Of course. I do have some stuff in my papers, but I don't recall it off the top of my head and I wouldn't like to guess.

Q301 **Alison Thewliss:** Sure. Is it possible to get some kind of list published of the 80 that you still require?

Chris Heaton-Harris: I think it might be included on the letter that is—

Alison Thewliss: There is a list on the letter of lots of agreements, but I don't think that totals 80.

Chris Heaton-Harris: I will double check. May I write to you through the Committee?

Q302 **Alison Thewliss:** I was looking at the bit about the air services agreements. Frankly, it seems quite late in the day to be starting to conclude these, and I wondered whether you had any further information on when those negotiations started.



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Chris Heaton-Harris: They started quite a long time ago. There has been, I guess you could say, almost a dilemma—not within Government, but in general—as to, when you are trying to negotiate a deal in good faith with the EU27, how much you surface of your plans for if you were to leave without a deal. Some of the aviation agreements have been being negotiated for a very long time, the US being the most obvious one: that was laid before Christmas. Most of these negotiations have been ongoing for longer than I have been a Minister in this Department.

Q303 **Alison Thewliss:** Okay, because it was only clear—I think there was the UK-Macedonia one, which took place in February 2018, but there was not any kind of narrative around when the other ones started.

Chris Heaton-Harris: Yes, that is fair enough, but it was before I was in my Department.

Alison Thewliss: That is fair enough for just now, I think.

Q304 **Bob Blackman:** Minister, how many of these agreements have material changes, other than “delete EU, insert UK”? That is fairly straightforward, but how many actually have material changes to the way we are going to do deals?

Chris Heaton-Harris: Very few of the ones that I have seen that are under my Department’s remit. The material changes come, essentially, in citizens’ rights. With the EEA and EFTA treaties that we have been signing—there are some citizens’ rights treaties with Switzerland, Norway and so on—those elements were in our agreement when we joined the European Union, so you could say that they are almost completely new. That is a completely different look; it would be new territory for agreement between us and those countries. However, in rolling over treaties and international agreements, they are mostly exactly the same.

Q305 **Bob Blackman:** During the discussion and debate on their progress through the European Union negotiations, how many of these treaties or arrangements did we object to, if any?

Chris Heaton-Harris: We are very polite negotiators, Mr Blackman.

Bob Blackman: No, I understand that.

Chris Heaton-Harris: We would not necessarily object to people raising questions, but we would make sure that we achieved the aims of our negotiation.

Q306 **Bob Blackman:** The point I am coming to is that if we got to a position in negotiations through the European Union where there was qualified majority voting and we were outvoted, that is surely something we would want to put right in any treaties we take forward.

Chris Heaton-Harris: Yes, but I have not experienced that in any of the ones I have been involved with.

Q307 **Bob Blackman:** So are we in a position where we know there are none, or have you just not experienced any at the moment?



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Chris Heaton-Harris: I would go for the latter, because I cannot honestly tell you about the whole gamut of all these international treaties, especially the trade ones, because they are not in the purview of my Department. We are just co-ordinating their passage through Parliament.

Q308 **Bob Blackman:** But the difference is that these treaties were negotiated by the European Union. We are now going to be approving them for the UK. Now is the time to put them right if there is anything in them we would like to see corrected.

Chris Heaton-Harris: Yes, but the Government have a policy of continuity of agreements so businesses have a level of certainty around their dealings, especially on trade policy. We have not aggressively gone out there to try to change any treaties. It is a very big task for the Department for International Trade and the other Departments involved to essentially roll over all these international treaties. The aviation agreement with the United States was not a kind of fly in, fly out—

Q309 **Bob Blackman:** No, I can imagine this isn't going to be a five-minute job.

Chris Heaton-Harris: Yes. We are trying to maintain what these agreements look like for continuity purposes, so there have been very few changes in them.

Q310 **Bob Blackman:** Given the pressure on time, which I understand, what is the process going to be for reviewing and altering these agreements after we have left the European Union?

Chris Heaton-Harris: That is up to the two partners, as sovereign countries, if it is a trade agreement, to choose to review.

