



# Select Committee on the European Union

## Uncorrected oral evidence: Scrutiny of Brexit Negotiations

Wednesday 15 May 2019

11.10 am

Watch the meeting

Members present: Lord Jay of Ewelme (The Chairman); Baroness Armstrong of Hill Top; Lord Cromwell; Baroness Falkner of Margravine; Baroness Kennedy of The Shaws; The Earl of Kinnoull; Lord Liddle; The Earl of Lindsay; Baroness Noakes; Baroness Suttie; Lord Teverson; Lord Whitty.

Evidence Session No. 1

Heard in Public

Questions 1 – 19

### Witness

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

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## Examination of Witness

Rt Hon Stephen Barclay MP.

Q1 **The Chairman:** Welcome, Secretary of State. Thank you very much indeed for coming and giving evidence to us. We very much welcome the evidence that you give before the Committee. You know that Lord Boswell is unable to be with us today and I am chairing on his behalf. I know he is very sorry to miss this session. We will, as always, send your staff a transcript of the session afterwards in order to make any factual corrections that are necessary. We will aim to finish by 12.40 or 12.45. We may run over if the questions and the answers get particularly interesting. We shall see how that goes.

**Stephen Barclay:** Is that an incentive for me to be interesting?

**The Chairman:** There is always an incentive and a hope that you will be interested in staying, if I can say it that way.

Before we get into the list of questions, it would be helpful if you were to bring us up to date. There have been quite a few events happening over the last 24 hours or so. We have the talks going on with the Labour Party, we have the dispatch of Olly Robbins to Brussels, and we have had the announcement last week of the decision to bring the EU withdrawal Bill before Parliament early next month. In the last few weeks, the Government have given the impression of running very hard on the spot, but I wonder whether you now think there is going to be a purposive move forwards.

**Stephen Barclay:** Thank you for that. Since we last met, you have had a session with two of the most senior officials in the Department, and I hope that was helpful.

**The Chairman:** It was extremely helpful.

**Stephen Barclay:** When we last met, I was very keen to explore how we would work differently between the department and the Committee. I hope that, first, that session was of value but, secondly, when I talked about working differently with the Committee, one can see that following through in the discussions and how we interact. You are absolutely right, Lord Jay. Over the last six weeks, we have been having discussions with the Official Opposition. That is a reflection of the fact that Parliament to date has not been able to reach a decision. Various options have been before the House, including the Prime Minister's deal, which has been rejected by the House on three occasions, but so have the various other options, in indicative votes. The Prime Minister has sought to work with the Opposition, and those discussions have been going on for six weeks.

You referenced last night. The outcome of last night's meeting between the Prime Minister and the Leader of the Opposition was a recognition that, after six weeks, both sides have now explored each other's position. The facts and the understanding have been fully explored, and there is now a sense that those talks need to come to a conclusion. That is why

the Prime Minister set out last night that the House of Commons will have an opportunity to vote on the withdrawal agreement Bill the week commencing 3 June.

The talks are still ongoing. On the Government's side, we have viewed them as constructive. Both sides have engaged seriously on them. The public generally have wanted the main parties to see if an understanding can be reached. There is a sense in the European Union and an expectation in Europe that the political parties would seek to reach an agreement.

It is helpful, with our European colleagues, to explore that. As you well know, Lord Jay, it is not our tradition within our adversarial politics. It is challenging for both sides, but it has been the right thing for us to explore. It is also right for the Prime Minister to then say, "It has been six or seven weeks so far. It is now time we give Parliament an opportunity to vote on the legislation". That is what the Prime Minister has set out.

**The Chairman:** Do you want to say something about what Olly Robbins is up to?

**Stephen Barclay:** Yes. My opposite number, Sir Keir Starmer, will often say at the Dispatch Box, "Yes, I note the letter you have secured from President Tusk and President Juncker, but it does not change the text of the withdrawal agreement or the political declaration". Yes, I can look at the unilateral declaration, where the Attorney-General set out how that changed, in paragraph 17 of his legal advice, the legal risk associated with concerns of bad faith. One of the concerns with the backstop for many Members of Parliament was that it would be used as a trap and the EU would exploit it. The unilateral declaration was aimed at saying, if the other side were acting in bad faith, how one would address that from a legal risk perspective.

From the Opposition's point of view, there is a concern that the text of the political declaration has not changed. What is being explored with the EU is whether there is any appetite on its side to do so and, if so, to what degree. On the UK side, there is sometimes a misunderstanding of the government position. If the political declaration does not include language on participation in security co-operation, is that because the UK Government did not want to participate, or is it because, at that point, the EU was unwilling to provide text to that effect? Through the talks, we have been able to share that it was the latter and not the former. In light of the discussions and the fact that it is then a cross-party ask, it is worth exploring with the EU whether there is any appetite to go further in areas where the UK wanted to but at that time the EU was not willing to agree to it.

**The Chairman:** That is a very helpful introduction. We will pick up on a number of those points as we go through the questions.

Q2 **Baroness Noakes:** I would like to pick up the withdrawal Bill coming to Parliament. It is coming in week commencing 3 June, and a moment ago

you said there would be a vote in that week, which implies there will be First and Second Reading in that week.

**Stephen Barclay:** Yes. The idea is that Second Reading will be in that week. There is President Trump's visit as well, so it is going to be an interesting week. That goes to the question of when we publish the Bill, and I am acutely aware of the desire, I am sure from this Committee but also in the other House, to see that text. Colleagues such as Sir Bill Cash are very keen.

For my part, I am extremely keen to get it out myself, because the sooner we can share that, the better. One difficulty is that, while the talks have been ongoing, it has been quite hard to lock down the text because of the ongoing discussions. There is a recognition in government that we need to publish that as soon as possible, but I am not in a position today to give a date as to when the draft Bill will be published.

**Baroness Noakes:** You accept it is important that certainly the House of Commons has time to look at the Bill before going to a Second Reading.

**Stephen Barclay:** It is important and there is a desire for that. I recognise that. However, there has been no shortage of discussion on the withdrawal agreement and on the issues. Indeed, I sent quite a detailed 10-page response to John Redwood yesterday, regarding some quite detailed concerns he had raised, which in the view of the Government were misconceptions about the withdrawal agreement, but they were the sort of issues one would get into in the debate on the Bill.

As that letter shows, many of these issues have been aired, but there is a legitimate expectation for both Houses to see the text, and the Government are looking to facilitate that as soon as possible.

**Baroness Noakes:** I believe Cabinet agreed it would be imperative that the Bill completed all stages prior to Summer Recess. It is a very tight timetable for a Bill to only have a Second Reading in the first week of June, given that it would need to have quite extensive scrutiny, I would have thought, in the other place. You should not underestimate the appetite for detailed scrutiny that exists in this House. How are the Government sure that they can even get those stages through? We do not have a date for Summer Recess, but let us say it is the last week of July.

**Stephen Barclay:** I am always conscious, when I appear at these discussions, of the expertise of the Committee, including former Chief Whips, who fully understand the issue. First, the Houses will move at different speeds depending on where the text is and the level of agreement between the two parties. I saw Lord Liddle raise his eyebrows at that, but I pray in aid the argument that the Cooper Bill, which I did not agree with, moved at pace, it is reasonable to say, through your House as well as the House of Commons. If you concede that point, the wider point is that it can move at different speeds where there is

agreement, and part of that therefore is the extent to which there is agreement between the two main parties.

That does not negate the fact that, regardless of whether there is agreement there, there will be many others who wish to scrutinise in detail. You are absolutely right, Baroness Noakes, that the timescale is challenging, but there is a desire in the country and the business community for us to move forward, to address the uncertainty that there is. That will be a consideration that parliamentarians will weigh alongside their scrutiny. There has been a lot of consideration of the issues. The withdrawal agreement Bill has been out there as a text since last year, so many of these issues have been extensively aired. In the Committee stage and amendments, we would want to get into the detail of that.

From a government point of view, we feel that we should try to resolve this by Summer Recess. That has shaped, as Lord Jay referenced at the start, the Statement from the Prime Minister last night, because there comes a point at which we need to have a Second Reading if we are to deliver the legislation by the Summer Recess.