Q311 **Bob Blackman:** Right. Looking at the scrutiny that is going to take place over the next 50 days, or whatever it is, if a Select Committee looks at a particular agreement and says, "Actually, we think this needs further explanation or exploration," what will be the Government's proposal for debating that particular treaty?

Chris Heaton-Harris: It rather depends on what the Select Committee asks for. There are lots of appearances scheduled. As I say, the Secretary of State for International Trade is either before or just about to be before the International Trade Committee. My Secretary of State is constantly briefing members of the Exiting the European Union Committee and I believe has had an invitation to go before that Committee again. So it is what Parliament asks.

Q312 **Bob Blackman:** But other Select Committees will be involved. I should imagine there must be things to do with DEFRA, for example, but there will be other Departments too, such as International Development—I can think of several Committees that might get involved. How do those Select Committees get to look at these things in detail? If someone is going to look at this deal for one part of Africa, which runs to several tomes, that seems to me like quite an onerous role.



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Chris Heaton-Harris: Yes. I would not like to suggest what work Select Committees should do in scrutinising the Government—I think that would be a bit untoward—but on the areas involving agriculture that sit within that agreement, the EFRA Committee has the opportunity to raise questions with the appropriate Ministers if it chooses to do so.

Q313 **Bob Blackman:** What is the process going to be for the House—not Select Committees, but the House—to debate any concerns?

Chris Heaton-Harris: There is the process that is enabled by the CRAG process itself. I have to say that in my appearances before the House as a whole there have always been questions on various international agreements and trade treaties. The Secretary of State, and indeed every Trade Minister, will tell you they are constantly appearing before Committees of the House, and the House itself, to answer questions on these matters.

Q314 **Mr Bone:** The two agreements that Mr Wragg showed us were tabled by the Foreign Office under the negative procedure with 21 days. There are not many more than 21 sitting days left, so if someone wants to pray against that and create a debate, are we going to be having all these debates on 28 and 29 March?

Chris Heaton-Harris: Fortunately—I look just briefly over to my right—it is for the business managers of the House to decide when the debates will take place.

Q315 **Mr Bone:** It has to be after the 21 days and before 29 March. The arithmetic means it must be in that week. There is no other way around it. You cannot just say, Minister, that it is up to the business managers.

Chris Heaton-Harris: Well, the process is that it is.

Q316 **Mr Bone:** Put another way, why on earth has it been left so late? What has your Department been doing?

Chris Heaton-Harris: I would like to think my Department has been working very hard to get lots of international agreements, which everybody in this Committee would like to see negotiated properly in bilateral agreements, over the line, at the same time as trying to seek a positive deal with our European Union partners that this Parliament can back, so that we can actually have a deal and therefore an implementation period that will allow further time for said things to happen.

Q317 **Mr Bone:** Isn't it the truth that, as the Minister hinted earlier, there was a deliberate process of not doing this because we wanted to look friendly to the EU in doing a deal? I want to know who stopped your Department doing this. Was it the Prime Minister? Was it the Chancellor? Was it the Business Secretary? Who held this up? You have had more than two years to do this, and to cross out "EU" and put in "UK" does not take two years. What on earth has been going on? This was a deliberate ploy of the remainers in Government to delay the possibility of no deal, wasn't it?

Sir Edward Leigh: Answer that.



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Chris Heaton-Harris: As my honourable parliamentary neighbour and friend knows, I would fundamentally disagree with the premise behind his question. A huge amount of work has been going on in Government on these matters for a very long time. Helen Goodman mentioned the Macedonian air agreement, which was signed months before I even became a Minister. Some of these are slightly more complicated and lengthy than others, as Mr Wragg has demonstrated. With very little fanfare, the trade agreement with Switzerland—our fifth largest export partner with £19 billion-worth of export trade—is already going through the CRAG process. While we might have been quietly getting on with this, because we wanted to ensure that our European partners did not feel we were doing the dirty on them, completely preparing for no deal and trying to pivot to that instead of trying to get a decent deal over the line, that is a dilemma that is above my pay grade. But I do not believe, in any circumstances, that anything was ever held back in trying to get deals done any earlier.

Q318 **Mr Bone:** That is the question. It is a question whether this was being done quietly behind the scenes and the work was continuing, or there was a deliberate pause because some Ministers did not want to give the impression that we could do no deal. You think it is just that it was being done quietly and not telling anyone?

Chris Heaton-Harris: I think if you ask the previous incumbent of my role how much work was being done on these international agreements during his time in my Department, he would tell you that it was a huge amount. It is the natural culmination of a huge amount of work with a timed boundary that means lots of them are coming to fruition now.

Q319 **Nic Dakin:** You mentioned the impact on citizens' rights. Is the Home Department or the Home Affairs Committee being alerted to those?

Chris Heaton-Harris: The Department, most certainly; I honestly could not tell you whether the Select Committee has scrutinised this or not. They have had a lot to say about citizens' rights in general, but I honestly could not tell you about the individual agreements.

Q320 **Chair:** So a Select Committee gets hold of one of these treaties, reviews it and raises significant concerns; it organises a debate on the Floor of the House; and the House finds a way to recommend to the Government that the treaty not be ratified until its outstanding concerns are addressed by Government. What is the process for dealing with that scenario?

Chris Heaton-Harris: I am sorry, I misheard the last sentence.

Q321 **Chair:** If the House says it is very uncomfortable with the treaty being ratified and does not want it ratified until the Government addresses its concerns, what is the process for dealing with that scenario within Government?

Chris Heaton-Harris: I am pretty sure that if there is an objection, the treaty cannot be ratified until the House is satisfied.



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Q322 **Chair:** So then it would carry over beyond 29 March?

Chris Heaton-Harris: Yes, potentially.

Q323 **Chair:** What will happen to ongoing trade arrangements between companies in the affected country and our country?

Chris Heaton-Harris: As I indicated, there are other processes by which you can possibly have a short-term agreement, but I do not believe that would be a very comfortable or legal situation to exist in. I suppose it depends on the nature of the tariffs on the goods or services that said companies were using.

Q324 **Chair:** So would it be business as usual until the issue was rectified to the House's satisfaction?

Chris Heaton-Harris: The Government would try to make it as legally watertight as possible for that to be the case, but obviously the whole purpose of having a treaty on those bases, normally, is to reduce tariffs in certain areas for various goods and services.

Q325 **Chair:** I am not a conspiracy theorist, but to pick up on what Peter said, is that why this has been back-end loaded, in a sense, to make sure that the House does not really have much wriggle room? The choice is to request a blemish be rectified or to potentially put an industry under great pressure and people out of work, so, in the end, they will pretty much go through.

Chris Heaton-Harris: No. I would like to think—I am not sure if it is ever possible to have track changes on those documents, but if you could—that you would find very little that would be of concern to Parliament at all, because they are, for the vast part, rolling over former international agreements to remove references to EU law and give them a solid foundation in our statute book.

Q326 **Chair:** I do not think it is the duty of Parliament to invent problems where problems do not exist. I am just painting a scenario where a Select Committee says, "Oh my gosh, we are very concerned about this," and then starts digging its heels in, and the House of Commons shares that concern, but you feel that that is an unlikely occurrence?

Chris Heaton-Harris: I do think that is highly unlikely in these circumstances.

Q327 **Chair:** Okay. Can we move on to the SI sausage machine? I will ask the Minister a straightforward question. Minister, how do you feel it is all going? Are the sifting Committees in the Lords and Commons working as you would expect? Is the scrutiny as you would expect? Are you confident that we will successfully dispatch them all in time for 29 March?

Chris Heaton-Harris: The answer to those questions is that I think the sifting Committees are probably working better than most people expected. Between a quarter and a third of SIs that are laid on a negative basis and sifted by the Committees are moved upwards to affirmative. I



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do not think there have been many complaints by Departments about that.

Where are we now? As of 4 February, 398 EU exit SIs had been laid. It is going to be a number less than 600. There has been a huge prioritisation exercise across Government to make sure that we are pushing forward only those SIs that we absolutely need to, so there has been a proper kicking of the tyres to ensure that Departments are not trying to use the process to do anything that they should not. I am very confident that we will be in a very good place.