**Baroness Noakes:** Is it clear that this is the last chance saloon for the withdrawal agreement in its current form? That is to say, it is the last chance that the Commons will get to vote on it.

**Stephen Barclay:** If the House of Commons does not approve the WAB, the Barnier deal is dead in that form. The House will then have to address the much more fundamental question as to whether it will pursue and communicate a no-deal option or whether it will revoke. What has characterised the discussion on this has been unwillingness within the House of Commons to make a final decision between a deal, no deal or revocation. Those are the three options. The Prime Minister has said it many times. The House has given a view on the Prime Minister's deal, in voting on it three times. That is why we have sought, in a Parliament where the Government do not have a clear majority, to explore options with the Opposition.

We had this discussion last time. If you look at the detail and the actual text of the withdrawal agreement from an opposition point of view there is a question. Is it the legal obligations? No. Is it citizen's rights? No. Is it safeguarding no hard border in Northern Ireland? No. That did not stop a vote against the withdrawal agreement. Part of that was the lack of clarity on the political declaration, which relates to the attempts to seek further detail on that. Ultimately, if the House is not willing to back a deal, we need to confront the decision, no deal or revocation, and accept the consequences of that.

**Baroness Noakes:** Do the Government now accept that the MEPs who will be elected at the European elections next week will need to take their seats in early July?

**Stephen Barclay:** Yes. From a government point of view, we were very keen to secure the passage of the legislation prior to the European

elections. That was the crux of the issue with the third vote, the one that was purely the meaningful vote, because we had a legal right then to extend up to May as opposed to 12 April, which is where the extension sat because the withdrawal agreement vote did not go through. It was because there was that right confirmed that the Speaker, as I understand it, was willing to grant that further vote. It is a source of regret that we did not take that opportunity, as the House of Commons, to move forward and deliver.

The consequence of that is that as a matter of law, as a member of the EU, which we will be at that point, the elections are required. That is not an issue just for the United Kingdom. The point that is sometimes missed is the fact that it also affects the voting rights of UK citizens in EU countries. From an EU perspective, there would be questions over the legal certainty of the Commission if there were questions over the composition of the European Parliament and that vote. It was in that context that the Chancellor of the Duchy of Lancaster therefore made the Written Ministerial Statement that he did, and it is on that basis that the elections are taking place. That is a source of regret, but it is a legal requirement.

**Baroness Noakes:** There is one final question from me, which is a legislative loose end. The Trade Bill left our House with some amendments that were not to the Government's liking. Could you give us any idea when that will be returned to the Commons for consideration of those amendments?

**Stephen Barclay:** That will be a question for the Leader of the House through the Business Statement process. I would not want to pre-empt that before it has been shared with the House in the usual way.

Q3 **Baroness Suttie:** Following up on the question from Lady Noakes about the MEPs who will be elected next week, is it your understanding that they would have a right to vote and get actively involved with the decisions on the future President of the Commission and so forth?

**Stephen Barclay:** Again, I defer to the legal position on this, which is that the United Kingdom is a member, and therefore MEPs will have the rights that affix to that status until that changes. The strong desire on the Government's part is that we leave the EU at the earliest opportunity, coming back to Baroness Noakes's point on timing, and deliver the legislation as soon as we can, so that that is for as short a period as possible.

To be fair, when I speak to EU leaders, that is also their desire. As I am sure Lord Jay will know through his own contacts, they have a degree of Brexit fatigue and want to move on. I was in Sibiu last week, and they had a forward agenda of issues that they want to address. For them, it is not all about Brexit. There is a desire on both sides to move forward, but the legal position is that, if the UK is a member, its MEPs will have the rights of any other MEP.

**Q4 Lord Liddle:** Following up on that, as I understand it, one of the things the Government did, to their credit, is make a commitment to the European Council that, as far as the Council is concerned, they would not try to disrupt business while we were in this very odd situation of wanting to leave but not able to secure a majority to leave. That was one of the factors that persuaded the European Council to grant us an extension, and it would be a factor at the end of October as well.

The problem with the European Parliament is that, if certain Members are returned, and I am sure we can speculate on who they might be, there might not be this spirit of good will and responsible behaviour. Have you any comment to make on that situation?

**Stephen Barclay:** Not surprisingly, Lord Liddle, you very astutely pick up on why I referred to the legal position as opposed to what the political outcome would be, because you are absolutely right: there is a distinction. First, the legal position on what Members of the European Parliament can and cannot do is different from what they may choose to do. The point is that, legally, they are there. You are right: there are certain political parties standing that probably would say their purpose is to disrupt and take a particular line. There are also mainstream parties, and I noticed Guy Verhofstadt was over campaigning with the Lib Dems. In terms of Timmermans and various senior roles within the EU, people may be looking at the S&D numbers and what they might mean for the top jobs. Different parties will approach it in different ways.

You also referred to what the Government's approach will be. The approach the Prime Minister has taken, as you correctly reflect, has been characterised by sincere co-operation. That is the approach that Her Majesty's Government have taken throughout the Article 50 process and there will be a continual constructive approach. As to what role the Prime Minister would take in discussions, that is a matter for the Prime Minister and not for me. One can see that, throughout the Article 50 process, there has been an approach of sincere co-operation and I would expect that to continue.

**Q5 Lord Whitty:** I know you referred to the Leader of the Commons in answer to Baroness Noakes, but it is not only the Trade Bill that is in abeyance. We were told that we had at least eight Bills that needed to go through before Brexit day when Brexit day was 29 March: agriculture, environment, fisheries, migration. Do I understand that, even with an October Brexit date, the Government have accepted that none or very few of those will get through in the timetable?

**Stephen Barclay:** It is in the public domain and has been reported that the Cabinet will be looking at how we prepare. We will be discussing legislation for no deal again very shortly. It is clear that the Government made a huge amount of progress, particularly on areas such as statutory instruments. I think 520 went through as part of that. A huge amount of work was undertaken on SIs. In the additional time that we have to prepare in the event of a no-deal outcome—for example, if an extension is neither requested or granted, and there are various scenarios one can

play through for that—we will look at that legislation. That is an issue that the business managers will consider as part of those discussions.

**Q6 The Earl of Kinnoull:** Secretary of State, I wonder if we can go back to the cross-party talks. As a Cross-Bencher, I suppose I am allowed to ask this question, or a series of questions, about the cross-party talks between the Labour Party and the Government. I wonder if you could begin by giving us a bit more colour about what exactly the areas of discussion are.

**Stephen Barclay:** The starting point is the six tests that the Leader of the Opposition has set out on what they are looking for, and what the Government have set out in Chequers and their position.

There are various areas that one can look at. The first is the debate on customs, customs arrangements, the benefits of a customs union and where one lands on that. There is a debate that my opposite number was exploring in the *Guardian* over the weekend, on the second referendum, the position of a body of Members of Parliament within his party and where the Opposition are on that. There is the issue of workers' rights. As you will know, the agreement already has a non-regression commitment, but the trade unions, for example, have sought a firmer commitment than that.

There is a question about phase 2 and the negotiating obligations, what is sometimes called the Snell-Nandy amendment in the Commons. John Mann has also tabled things in the past there, more on workers' rights, but also on the negotiating obligations, and how we consult with and report back to the House.

There is the issue that I referred to earlier, in answer to Lord Jay's question, about security and agencies, and what our participation might be there.

Then there is the question about single market alignment, where the Government have set out their position on the Northern Ireland border and goods, and the understanding there.

Part of the discussions have been about explaining the respective positions, and seeing where the positions are perhaps closer than some of the political knockabout sometimes suggests, and where the differences between the parties are more fundamental.

**The Earl of Kinnoull:** That is very helpful. Thank you. Yesterday, the Cabinet discussed areas of compromise, both compromises you would give and what you were seeking as compromises that the Labour Party would give. I wonder if you can give us some colour on those two areas, please.

**Stephen Barclay:** First, compromise works both ways. It is not simply about where the Government compromise; there has to be compromise on both sides. The talks are ongoing, and it is reasonable to protect the confidentiality of those, so I do not want to stray too much into detail. At

the same time, I recognise that we have a number of very senior stakeholders here, so I want to lean in as much as I can.