Q328 **Chair:** During previous meetings that we have had with you—I think it was with you, Minister—

Chris Heaton-Harris: I am afraid this is my first outing.

Chair: Is it? Well, with other Ministers and with the Leader of the House, it was felt that it might be more than 800—somewhere between 800 and 1,000. So actually, it is a success story to have managed it down to 600.

Chris Heaton-Harris: Yes. It has involved a lot of work by people in my Department and in other Departments. It has been a proper prioritisation exercise.

Q329 **Chair:** They are to be congratulated on that. The second question, before I ask colleagues to come in, is, are you surprised that it is as many as somewhere between a quarter and a third that are being upgraded to affirmative? I think the general view of the Committee was that it would be lower than that. We did not have a specific percentage in mind, but maybe something like one in 10. Did it come as a surprise to your Department?

Chris Heaton-Harris: Not really. We did not actually know what it would be. When the first 10 went to the sifting Committee, when that was instigated, two were upgraded, so I thought that about 20% would probably be the norm. It is just above that, so it is about where I would expect it to be.

Q330 **Chair:** Right. I am sorry that this is your first appearance before the Committee.

Chris Heaton-Harris: I am sorry too. I am sure it will not be the last.

Chair: We will have to get you back on a more regular basis.

Q331 **Sir Edward Leigh:** Given the volume of SIs and all the rest of it, if we are to leave at 11 pm on 29 March, when will be the last possible day that the deal can be agreed in principle by Parliament?

Chris Heaton-Harris: Oh, that is a very good question. To slightly reinvent it, when it comes to secondary legislation, we will be ready for leaving the European Union without a deal in good time. A deal could be struck at any time—I assume up until the very end—but my job is to ensure that we have a statute book that is ready for a non-negotiated-deal circumstance, so I am quite confident that—



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Q332 **Sir Edward Leigh:** That is quite reassuring, because we are constantly told that, even if we get a deal agreed, we will have to have a delay of several weeks to get all this business through. That does not seem to be true anymore.

Chris Heaton-Harris: I am working to the date of 29 March.

Sir Edward Leigh: Can you answer my question? It is fairly straightforward.

Chris Heaton-Harris: Yes.

Sir Edward Leigh: That is fine. Thank you.

Q333 **Mr Bone:** I am sure that the whole Committee is reassured that, by 29 March, you will have ensured that we are ready to leave on a no-deal basis. I therefore assume that President Donald Tusk was talking specifically about you when he said there is a "special place in hell" for "those who promoted Brexit without even a sketch of a plan of how to carry it out safely", by which he clearly means no deal. Are you looking forward to that place in hell? Would you like to say something to President Tusk?

Chris Heaton-Harris: I would just like to say that I do not believe that anyone in Parliament is in that place. Every parliamentarian has been playing their part in getting the SI programme through and working very hard to ensure that our statute book is ready for our leaving the European Union in the event of no deal, and I would like to think that they are working equally hard to get a deal.

Q334 **Mr Bone:** Does the Minister think that President Tusk does not know what he is talking about?

Chris Heaton-Harris: I will leave President Tusk's comments to one side.

Mr Bone: You spoilsport.

Chair: There was a chap—it might have been a famous man—who on his deathbed said, "I am bound to go to hell," then closed his eyes, before opening them one last time and saying, "but I shall meet some capital fellows down there."

Q335 **Alison Thewliss:** One thing I have found while sitting on some of the delegated legislation Committees and looking at these statutory instruments is that we get things at pretty short notice, and that, on several occasions, no impact assessment has been provided.

This is hugely concerning for me. None of us can be absolute experts on the detail of all of these things coming through, so the impact assessments are actually quite important. Do you agree that, without the impact assessments, we are being asked to take the Government's word for it and approve the SIs, without any real evidence behind them?

Chris Heaton-Harris: Departments have been provided with guidance that the impact of EU exit statutory instruments should be assessed in line



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with standard practice, following the better regulation framework and in accordance with the Treasury's Green Book guidance. That includes statutory instruments introduced to fix deficiencies to allow current systems or regulatory provisions to operate, following the EU withdrawal Act and following a no-deal scenario.

However, essentially, measures that will have an equivalent annual net direct cost to business—plus or minus £5 million—are subject to proportionate analysis by Departments and are approved by Department's chief economists, so they might not necessarily need an impact assessment. It all depends.

Lots of these statutory instruments are just preparing our statute book—similarly to the international agreements portfolio—and making sure that there is a proper basis in law. You are moving things across to our statute book that were based on European law before. There is very little cost involved in those. Therefore, when properly assessed—I believe they all have been—they might not need an impact assessment.

Q336 Alison Thewliss: I think it would be useful to see a bit more of the working, I suppose, as to how that £5 million threshold is or is not reached. An impact assessment would give you that kind of detail. Further, saying that there is a £5 million cost to business does not quite get at the real impact, in some cases.

There was one Committee that I sat on relating to credit card interchange fees. The cost to business might be something, but the cost to the public might be something additional, as well. That is not taken into account within that £5 million. So it is difficult to know the full impact of anything, if this £5 million is limited and restricted specifically to business.

Chris Heaton-Harris: I hear what the hon. Lady is saying. Even on the statutory instruments that fall beneath this level, it does not mean that there is no consultation—it just means that there is no formal consultation or formal impact assessment. In general, a Department in charge of an SI will always put feelers out to the interested parties in an area, to ensure that any statutory instrument is going in the direction of travel that they would expect. There does not necessarily always have to be a formal consultation or formal impact assessment, but there is always something going on behind the scenes to ensure that the right people do know that an instrument is being laid and so on.

Q337 Alison Thewliss: On that particular point, I am not entirely sure that that is good enough, either. There have been a couple of instances in the DL Committees that I have sat on, where evidence has emerged—from the ABI, earlier on in the week and from a different organisation the week before that—in a letter from one of the organisations, raising concerns and showing that they were not happy with a particular aspect of the SI. The Government would not then change the SI, and we had to approve it anyway.

It just does not seem like an adequate enough process to fix anything that industry, consumers or anybody else does not see as quite right. We



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are bound to approve it or else nothing will happen. That is not a good process.

Chris Heaton-Harris: I honestly do not know about the examples that you have talked about. I would absolutely happily have a cup of tea with you to talk about those things. In general, on those SIs of the type I have described you have an impact assessment and there is a good amount of consultation. That means not just sticking something on the gov.uk website, but contacting interested groups and bodies. I am kind of surprised. I guess there are always going to be areas of controversy in every area of law, but I would like to think that this is actually managed quite properly and within the guidelines that have been well-established in this place.

Q338 **Mr Wragg:** I am not surprised that there is a slightly higher number than anticipated being referred by the sifting Committees. It does, after all, have to somehow justify its existence to do something.

I am looking here at very good statistics, which show us the level or an indication of the incisive examination given in these DL Committees by hon. Members from across the House. I note that 14 of them lasted less than 15 minutes, 27 lasted between 15 minutes and 30 minutes, 19 lasted between 30 minutes and 45 minutes, five of them—these were the long ones—lasted for 45 minutes to one hour, and only one lasted over an hour. They have 90 minutes available. In your experience how many contributions have you seen from Back Benchers on those Committees?

Chris Heaton-Harris: In my experience, I have only taken through one SI from my Department. I believe it lasted 12 minutes and there were two contributions, both from Front Benchers.

Q339 **Mr Wragg:** Is it fair to say that in all of these SIs there are plenty of opportunities for hon. Members to take part in scrutiny—if they deem the scrutiny of turning up to these Committees that they are appointed to in the first place worthwhile—and to do a bit of research beforehand, to at least be able to ask one or two questions, and that if they are not doing so it is their own fault?

Chris Heaton-Harris: Parliamentarians judge their own level of work and how much scrutiny they want to give to any particular thing on a personal basis. I am very aware that, as a Minister, you have to go in fully prepared to be there for your full 90 minutes and have exacting questioning.

Mr Wragg: Absolutely. Thank you very much.

Q340 **Chair:** On that “fully preparedness”, page 373 of this report—can you talk us through that, because—

Chris Heaton-Harris: Which paragraph?