**The Chairman:** Just a little would be helpful.

**Stephen Barclay:** There is a balance to be struck. On workers' rights, for example, what sort of economy are we seeking to build in a post-Brexit world? Is that, as sometimes characterised, a race to the bottom, a deregulatory approach? The Prime Minister has always been clear that, no, that is not the case; we are not seeking to do that. Through the industrial strategy, apprenticeships and a skills-based immigration system, we are looking to develop a more skills-based, quality marketplace, building on our universities' innovation. How do we therefore provide reassurance on workers' rights with regard to the Government's intentions, given the concerns on the Labour side, such as whether a future leader would take a different approach? What reassurance might be given? Those are the areas where sometimes there is common ground, but there is also an issue of trust and what reassurance can be given.

Likewise, on the confirmatory vote, others will have a better idea of the numbers in the Labour Party than I do, but in the *Guardian* Sir Keir reported 120 or 150. Others may say it is fewer than that, so people will have different views on the numbers. As was referenced at our previous session, given where the Kyle-Wilson amendment was, there is a question: would you need to have talks if you added a confirmatory vote?

Therefore, from a government point of view, why would you have a discussion with the other parties if you were doing a confirmatory vote? The Government are set and very clear on their concern at the idea of a confirmatory vote. Those are the areas where perhaps the parties can be more aligned and the areas where the difference is much more fundamental.

**The Earl of Kinnoull:** I am very grateful for that helpful response. A couple of words were missing from your analysis, and they are "customs" and "union". I wondered whether there was a possibility of compromise there. One of the ideas is a temporary membership of the customs union with a clear exit agreement. How does that feature on the radar screen?

**Stephen Barclay:** In my defence, I did say "the benefits of a customs union", so they were not entirely missing. If one looks at the Government's approach, it has been to ask how we combine the benefits with an independent trade policy. The concern from the Opposition's side has primarily been whether that is deliverable, because it is a different approach, and, if not, what the fallback position is and what options there are to enable them to pursue their policy in the future, their policy being, as you well know, to have a say on EU trade agreements. From a government point of view, we question the deliverability of that, given that the EU treaty expressively prohibits it.

That is the crux of the areas of discussion. To what extent does the government approach preclude a future Labour Government from pursuing their policy, given that neither party can bind the other post a general election? That is a constitutional principle that I think both sides accept. That is absolutely the discussion that we have explored and goes to the crux of the issue.

**The Earl of Kinnoull:** I suppose something of great interest to this Committee is Parliament's role in trade talks, and things such as environmental and social protections, in the future relationship. I wondered how that had come up in the discussions and what progress had been made.

**Stephen Barclay:** I will take them in reverse order. On the environmental side, if one looks at the various comments that Michael Gove has set out about the Government's commitment to environmental standards, the Government wants to take a leadership role there. It is a slightly different argument from the one over dynamic alignment on workers' rights, where the volume of legislation out of Europe on workers' rights is different from that on the environment. There is a much higher volume on the environment, so there are issues of how those would be dealt with. The Government's own position is that we want to have high environmental standards, and that is part of the talks between Michael and the Labour Front Bench.

Several things are caught up in the issue of Parliament's say. First, there is the fact that the numbers in Parliament will not change, set against the question, if there is a new leader of the Conservative Party and Prime Minister, of how that would impact on the phase 2 negotiations from a Labour point of view. The numbers will not change, but to what extent are there concerns about the commitments that come out of the talks?

We are very keen, and as I said in our previous evidence session I am personally very keen, to learn lessons from the first phase. There will be things that have been done well. I was not in post, but there will be things that have been done well previously, and other things we can learn from, in our engagement with Parliament. How do we have a more transparent, trusting and open relationship with Parliament in phase 2 and socialise issues upstream? Hence directors-general from the Department are coming in and having sessions with the Committee, as part of that shift. We are not waiting for phase 2; we are already seeking to engage on that.

**The Earl of Kinnoull:** In closing, I suppose everyone knows that these talks are very complicated. They have gone on for six weeks so far. What can you tell us about how much longer they might go on? Is the arrival of the withdrawal agreement Bill a time at which they would have to stop, or could they continue notwithstanding? Will they remain talks that are just between you, as the Government, and the Labour Party, or might they be expanded to other parties?

**Stephen Barclay:** First, the talks have gone on now for six weeks. They are ongoing, but both sides now have a good understanding of each other's positions. There comes a point at which decisions need to be made, and we are at that point. When one looks at the scope of the withdrawal agreement Bill, as the Bill Minister I am sure I will be having discussions on a clause-by-clause basis with a variety of stakeholders, because it will be a Bill subject to significant amendments. Baroness Noakes alluded to this in her questioning. The Government will need to engage widely and consider a multitude of issues, often against quite short timescales, which will be one of the Bill management challenges with that legislation.

There will be engagement, and that will be separate to formal talks with other parties, partly because of two issues. First, on a numbers basis, the Official Opposition is in a different position from that of other parties. Secondly, with the exception of our confidence and supply partners, the minority parties are all very much of the view that they want a confirmatory vote. It is hardwired into their position, and that shapes those discussions.

Q7 **Lord Liddle:** I should say at the start that I have always been a bit of a sceptic about these cross-party talks. The question is this: is there a relationship between what you are discussing with my good friend Sir Keir Starmer and what is likely to be acceptable to Brussels, based on Mr Olly Robbins's visit to Brussels? It seems to me that the minimum the Labour Party is bound to want is changes in the political declaration, because that would give us some guarantee that a new Conservative leader would not just chuck the whole thing out.

Do you accept that, if there is going to be an agreement, it would have to result in changes in the political declaration, to which the Government and Parliament would have to subscribe?

Secondly, if you look at the two areas of the customs arrangement/customs union question, does what the Government are proposing not essentially go back to the proposition that was in the Chequers White Paper, whereby Britain could set its own tariffs but at the same time enjoy the benefits of the customs union? Is it not, in practice, going back to that? What chance is there of that being put in the political declaration? That was the first point.

The second point, which is more critical of the Labour stance, is this. At the PLP on Monday, Jeremy Corbyn said that we want access to the single market. That involves a lot of regulatory alignment, but also, from a Brussels perspective, it involves guarantees that Britain will not cheat on things like state aid and competition policy. It is not just a question of regulatory alignment. It is also a question of giving guarantees on these no-cheating questions.

**Stephen Barclay:** There are three distinct issues. One is the question of alignment, which is driven by the interplay with the "almost frictionless" debate. The second is the Government's position, Chequers and independent trade, and how that sits with the Labour position. The third

is what Labour needs on the political declaration. That is just to unpick them, because you raise three quite distinct issues.

On single market alignment, it is worth reiterating what I am sure many around the Committee are fully aware of. Sometimes the political debate in the House of Commons assumes that if you opt in through a bit more alignment you reduce the friction accordingly, as if it is a sloping scale. It is a point of fact that, as of today, what we have is not completely frictionless. There are certain things on the defence side, for example. It is not that it is frictionless. The question is how much friction.

You will not get the level of frictionless trade that we have today without fully signing up to the single market, including the four freedoms and things such as VAT alignment. Sometimes there is this slight misconception: "If I add a bit on the services side, I will get the corresponding reduction in friction that goes with that additional alignment". That is not actually the case. It is worth reinforcing that point, because sometimes people think, "If I add on another bit and another bit, I get a commensurate reduction in friction". That is not the case. The Government's position has been the Northern Ireland context for agri and goods. The question then is how much further you go.

On the extent to which the Chequers position is reflected in the political declaration, it is, because the political declaration expressly enables an independent trade policy. That is in the text. It is not for me to set out the Labour position, but I suspect the Labour question is more about its deliverability, whether they feel the Government can deliver that in the phase 2 negotiations, rather than whether the political declaration enables that.

In terms of the discussion with the Labour Party, and with Sir Keir and others, it is the extent to which that prohibits or prevents Labour, should it win the next general election, from pursuing its approach, which is, as I said earlier, to have a say on EU trade, which we do not think is possible under the legal position as a third country.