Q341 **Chair:** It’s actually not a “paragraph”; it’s a survey—[Laughter.] Minister, you are performing beautifully. I just thought I would see if I could get you to break into a slight sweat, but your good humour carried you through that brilliantly.



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Who is next? Bob. Sorry—I'm ignoring Bob, and I don't mean to.

Bob Blackman: As usual.

Chair: No, not at all.

Q342 **Bob Blackman:** This actually follows on from Mr Wragg's comments. What is your estimate of the number of delegated legislation Committees that will need to be set up between now and exit day to consider the various different SIs?

Chris Heaton-Harris: That is a very good question. I believe that I have something here. Over 390 SIs have now been laid to date, which is over 60% of the SIs. Over 190 have been made. Working on a rough percentage of what goes negative/positive, we are probably looking at about 50.

Q343 **Chair:** Fifty? Fifty more to go?

Chris Heaton-Harris: No, no, no—as in going through the process—yes, 50 more to go.

Q344 **Bob Blackman:** So, 50 separate Committees sitting between now and exit day?

Chris Heaton-Harris: Probably a bit more, actually, if you are working on the numbers. Sorry, I haven't got the exact number here; that was a mental calculation.

Q345 **Bob Blackman:** I am just getting a flavour for the workload that you are expecting to be undertaken.

Chris Heaton-Harris: I am expecting there to be roughly around another 200 more SIs laid. A decent number of those will obviously be negative. And then, working on the percentage that are normally affirmative, and then the upgrade from the sifting Committee, I think you could probably say—well, somewhere between 50 and 75 would be about it. But that was an off-the-cuff sketch.

Q346 **Bob Blackman:** Sure. We are not going to hold you to an exact number; I'm just getting a flavour.

Obviously, you can hold a number of these on a single day, in different Committee rooms with different Ministers, but staffing these Committees, with Members of Parliament, and officials and so on, is quite a challenge.

Chris Heaton-Harris: Yes. I am not sure if I said it quite properly at the beginning, but it was a genuine "thank you" to parliamentarians for actually doing the role of scrutiny, and to the staff of the House, because there has been a large number of Committees and a lot of Committee work that has needed to be done in scrutinising these pieces of secondary legislation.

Mr Wragg might have detailed that some of them have gone through more quickly than others, but that is just how these things work. Certainly, I



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have yet to hear of one where the official Opposition has not raised reasonable concerns, or at least asked sensible questions.

So, I think a huge amount of work is going on across the House—by staff and parliamentarians—to assist with this, and I am comfortable that the batch of work that I am looking at will be completed well before exit day.

Q347 **Bob Blackman:** So what consideration has been given, for example, to debating maybe one, two or three SIs in one Committee?

Chris Heaton-Harris: Some SIs have been consolidated. I know that lots of people are excited about a BEIS SI that is very large; I think it comes close to the agreement that Mr Wragg waved around. But there's an understanding that these are lots of minor changes in a very similar area that actually need scrutiny by the House. I'd like to think that this is all being done effectively.

Q348 **Bob Blackman:** My last question: how many of these Committees do you expect to sit not next week but the following week?

Chris Heaton-Harris: I don't know. To be quite honest, I don't think that is down to me; I think that is down to the business managers of the House. Is that correct? Well, I'm not meant to ask the questions.

Q349 **Bob Blackman:** But you don't have the numbers? Clearly, that was due to be recess week—

Chris Heaton-Harris: There is a flow, and I would like to think we will get, essentially, a quarter of the number of SIs left in each of the next four weeks, to facilitate—

Chair: We dealt with five yesterday, so we are getting through them. I think that is down to the efficiency of the House and Members. Does anybody else have another question? Helen?

Q350 **Helen Goodman:** Yes. I am going to pursue the same area, but from a slightly different perspective. There are 600 instruments altogether. Some 83 have been approved, so we have another 520 to go.

Chair: No.

Q351 **Helen Goodman:** Why not? If we have approved 80 and we have 600 in total—

Chair: They will not all go into Committee.

Bob Blackman: Yes, not all are going into Committee, are they?

Helen Goodman: We have 520 more to approve. They won't all go to Committee. There are 520 more to approve.

Chris Heaton-Harris: One hundred and ninety have been made—as in, are through the complete process.

Chair: Are done.



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Chris Heaton-Harris: Three hundred and ninety-eight in total—the 190 are a subset of that—have been laid, so are at different stages, I guess, of said process. I think we will come in at under 600 SIs in total, so realistically there are up to 200 to be laid and go through the process.

Q352 **Helen Goodman:** But the fact that an instrument has been laid does not mean that it has been approved.

Chris Heaton-Harris: No; absolutely right. It has to go through the appropriate process, but it has been laid in good time for that to happen.

Q353 **Helen Goodman:** Yes, but how many have been approved?

Chris Heaton-Harris: One hundred and ninety.

Helen Goodman: One hundred and ninety have been approved?

Chris Heaton-Harris: Yes.

Q354 **Helen Goodman:** I see. Our brief says 83. Okay. We have 400 to go in that case—roughly.

Chris Heaton-Harris: Yes. The rest are in the process of—

Helen Goodman: Four hundred—

Chris Heaton-Harris: Roughly.

Q355 **Helen Goodman:** Are either in the process or in Whitehall, waiting to be put into the parliamentary process—400.

Chris Heaton-Harris: Yes. Let's do the maths. Three hundred and ninety-eight are in the process in the House, so that means 208 are at some stage of scrutiny before the House. One hundred and ninety have been made. That means up to 200 are going to come before the House in the course of the next month or so.

Q356 **Helen Goodman:** Yes, 200 are going to come before the House and another 200 are already before the House. Being already before the House does not mean that the Committee has met, if it's the affirmative procedure. The instrument could just have been published and put on the Table and the next bit of the process has not started. So, far from having another 50 Committees to do, at the current rate of progress, we have another 100 to do. That is five a day, isn't it?

Nic Dakin: Can I just come in on the back of this? In the European Statutory Instruments Committee, we do have a sense that things are not coming as fast to us; it seems to be slow. There's a suspicion that a backlog is building up; that may not be true. Do you share that view, or is the confidence going to get us there? We sat this week, for instance, and I think we had three or four, and I think that next week we have 12. We sit every week and we are not getting a huge number. So it seems to us that there are more to come, and we can't see where they are in the process. Perhaps you have better lines of sight than we have.



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Chris Heaton-Harris: Genuinely, I am confident that, in the course of the next four weeks of Parliament sitting, we will get through pretty much all of—or at least have laid, rather than getting through the whole process, the vast, vast majority of the up to 600 statutory instruments. I do not see any backlog, although potentially I can see where the thought might come from, because a few months ago, when I wrote to you, we were looking at possibly up to 800 statutory instruments; because of the prioritisation and work that has been done, you're looking at slightly less than 600. You might be expecting a percentage of that.

Helen Goodman: No, I am sorry—

Chris Heaton-Harris: Go on, then.

Q357 **Helen Goodman:** There are 600 in total, of which 83 have been approved and 103 are listed on future business.

Chair: Is it 83 that have been approved by the affirmative process?

Helen Goodman: It does not say that. It says "approved".

Chris Heaton-Harris: I only have the total figure in front of me, which I believe is that 190 have been made.

Nic Dakin: Yes, there is some issue on the data.

Helen Goodman: There is a data problem.

Chair: It is quite complicated. We will have to get to—

Q358 **Helen Goodman:** I think we need to get to the bottom of this.

Chris Heaton-Harris: Would you like me to send you a note?

Chair: Yes, that would be very helpful.

Q359 **Mr Wragg:** Is the Minister aware of how many of those instruments might be taken together in one Committee?

Chris Heaton-Harris: I am not aware of that.

Q360 **Mr Wragg:** But there is potential scope that that will be the case, and it has been the case already.

Chris Heaton-Harris: Yes, but I am honestly not aware of that, so I wouldn't want to speculate.

Q361 **Mr Bone:** There are a number of Members on this Committee who are on the Panel of Chairs. We turn up and we chair the SI, and it normally takes about 15 minutes. It is not that they are not scrutinised; they are scrutinised. The Minister speaks, and the shadow Minister raises a number of questions, but it goes through. It does seem an awful lot of wasted time to get a set of Members, a Chairman, the Officers of the House and a Minister there for one SI.