In my view, the Government pursuing their objective does not prevent a future Labour Government from pursuing their objective, so to what extent is there concern? Sometimes one hears a conflicting argument from some on the Opposition Benches, where on the one hand they say that the government ask is undeliverable, and on the other hand: "We are fearful you will deliver it and, in doing so, preclude us from pursuing our option". Sometimes there is a conflicting narrative between those two things.

On the extent to which Labour requires changes to the political declaration, that is not solely within the Government's gift, because it will be for the EU. You are absolutely right, Lord Liddle. It is fair to say that Sir Keir at the Dispatch Box, while I have been sat opposite him, has said quite often in the debate on the three meaningful votes that neither of the texts has changed. The withdrawal agreement text has not changed. The political declaration has not changed. Is there a desire on the

Opposition Benches to see a change of text? If one looks at those debates, it is reasonable to assume the answer is yes.

The withdrawal agreement text cannot be changed. The EU 27 have been unequivocal in repeatedly making that clear, not least for colleagues on my own side, who are very keen to see the protocol in Northern Ireland changed. The EU has been explicit in saying that. It would be a slightly contradictory argument to say, "It cannot change" and then suddenly suggest that it can. If one looks at the text of the extension that was granted at the last EU Council, it is explicit in saying that is locked down.

What Labour needs is a question for the Leader of the Opposition and the Labour negotiating team. Through the talks we have sought to explain why the Government landed in the position they did on certain issues—agencies, security, workers' rights and so forth, what is within control domestically through domestic legislation, and, in terms of the political declaration, whether there are areas in which the EU is willing to move where the UK Government wanted to in the first place. Those are issues that we have been exploring.

**Q8 Lord Teverson:** Secretary of State, can I apologise for being late? I have been chairing my own Select Committee and it has only just finished.

I wanted to come back to this matter of trust and understanding. I have a serious difficulty with this, in that at the end of the day it has to be more than trust, because trust does not work enough when it comes to an agreement between political parties or within Parliament. As you say, the withdrawal agreement itself cannot be changed. That is not in the gift of anybody at the moment except for the EU, which will not change it, and this is all to do with either internal policy or the political agreement.

Given that, I do not understand, with our customary constitution, how anything can be guaranteed for the future and how a conclusion can therefore work. There is not normally trust in our political system between parties. I do not see how anything can be nailed down to get around that problem.

I suggest that these talks are perhaps useless. Sorry, do not misunderstand me. It is very good that they have happened. In my own view, they should have happened far, far earlier. I just do not see how they can come to a successful conclusion, because there is no way of nailing that agreement down for the future. You cannot make it future proof. Please prove me wrong. I would be delighted if you could.

**Stephen Barclay:** I generally take issue with your characterisation that these talks are useless on the one hand, but should have happened earlier. If they are useless, it would have been pointless if they had happened earlier.

We touched on the crux of your point earlier. It is an accepted constitutional point that a Government cannot bind the future Government. That cuts both ways, because the Opposition cannot say, "We want to entrench things in a way that binds this Government beyond the next general election, but does not bind the Opposition, should it

become the Government at the next election, from pursuing its options". There has to be a degree of consistency there.

I would argue that the biggest issue of trust goes to the perhaps over-cited LBJ point about numbers. The point of trust is that the current Parliament, as constituted, with the numbers it has, will only do certain things because those are the numbers. Regardless of what happens in one party or another, the numbers of this Parliament will not change.

Therefore, the question is what can be safeguarded, from a trust point of view, in this Parliament. Both parties want to preserve their position post the general election. I do not think anyone has ever suggested to me—certainly, no one has suggested to me on the Labour side—that they want to constrain their own ability post the general election to pursue a different course. The approach has been what can be agreed for this Parliament.

As you well know, Lord Teverson, both parties stood on a manifesto commitment to deliver on the referendum result, so it comes down to a fundamental question: are both parties still trying to deliver on their manifesto? What are the numbers of this Parliament and what are they doing? What safeguards people's positions post the next general election? If people do not trust in what Ministers have to say, perhaps they will trust in the numbers and the composition of the Commons as it currently is.

**Q9 Baroness Kennedy of The Shaws:** Secretary of State, I too want to apologise for being late. The world goes on beyond Brexit and I was launching a report on sexual harassment and bullying, so there are other things that people out there are trying to address.

I just wanted to pick you up on a number of things. Indeed, I want to pick up my dear friend and colleague. The word "cheating" was referred to as how Labour policy might be seen into the future, by wanting to have close alignment on the single market. Let me assure you that perhaps wanting an opt-out on state aid and competition might be a perfectly valid thing and was done in the past by Mrs Thatcher, so we should not think of it as cheating.

**Lord Liddle:** It is how Brussels sees it. That is the point I made.

**Stephen Barclay:** I do not think that was my word. I did not use that word.

**Baroness Kennedy of The Shaws:** No, it was Lord Liddle's.

**Lord Liddle:** It is how Brussels sees those things.

**Baroness Kennedy of The Shaws:** I am rather anxious that we do not let the word take root in our thinking.

Anyway, I wanted to ask you, Secretary of State, about something you have just said. The Labour negotiating piece is to say that there should be greater access to the single market. You were saying that greater

access does not necessarily mean that you get less friction. I want to just unpick that a bit. In most circumstances, when you are negotiating any kind of contract, and I say this as a lawyer, there are pluses and minuses. There would surely be a reduction in friction if you managed to get something on, for example, financial services that meant we were not going to have the handicaps we will have by leaving.

**Stephen Barclay:** The precise words I said were that it is not a line where, with each step of additional alignment, you get a corresponding reduction in friction, to the point that you can then have the same position as now. The point is this: if you want to have the same position as now, you have to sign up to all the aspects.

**Baroness Kennedy of The Shaws:** You have to stay in.

**Stephen Barclay:** That includes the four freedoms, VAT et cetera, that I referred to earlier. It is often presented as each extra chapter giving an automatic reduction in friction, and that is a mischaracterisation. That is what I was referring to.

Q10 **Baroness Armstrong of Hill Top:** Going back to my old trade, the Prime Minister promised in mid-April that options will be put to the Commons so that the Commons could come to a decision. I assume that has been overtaken by the decision to bring forward the Bill. In a Bill, you cannot take different ways of voting. You cannot have an indicative vote that is pushed to a preferential voting system. How are the Government going to fulfil their commitment to put different options to those that are in the current agreements?

**Stephen Barclay:** You are absolutely right, in that the Prime Minister set out, in essence, a plan A and a plan B. The plan A was to explore with the Leader of the Opposition whether an agreement could be reached between the two main parties. Failing that, and I would have to go back and check the precise language, it was to say that we would agree to explore with the Opposition whether there could be a mutual commitment to be bound by indicative votes, but in essence they would be binding votes. The point there is to explore with the Opposition whether there is a willingness to be bound.

There is little point having indicative votes if people are not willing to be bound by the consequence of that. As you well know, whatever is then agreed has to go through Committee. It has to go through Third Reading. Therefore, if people turn round and say, "That is my third choice. I am not going to vote for that at Third Reading", it is not going to be effective. The Opposition have said to date that they are not willing to be bound by that process.

Therefore, the question arises, as you know far better than I do: where does the sustainable majority come from in the House if Members of Parliament are not willing to be bound by the result of that? We are still on plan A, which is why the talks are still ongoing.

Part of a plan B would also be a question for the Opposition, on whether they would be willing to commit to that.

**Baroness Armstrong of Hill Top:** You are not proposing any new ways of working. Rather than putting forward any new propositions, you would be waiting for other Members to put forward their proposals in Committee.

**Stephen Barclay:** If one goes back to what the Prime Minister said, it was to explore with the Opposition under plan A, and, failing that, with plan B, whether the Opposition would be willing to commit to a different process.

To date, the Opposition are not willing to commit to that process, but the plan A is still being explored. That is the position, which is entirely consistent with what the Prime Minister has set out. If you are asking to what extent there is scope for Hilary Benn, Yvette Cooper or others to table amendments, they will be tabled in Committee in the normal way and the House will debate those as it ever has.