I know you cannot group SIs of different types, but if they are from the



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Department, why can't we have the Minister from the Department there and the same Committee doing, say, three or four SIs? The timing of them would be the moment the previous SI finishes, and you could get, say, four lots done in an hour and a quarter without having all the rigmarole of creating a separate Committee. I wonder whether the Minister can see any objections from the Government to that procedure.

Chris Heaton-Harris: Realistically, it is up to the House as to how it organises its business. I would assume that Ministers and shadow Ministers would be comfortable with that, but it is not in our gift, nor should it be. I do recall that there were a number of papers written when I was on the European Scrutiny Committee about making the individual debating committees—A, B and C—have a steady membership, so that expertise could be built up in a certain area for scrutiny, but again, that is not for Ministers or Government to suggest.

Chair: I think we will have one more question, Chris.

Q362 **Sir Christopher Chope:** Can I express disagreement with my colleague from Wellingborough? If we curtail the length, it means that proper scrutiny may well not be available.

Mr Bone: On a point of order, Mr Walker.

Chair: To be fair, Mr Bone has not talked about curtailing the length. It is what happens in Westminster Hall: if a debate ends early, the next debate proceeds immediately afterwards, so he is not talking about curtailing anything. He is saying if an hour-and-a-half slot is provided for an hour-and-a-half Committee that ends after 30 minutes, the next one then starts immediately.

Sir Christopher Chope: I accept that that is the point that he is making, but surely the more positive point is that if Ministers come to the scrutiny Committees well prepared and the documentation is excellent, there will not be the need to take up so much time. If we curtail the amount of time, that means that we will reduce the amount of pressure on Ministers and draftsmen to produce high-quality work.

I wish to say that having chaired some of these Committees, I much appreciate the quality of the work that has been done by the draftsmen, officials and Ministers in preparing for what they are going to say and being masters of the brief. If the Minister is not a master of the brief, that is what leads to prolonged debate, because people are rightly suspicious and so things drag on. The fact that they are not dragging on is, I think, a testament to the quality of the work that is being done by all the people to whom I have been referring.

My specific question was this: of the 600 or so, how many are exclusively applicable to the no-deal scenario?

Chris Heaton-Harris: The majority are exclusively applicable, and so should a deal come along, the withdrawal agreement Bill would essentially suspend that group of SIs while the deal was ratified and negotiated.



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Sir Christopher Chope: So those SIs would be suspended? **Chris Heaton-Harris:** The SIs that have been made purely for leaving without a deal. In the circumstances of a deal you would not need them. However, the deal will be ratified by the passing of the withdrawal agreement Bill. That Bill would essentially suspend those SIs. It would not remove them because, I guess, there is potential for no-deal circumstances all the way through the process to the very end of the future economic partnership agreement.

Q363 **Sir Christopher Chope:** Can I urge upon you and the Government not to let up in delivering these SIs for the no-deal scenario? Even in the eventuality of a withdrawal agreement being presented to the House in the form of legislation, that might not succeed.

If we allow a situation to develop where we haven't made contingency plans for no deal, in the event of that legislation not passing, we would be weakening our position. I urge you and the Government to ensure that, even if there is an agreement, we get on and finish the job of preparing for no deal, so that we are properly prepared for all eventualities.

Chris Heaton-Harris: I should first have said thank you to Sir Christopher for his kind comments about my ministerial colleagues and the various Departments for the work they put in behind the scenes. As I mentioned, I have taken only one SI through myself and I am preparing to take a couple more through quite shortly.

The amount of work that goes on behind the scenes to prepare a Minister for those appearances is quite something, so those comments are well taken and appreciated. You do not have to urge me or the Government to ensure that our statute book will be ready for no deal on 29 March, come what may.

Q364 **Chair:** Minister, thank you for a very professional performance. You are clearly very well briefed by your own civil servants. Will you pass on the Committee's thanks to them as well?

Chris Heaton-Harris: Thank you. I will; they prep me very well and I need a lot of work.

Chair: Obviously you don't. We will get you back every week now for the next eight weeks because you've enjoyed it so much and we have enjoyed having you so much.