Those issues, I am sure, will be explored. I do not think there will be any shortage of amendments during the passage of the Bill, and the House will consider those, subject to which amendments the Speaker chooses.

Q11 **Baroness Falkner of Margravine:** Let us move on to the transition. We saw that, as we approached the deadline of, first, 29 March, and then 12 April, the Commission did quite a lot of work on rolling over agreements, memorandums of understanding and so on, to ensure continuity to the best extent possible.

Many of those rollovers and extensions only took us to the end of the year. Some of them went forward for a whole year. When the transition agreement was envisaged, it was going to take us until the end of 2020. I also recall that the Chancellor, in a famous speech, had described transition as a wasting asset, because, once you got down to it, people would have to make decisions as if uncertainty continued.

Do you believe now that not making up our minds about what we want to do from the UK side is eating into the transition time period that we had envisaged? In light of the fact that we are eating into it, let us assume, on a really good day, that things get through the House of Commons. Do you really believe we can do the future relationship negotiations before the end of the transition period, or are we going to seek an extension beyond 2020, after the transition period?

**Stephen Barclay:** You are absolutely right, Baroness Falkner, in that, the longer the House takes to ratify, the more that eats into the time we then have for the phase 2 negotiations. As you also referred to, there is scope to extend those. That is not a unilateral right. That is to be agreed with the EU, so one should be mindful of that. Sometimes, under the UK-centric approach, this debate just assumes, as with Article 50 and the extension debate, that this is purely a UK thing. One should not lose sight

of the fact that the extension of the implementation period is a joint decision.

You are right; it eats into that, and it comes back to where we started in this session. It is why, after six weeks of talks, we get to a point where we need to say, "Look, we need to bring this to a resolution". Among the myriad reasons for that is the impact on the implementation.

**Baroness Falkner of Margravine:** Are you seeking to extend the transition period? Had you passed the withdrawal agreement before 29 March 2019, transition would have gone until December 2020. If the withdrawal agreement is not passed, or if there is no agreement from the UK side to exiting until the 31 October, will you then seek to extend the transition period beyond December 2020? There will still be an enormous amount to be done.

**Stephen Barclay:** There are two issues within that. First, if we do not pass the withdrawal agreement, phase 2 falls away and we are into a much more fundamental question between no deal and a revocation. There is a question of extension, but the second referendum debate really is a proxy for revocation. All you do with a second referendum is add 12 months of further uncertainty and end up with a choice either to revoke or to leave without a deal, in essence. To me, people arguing for a second referendum are just dodging, because they do not want to confront the fact that their position is to revoke and that collides with their manifesto.

**Baroness Falkner of Margravine:** You will know that is not my position.

**Stephen Barclay:** Indeed I do. Phase 2 falls away if we do not ratify; it becomes a moot issue. The crux of what you are driving at is absolutely valid. The longer we take to ratify, the shorter the implementation period, and the greater the pressure, therefore, on concluding phase 2 within the timescale that is there. Our objective is to work to that timescale, but there will need to be a decision point for Parliament as to whether it seeks an extension. That will be shaped by the negotiations that flow.

**Baroness Falkner of Margravine:** It is entirely feasible that Parliament chooses to extend the transition period because we have not prepared to the extent that we needed to prepare for our future relationship.

**Stephen Barclay:** It is a future decision, which will be shaped by the negotiations. It is a right that we have, it is not a requirement, but it is not a unilateral right, and it will be shaped by the various events that happen in the interim.

**Baroness Falkner of Margravine:** That is right. By the way, I should say, on Baroness Kennedy's question about financial services, that our Committee heard again and again in Brussels that the one exception to the single market they certainly would not make would be with regard to financial services, so I would have to agree with you there.

As you also know, the sub-committee is responsible for the budget and our budget contributions into the EU. We understand from the Economic Secretary to the Treasury in letters he has written to this Committee that our 2019 contributions are still up there. We know that the MFF is going to be concluded, in his expectations, by next year, with first solid discussions by March 2020, so let us say mid-year 2020.

If that is the case and if we have an extension of the transition period, presumably we will first have to agree the budget contributions into 2019 and 2020. Then presumably, if transition is delayed, we will continue to pay into the EU budget. This is just a membership fee. It is not the exit bill. We will continue to pay into the EU budget for whatever period it is, until the end of transition.

If I am right in that regard, to what extent are we going to be actively arguing our position in the multiannual financial framework that will commence, assuming we are paying, given that the Commission has quite ambitious plans for the multiannual financial framework? Will we expect to hang on to our rebate? Will we be able to exercise our veto? There is a question mark over sincere co-operation and our ability to affect what happens, unless we revoke Article 50.

Could you shed some light on the Government's thinking on those obligations, which the Prime Minister consistently says we will honour? The honouring of those obligations comes with having to take some choices about using a veto, not using a veto, rebate and various other things.

**Stephen Barclay:** You raise a very interesting area. It goes to the heart of why the December 2020 date was chosen. The 2014-20 period of the MFF, which David Cameron had negotiated, is that slug of time. As for the £35 billion to £39 billion estimate, it is an estimate because it is based on a set of negotiating principles, through which these figures will finally be calculated.

On the question of any extension, our objective is to negotiate for December 2020 to avoid this. This is partly why we are seeking to ratify the withdrawal agreement as quickly as possible. If we are not able to do that, we will be on a very different trajectory. That is the one that I referred to and which people do not want to confront, which is that the House of Commons will face a very clear choice between no deal or a revocation outcome. It is because the longer the delay the more issues arise that we need to crystallise that decision.

**Q12 Baroness Armstrong of Hill Top:** Northern Ireland remains part of the withdrawal agreement. Do the Government have any update for us on how that is going? David Lidington told the House at the end of April that the Government were investing £20 million in alternative proposals. It was said at another stage that we were at least 10 years from actual further proposals. This remains a major issue. Where are we on this?

**Stephen Barclay:** A number of issues arise from consideration of that. First, a very important consideration is whether the talks between the parties in Northern Ireland, at Stormont, deliver a successful outcome.

Those are extremely sensitive talks but extremely important. That shapes much of the discussion there.

On the specific issue of alternative arrangements, you are right: the Government have a commitment to invest £20 million. We are proceeding with three working groups, one on parliamentary engagement, one that will be a technical group and one that will be a business group. They will all be chaired by Ministers and we are moving forward with that.

A number of issues flow from the alternative arrangements work. To what extent is there existing technology that is deployable? To what extent is there technology that is deployable but the unique circumstances of the border in Northern Ireland make that difficult? You could say that there is GPS tracking technology that could assist, but there may be security issues or community tensions from that, so one has to look at the technology and the community engagement. One has to look at the compliance costs. One has to look at the segmentation, not just on sectors but also between, say, small traders, multinationals, trusted trader schemes and so forth. One has to look at the extent to which the issue is about the Good Friday agreement and the extent to which it is really about the single market and protecting that. What is the real driver of the debate?

There are a range of issues. You then have the timescale for that. To what extent is it linked into the political debate on the protocol in Northern Ireland, and to what extent is it linked into, as Baroness Falkner correctly alluded to, the date at December 2020? Within the alternative arrangements, there are a whole range of different issues. We have made clear our commitment to exploring that at pace and we have committed money to doing so.

One final point on that is that the EU itself has accepted that there is merit in alternative arrangements. It has also made a commitment to joint working on alternative arrangements, but the key there is that that is post-ratification. On the government side, we have started and work is already under way on that. In terms of the joint working with the EU, that is a post-ratification issue.

**Baroness Armstrong of Hill Top:** How are we getting on with the devolved Administrations on everything?

**Stephen Barclay:** It comes back to working differently with Parliament. I was in the Scottish Parliament last week, exactly because I am a great believer in sharing. If we are going to work differently, it is important to visit to engage and demonstrate that, rather than simply standing in Westminster and saying, "We are working differently". There are areas of common interest, for all the difficulties, perhaps sometimes political, in the debate.

Let me give you one example on citizens' rights. There is a shared desire between the Scottish Government and the UK Government to protect

citizens' rights. One specific change, and it is similar to the Committee, is that I have discussed with Mike Russell how officials from the Scottish Government and the UK Government work much more closely together. That is an area where trust is perhaps easier to establish than it sometimes is at a political level. We need to move away from the regular drum beat of JMC meetings, which have an element of quantity rather than quality. How do we get a slightly different discussion there?

I think I alluded to this last time. One also has to be mindful that there are tensions between the point at which one shares with Parliament and the point at which one shares with devolved Administrations. If we are sharing with one before the other, colleagues may have concerns. In the House of Commons, Sir Bill Cash, for example, would expect his Committee to be made aware and in a timely fashion, so we need to balance that. We can look at the way my opposite number, Michel Barnier, approached the engagement with the 27 and how that was handled. There are things we can apply with the devolved Administrations as well.

**Q13 The Chairman:** Going back to Baroness Armstrong's first question, what participation is there by the Republic of Ireland in the various working groups that you are talking about? Borders have two sides.

**Stephen Barclay:** The two main routes, within Her Majesty's Government, are, first, through the Secretary of State for Northern Ireland, who, as you would expect, has very regular engagement with senior Ministers in the Republic of Ireland, and, secondly, the Chancellor of the Duchy of Lancaster, who has considerable engagement with Simon Coveney and others there. The Prime Minister, as you know, also has significant engagement with the Taoiseach, at Head of Government level, so there is quite an extensive engagement.

**The Chairman:** Are they involved in actual working groups, or are those just purely UK side?

**Stephen Barclay:** The working groups are UK. As I referred to in my earlier answer, the engagement with the Commission has been as an agreement post-ratification, so it has not been done on a bilateral basis. There will be a desire to engage with them. As part of the discussion, once we get into the meat of that work, that will be one of the questions we are very keen to surface and to see what appetite there is from the Irish Government, in their relationship with the Commission, what can be done and what they are not willing to do.

**Lord Whitty:** I want to focus a bit on the other possible outcome: namely, that we do not reach agreement by 31 October. Two sorts of questions arise. I appreciate that you cannot discuss leaked reports, but there have been some reports that you in particular, and others, were advocating intensifying no-deal preparations. My sub-committee has been looking at transport, and some of that needs further reinforcement if there is a real possibility of no deal. Do you think you have the priority and the resources for the contingency of no deal? That is my first

question.

My second question is the political one, really. What happens, if we are in no-deal territory, to the content of the withdrawal agreement on Ireland, on the budget and on citizens' rights? Do we then have to reinvent those? Is Mr Farage correct that we do not have to pay a penny in those circumstances? What is the Government's assessment of where we would stand and whether we could somehow revive some of those agreements in an otherwise no-deal situation, with no transition period as a result?

**Stephen Barclay:** You raise a number of quite substantive issues within that. To unpick those, first, to what extent, if there was no deal, might you be able to have what sometimes gets called managed no deal or mini deals on the side? The position the Commission has set out to date is that it will not entertain that. It is a question of political judgment as to whether you think, closer to the time, there would be pressure from member states in that regard. Alberto Costa, for example, one of my parliamentary colleagues, has tabled an amendment that was passed by cross-party support in the House of Commons saying that, in the event of no deal, Parliament would seek a side deal in respect of citizens' rights.

There has been support within Europe, in the European Parliament, in the Dutch Parliament, to do that. That is at odds with the position the Commission has set out, so there is a debate there. We have had debates on that. The proof of the pudding would come closer to the time. Colleagues such as Alberto say, "Notwithstanding that, this is in both sides' interests, so could you do a mini deal?"

There is a separate debate, which Baroness Falkner talked about, on the financial settlement and the circumstances around that with no deal. In a way, that points to the oversimplification of the debate that we often get. I get some colleagues in the House of Commons saying that we would not pay a penny. The reality, which Baroness Kennedy will know from a legal obligation point of view, is that something we collected as a member, such as customs duties, we have collected on one premise. There would be a legal obligation to pay that. I do not think many international lawyers, regardless of where they stand on the political debate, would demur from that. You could then have an incremental scale where you look in the RAL at commitments post-notification and have a debate on that. It was before my time in office, but those were the sorts of arguments I would have expected the negotiating teams to have explored.

In the event of there being a no-deal outcome, to what extent would they be revisited? That would depend on various factors. The wider point I am making with regard to financial settlement is that when people say that you would not pay a penny, I think pretty much any international lawyer would look at that and say, "I don't think the idea that you would pay zero on a duty you collected as a member state would stand the test of the courts".

There is a separate question: would you pay the full £35 billion to £39 billion? If you paid it, would you pay it over the same timescale? Those are more detailed, and we could have a whole session on that with the Attorney-General and explore that in more detail. I do not think the political argument that you do not pay a penny cuts the mustard.

More generally on no deal, as you say we do not comment on leaked stories. The wider point is that there is an underappreciation that no deal can still happen. On 31 October, if the House has not passed the withdrawal agreement Bill, there are growing voices in Europe, not least the French, who want to move on to other issues. There is no automatic right of an extension. In that scenario, it would then be a question for the House as to whether it revoked or opted for no deal. None of us can sit here and definitively answer that question, because one cannot prejudge that outcome. Can you categorically say no deal would not happen? No, absolutely not.

You then get into a subjective debate as to how likely you think it is, or to what extent you will want to shape that debate if you see that coming. The timing of that is a separate issue. When would you want to have that debate? You could not wait until the Council on the 17th and then suddenly prepare for no deal. What is it responsible for a Government to do and at what time? You open up various issues.

I have been clear. I appreciate that this will not be the consensus of this Committee, but in a choice between no deal and revocation, as I have repeatedly said, the issues are so fundamental to our democracy that my personal position would be to look to mitigate no deal. I have equally set out to colleagues that there are significant downsides in both scenarios. It is important that we recognise that. There will be strong views on that issue around the table. The point is that if a deal is not passed, we are heading to that decision. I have been trying to get colleagues to open their eyes to that inevitability.

**Lord Whitty:** Is there such a thing as managed no deal in the sense of jointly managed no deal? Clearly, both sides can make contingencies. Some of those may be reciprocated, but is managed no deal a real concept?

**Stephen Barclay:** The Alberto Costa amendment, supported cross-party, was on the basis of agreeing protections of citizens' rights in exactly that way. The fact that Members of Parliament from all parties supported that suggests that they would hope to reach some agreements to mitigate the impacts of no deal in that scenario. Whether member states would agree to that, or the Commission would agree on their behalf, is a point that would have to be established in due course.

The wider point is that a responsible Government have to mitigate the impact of no deal. That has a significant lead time. My sense is that, within the question, there is a distinction between what is in the Government's control, what is in the control of third parties such as businesses, and what is in the control of the Commission or member

states. Those are different issues. We saw at Calais, for example, significant steps being taken by the French Government on infrastructure there.

There is a separate issue with no deal that sometimes gets missed, which is the extent to which, using the opportunity of having done almost a “drains up” and looked at certain areas, we should question whether we can strengthen our resilience in any regard. Is it right that so much of our supply of goods comes through the short straits in the way it does? Do we want to diversify that? What is the resilience in certain areas? There are areas alongside no deal where we can look, more from a general resilience point of view, at what it is good for the Government to be doing in any event.

**Q14** **Baroness Armstrong of Hill Top:** I have a comment first. When Lord Kinnoull and I were in Brussels, before Easter, Barnier made it clear to all the Parliaments that whatever issues were addressed in the withdrawal agreement would have to continue to be addressed, even through no deal. They know that you cannot just leave these things up in the air.

**Stephen Barclay:** He would say that, though, would he not?

**Baroness Armstrong of Hill Top:** This is what I want to ask you. Given that you would still prefer no deal to revocation, have the Government considered the impact of no deal on the people in Northern Ireland—unionists who are not in the DUP, if you like—who are saying that they would rather have a united Ireland than go forward with no deal? Have the Government considered the impact of no deal on the future of the union?

**Stephen Barclay:** Yes, hugely. That has weighed extremely heavily in shaping the Prime Minister’s thinking on the fact that two extensions were agreed. She has a very strong personal conviction as to the importance of the union. She travelled and gave a speech in Northern Ireland, you will recall, and I think that anyone who spoke to her around that time will know that she was quite moved by the conversations she had within the community. She takes that extremely seriously, and I do not think that anyone cross-party would think she does not. That would be my view. Certainly that is not the sense I have ever had.

The issue is not just the impact on Northern Ireland. There is also a significant impact in Scotland. That impact also cuts to both sides of that debate. There is the impact of no deal and any disruption that flows from that, but there is also the impact of revocation on the debate in Scotland. It is not a one-sided issue. It impacts on both sides, which comes back to the point that only five Labour MPs voted for the deal last time, and people cannot have it both ways; they cannot consistently vote against the withdrawal agreement and say that it is the only thing the European Union is now willing to agree, that they are against that, that they are against no deal, and then say that they recognise there are also impacts on the union from revocation. These are issues that the other parties also need to engage on.

**Q15** **Baroness Kennedy of The Shaws:** Secretary of State, all of us round the table know that there is a sort of choreography in all this. At this moment, attempts are being made by the Opposition to persuade the Government of a way in which they might contribute to an idea for going forward. The withdrawal agreement which Mrs May has been putting on the table has repeatedly failed. Alternatives that are put up by other members of the Commons do not seem to have much traction either. It is becoming clearer and clearer to many people in the country that it is really stark, that it is looking increasingly like revocation or no deal.

A point is going to have to come at which, in order to take this forward in the choreography—you may not at this moment be prepared to put the arrangements on the table—it is decided that none of these alternative routes will work. It really becomes that stark position of either sticking or twisting: that we remain in the European Union, or we leave in the way the hardliners want—without any kind of real negotiated relationship.

At what point do you decide that the House will be capable of making a decision on this, or that the only way to resolve something as stark as that is to go back to the people? You see, that is increasingly becoming the question the public are asking.

You have to have time to do it. If our partners in this venture in Europe are saying, “The deadline this time is definitely 31 October”, we cannot have this business of trickling towards the cliff edge. We need to decide pretty soon whether there is going to be an opportunity for the public to have a say on that stark division. When do you decide that? What is the optimum date for that?

**Stephen Barclay:** I would take issue with the way you frame it, because, for me, going back on the biggest vote in our history is the hardline position of those who want to go back on that vote. The language about a confirmatory vote is premised on the idea that people allegedly did not know what type of leave they were voting for, but the confirmatory vote is not a choice of different leave options; it is to go back to a remain option.

I think that people who argue for a second referendum want to revoke, and they should say that that is their position. A second referendum would mean a 12-month delay, with all the disruption to business and others that comes from that. If their position is that they want a second referendum in order to remain, it is much more honest if they say that they want to revoke and are clear about that. The whole debate about a second referendum is a deflection by people who want to revoke and are not prepared to say that they want to revoke.

**Baroness Kennedy of The Shaws:** Yes, but in the presentation you have just given us you have not reckoned on this. In the three years we have been sitting around this table, we have all learned, but so have the general public. The general public are not stupid. Many people have listened to these debates and have started to form a different view about many of the aspects of this that they had not considered before. They had not realised the extent to which we were putting the union at risk,

the effect on Ireland, our relationship with Scotland, the possibilities that this will have devastating effects on the jobs of the next generation.

Suddenly, people are getting to grips with the real fundamentals of this. Why do you feel that there has not been sufficient growth of knowledge that the public should have their say on that eventual thing? I am talking about the point at which other options are no longer clear.

**Stephen Barclay:** We are into more mainstream political debate. I am pleased that you say the public are not stupid, because many of us on the Brexiteer side have spent the last three years with people on the remain side telling us that we were stupid or did not understand what we were voting for. My constituents understood what they voted for and still understand what it was, and they want this Parliament to deliver on it.

You asked about timing. We are seeking to do a deal. We are seeking for the deal to be ratified, and the timing is shaped by that. People who want a second referendum should say that they want to revoke. I have yet to find someone who wants a second referendum in order to leave. It is all the people on the side who did not want to leave who want a second referendum.

All that is doing is prolonging the division, prolonging the uncertainty. People should just be honest about the fact that they want a second referendum because they want to revoke. That is the reality of it. On this, I am afraid we will agree to disagree. What the business community and the country need is to move forward. We had a vote, we had a clear result, and Parliament needs to deliver on it.

**Baroness Kennedy of The Shaws:** That was at a moment in time when many of these things had not been part of the public discussion. That is the point. Why would you be afraid of asking the people, "Is this still what you want?"

**Stephen Barclay:** If you want a confirmatory vote, you can have a confirmatory vote between different options of leave. You can have a confirmatory vote between the Prime Minister's deal and no deal, if that is what you are saying people did not understand. We are away from the department and into more of a Chamber debate. The fundamental point is that we had a result, both parties were elected on manifestos saying they respected that result, and the task for Parliament is to deliver on that.

Q16 **The Earl of Lindsay:** Secretary of State, what is the Government's latest thinking about the structure of the negotiations for the future relationship?

**Stephen Barclay:** This was an area of work that Susannah and Alex explored with the Committee, because a lot of work has been ongoing on that. Part of the challenge from a Whitehall architecture perspective is when we are going to get into that phase and how we do that.

In terms of the structure, the first thing is for us to recognise that we will need to gear the architecture of Whitehall quite differently. The leadership on that will come through my department; the Department for Exiting the European Union will lead on that. We need to look at how we bring in the various sector issues and the devolved Administrations in a meaningful way. Different industrial issues will impact differently depending on the territories. A lot of work has been going on on that phase 2, but the key challenge at the moment is how we actually get to it.

**The Earl of Lindsay:** If a lot of work has been going on about the thinking around this, how much can you tell us about the shape, the pattern, the model that is emerging in that thinking?

**Stephen Barclay:** The main issue will be the role of UKRep. One of the things we have been doing to prepare for phase 2 is expanding UKRep and the presence in Brussels. We will need to look at the role, in that we have had the Cabinet Office Europe unit working through No. 10. In phase 2, in terms of the architecture within government, that will come through DExEU. Part of it will be how we segment it with the different sectors and the different Administrations.

**The Earl of Lindsay:** You are anticipating that there will be separate negotiating streams, as it were, and DExEU will be the co-ordinator of those separate negotiating strands.

**Stephen Barclay:** Yes. Our estimate is that there will be 12 to 15 different work streams. The role of the department will be to act as the co-ordinator of those.

**The Earl of Lindsay:** You mentioned the need to bring in the devolved Administrations or to engage them. How substantial do you think their role will be? How much do you think they will think they have a significant role in the negotiating process?

**Stephen Barclay:** That will vary, depending on the different work streams and the interests there. One of the key issues is that there will be a huge amount of data and expertise within the devolved Administrations that is relevant to certain work streams to reflect the economic interests that apply, which is why I am very keen on the official-to-official-level engagement. One lesson that comes out of the first phase is how we work closely with them in order to give them as much notice of issues as possible.

**The Earl of Lindsay:** Finally, how will the UK's negotiating mandate be set? How will parliamentary approval for that mandate be achieved?

**Stephen Barclay:** That is an important point and something we have been discussing through the talks with the Official Opposition. The key issues there are the reporting structure back into Parliament and the frequency of that. How do we get much earlier agreement on the trade-

offs? One of the key issues will be not just the work in each individual work stream but the trade-offs between the different priorities.

As I think I mentioned at our last session, I see much more of a role for the Select Committees as part of that process. I had four years on the Public Accounts Committee and I always felt that a Select Committee's report was only effective if it was agreed. Therefore, the Select Committee operated very differently from Members of Parliament engaged in the Chamber. There is a lot of ability to work with the Select Committees in a different way, given the personal relationships on the Select Committee, the commonality of interest. People get to know each other over time and the Select Committees operate in a different way. There is a lot that we can do in looking at the work streams, working with particular Select Committees, but also looking at how, when we come to consider some of the trade-offs, we have representation between the Select Committees.

**The Earl of Lindsay:** Do you anticipate parliamentary approval for the mandate being sought before the negotiations start?

**Stephen Barclay:** I do not want to go too much into the detail of where we are on the discussions, but it comes back to the point on numbers. It is a political reality that many Members of Parliament feel that the withdrawal agreement was presented to Parliament without them being as engaged on it early enough. I expect that, regardless of what the Government want to do, Parliament will look to have a more active role in the negotiations than it did in the first phase. That is a reality, anyway.

From a government point of view, we need to protect both the constitution and our ability to be nimble, to respond to issues, to work at pace. There are legitimate concerns. There are issues of what can be shared in confidence and how secure that is. Among the committees in the House, the Intelligence and Security Committee has always had a very strong record, but then the subject matter lends itself to that. There are other committees where that may be more difficult. Those are the issues that we are discussing.

Q17 **Lord Cromwell:** Secretary of State, could I ask you a bit about the preparations for influencing in Brussels once we are no longer a member, if in one mighty bound we can get into that post-Brexit world? Let us start with the EU agencies. We are going to need new ways, practical ways, of interacting with, relating to and influencing them that are acceptable not only to us but to them and the other members. What preparations are in train, and can you give us some colour as to how you see that working in a post-Brexit world?

**Stephen Barclay:** You are absolutely right. The first thing is that we confront that head on and accept that the relationship will be different. I think that will be clear at Prime Minister level, because the rhythm of Council meetings and things that we are part of as a member, as opposed to being a third party, is different. That is reflected in things such as the resourcing of UKRep. I mentioned how we are looking at that.

It is reflected in, for example, me going to Romania last week. Some people questioned it: "That was a debate about the future of Europe. Why is the UK going?" If I pick out one statistic, it is that 18 million Africans are coming into the labour market per year, with jobs for fewer than 4 million. That is not a Europe-centric issue, but you cannot debate the flow of migration, the security and terrorism issues, the economic potential of industries such as fintech without thinking through the implications of those sorts of numbers. It was my contention that the UK has a key role to play there through our links, our soft power, our DfID aid budget, our security presence—through various things we have.

**Lord Cromwell:** Can I press a little more? I am a practical soul. The informal contacts and so forth that you have referred to are all very well, but are there ways in which we can actually be in those agencies, influencing them directly? Is there any preparation to try to secure that?

**Stephen Barclay:** In many of those areas, the political declaration keeps the option open. This was one of the points that flowed from the earlier conversations around the Labour talks. To the extent that the political declaration does not give commitments on some agencies, is that because the UK Government did not want it, or is it because of the way that phase of the talks came at the end and what people were in a position to do?

It is much more the latter. The political declaration enables us to have further discussion on that in the run-up to December 2020. Do we see merit in engagement in many of those agencies? Yes, we do, and we will explore that as part of the next phase of the discussions.

**Lord Cromwell:** As you have repeatedly said, it is a two-way process. Whether they will welcome our involvement is another matter. Let us leave that rhetorical question for the moment.

This is my second and final question. You mentioned UKRep. It is going to have an important role, but there are also all our missions in all the member states. Are they being prepared? Are they being resourced to take on those roles in the individual states where they are?

**Stephen Barclay:** Yes. I can give you a list to show where we are, but ultimately that will be part of the spending review discussion. The point that underpins it is that we absolutely recognise that we will need to operate differently and we will need to engage more at ministerial level but also have more resource and expertise.

To your point about it being two way and whether they would welcome our engagement, a good illustration is the European arrest warrant. We surrender eight times more numerically than the EU surrenders to the UK, so just as a point of logic there is a clear benefit to the EU. That eight times is split between the 27, so if you look at it on a bilateral basis it is slightly different. The point is that there is a mutual interest there. When it comes to issues such as terrorism, as far as I am aware there is no

politician within the EU 27 who does not want to be working with the UK and its expertise to address that.

There is a question of what could be done at that time and there is a question of what the opportunities are, moving forward. There are clear areas such as that of mutual interest. The question then will be how we can do that in a way that reflects the more detailed issues. What is the role of the ECJ in that? You get into some of the detail, but there are areas of common interest.

**Lord Cromwell:** I am just looking for an assurance that we are going to be tooled up in our missions to take this on.

**Stephen Barclay:** Yes, hugely. In a way, you can almost look at what we are doing as opposed to what we are saying. The fact that I travelled to Sibiu last week hopefully gives you an indication of the appetite and the recognition that this is something we need to do.

Q18 **Baroness Suttie:** I am sure you have gathered that this is the last question. Briefly on the governance of the withdrawal agreement, could you say a little more about how you see the Joint Committee and the specialised committees working in practice?

**Stephen Barclay:** There is quite a bit in the text about the respective roles. The specialised committees will consider the issues covered by the areas where they cannot make the formal decisions. Then you will have the ministerial oversight, which is where the more formal decisions will be made. They must be made by mutual consent, which is an important protection. The regularity of engagement is one of the issues that we need to look at.

**Baroness Suttie:** On the question of reporting back, would you make the commitment that you or the relevant appropriate Minister would report back to this Committee, ideally before and after meetings of the Joint Committee?

**Stephen Barclay:** I think this came up last time. There is a difficulty as to what can be done before when it comes to closing off optionalities. Post Joint Committees, to some extent I am not sure it will be my discretion, because the Committee will no doubt seek for me to return, regardless of what I say in answer to that question.

I recognise that there will clearly be interest in the outcomes of those and that there will be a need to engage with your Committee and, I am sure, with the committees in the other place.

**Baroness Suttie:** In terms of transparency of the meeting documents, the schedules, the agendas, et cetera, would you expect them to be deposited in Parliament for scrutiny?

**Stephen Barclay:** Some of that detail will still need to be worked out, but I just look to the reality of where the House is. We had a humble Address requiring legal advice to be disclosed. I do not actually think that

was a good decision in the House of Commons, but if you make that one extent of the range, the question for Ministers is then what reasonable expectation we can agree up front with the committees about documentation. I would hope, perhaps through the clerk of the Committee, to get to some understanding of what the Committee would like to see and when. There are enough people around the Committee who have been in government and understand where the Government need flexibility and where Parliament has a legitimate interest.

**Baroness Suttie:** Finally, what would be your response to this Committee's recommendation of a new mechanism whereby either House could require a response from the Government if there were concerns about EU legislative proposals that would have a particularly adverse effect on this country?

**Stephen Barclay:** Ultimately, Ministers cannot constrain the House. If the House wants certain things, there are ways the House will assert itself and request those.

Going back to Baroness Falkner's question, one of the reasons why one does not want to extend is that there is a natural lifecycle to how long it takes for EU rules to come through. Normally there is a time, in the time pattern of that, that provides protection. That is partly why the transition period is the length it is; it is linked partly to the financial end date, but it is also partly because, with anything less than two years, it is quite difficult for the rules cycle to come through.

It is worth remembering that there is also a requirement in the documentation for good faith, so rules cannot be brought through that are targeted at the UK in a particular way. There is protection in the withdrawal agreement in that regard. At the same time, and this is a point Sir Bill Cash has raised, the Committee already has sight of the documentation coming through, and there will be a desire, I am sure, to continue to have that sight moving forward.

Q19 **Lord Teverson:** This is a question we all get asked, Secretary of State: what the heck is going to happen at the end of the day? Can you give us an answer?

**Stephen Barclay:** We are going to leave. At the end of the day, we will leave because there was a clear result. It is the job of Parliament to deliver on the result. It is not just the damage that will be caused to democracy in this country. This is one of the strengths of the United Kingdom. Around the world, we often see democratic decisions taken and then not respected by Governments. It is part of the soft power of the United Kingdom that historically we have been seen as a beacon of democracy and a country that respects democracy. It behoves all Members of Parliament and Members of your House to respect the democratic result.

**Baroness Armstrong of Hill Top:** Some of us have questions about the referendum, but never mind.

**The Chairman:** Those last two questions have shown both how much we appreciate the evidence you have given to us—thank you very much for that—and how much we will enjoy seeing you in future as this rather convoluted process continues along its way. Thank you very much indeed for coming to give evidence to us today. We are very grateful to you.