

European Scrutiny Committee

Oral evidence: UK parliamentary scrutiny of the Withdrawal Agreement Joint Committee and application of the Northern Ireland Protocol, HC 741

Monday 5 October 2020

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Members present: Sir William Cash (Chair); Allan Dorans; Richard Drax; Mr Marcus Fysh; Andrea Jenkyns; Mr David Jones; Craig Mackinlay; Anne Marie Morris; Greg Smith.

Questions 1 - 32

Witnesses

I: Rt Hon Penny Mordaunt, Paymaster General, Cabinet Office; Brendan Threlfall, Director, Transition Task Force, Cabinet Office.



Examination of witnesses

Witnesses: Rt Hon Penny Mordaunt and Brendan Threlfall.

Q1 **Chair:** Welcome to a hybrid public meeting of the European Scrutiny Committee. I am in a committee room in Westminster with several members and a small number of staff required to facilitate this meeting. We are suitably socially distanced from one another. The witnesses and other members of the Committee are participating remotely from their homes and offices across the whole country. Our witnesses today are the Paymaster General, Penny Mordaunt, and Brendan Threlfall, the director of the Transition Task Force at the Cabinet Office. We are delighted to have you here today. There is a lot of ground to cover as we approach the end of the post-exit transition period.

I am now going to make a statement myself. This Committee was instituted in 1973 under the standing orders of this House when we joined the European community, which is now the European Union, to scrutinise and report to the elected House of Commons on legal and political matters arising from documents derived from European institutions, such as the Northern Ireland protocol. Today we are questioning the Paymaster General on this, and the Minister for the Cabinet Office has assured us of his commitment to scrutiny.

The United Kingdom Parliament, including the other House, passed a sovereign Act of Parliament authorising the referendum on our membership of the EU by six to one in this House of Commons. There were then subsequent Acts passed by very large majorities, including the European Union (Withdrawal Agreement) Act 2020, following the last general election in which the voters gave the Government a majority of 80. This Act passed by 124 votes in this House, and it included section 38, all of which, including sub-section 2(b) itself, expressly and unambiguously sets out the sovereign rights of the UK, notwithstanding the withdrawal agreement, our having left the EU lawfully on 31 January 2020. The Act was also passed by the House of Lords.

The Internal Market Bill, which carries forward these powers expressly and unambiguously, has now passed the House of Commons, which is the elected body, by another great majority, and, as I have indicated on previous occasions, is in line with precedents in law on the international plain. This Bill itself has been passed, notwithstanding the constitutionally offensive and intrusive threats and litigation against the UK made by the unelected European Commission. They even demanded that the Bill be withdrawn together with the notwithstanding clauses and matters relating to judicial interpretation, its demand also being in defiance of the privileges of this House. I put this clearly on the record, as this Bill is now to be considered, as of last Wednesday, 30 September, by the House of Lords in accordance with the Salisbury Convention.

I take it, Minister, that you would agree with what I have just said.



Penny Mordaunt: I would say something to that. The Committee would not expect me to give any detail on our response to the EU's letter in this session, but the points that you have made are clearly understood. Section 38 of the Act concludes that nothing in the Act derogates from sovereignty of the United Kingdom. The collective determination of the British people over the last few years, difficult years though they have been, to get an outcome to this whole process that is compatible with sovereignty and supports sovereignty must be clearly understood. We are resolved to do that.

Finally, on a personal level, as a parliamentarian who burned an awful lot of political capital early on in their time in the Commons in resisting reforms to the House of Lords, in part because they would have undermined the primacy of the Commons Chamber, I would suggest that trying to thwart the ambition that we have an outcome that is compatible with sovereignty or the will of the British people from an unelected Chamber that still reserves some of its seats for men only is probably not a good look.

Q2 Chair: The main issues that we wish to raise with you, apart from that, are the operation of the Joint Committee on which you sit and the decisions it needs to take by the end of the year to implement the protocol on Ireland and Northern Ireland; secondly, the arrangements set out in the protocol concerning the application of EU law in Northern Ireland after transition; Parliament's role in scrutinising European, EU and international affairs after transition; and, if we need to do so after this session, any other further questions that you may be able to answer—and we trust you will answer—in writing.

I am now going to move on to the actual questions themselves. How much progress was made at the last Joint Committee meeting on 28 September, what items did the UK ask to be placed on the agenda and what was the outcome of the "stocktake of Specialised Committee activity?"

Penny Mordaunt: The meeting that took place on 28 September was particularly concerned with an examination of citizens' rights, where the UK raised considerable concerns it has with the lack of progress being made and the EU not upholding its responsibilities in ensuring that member states are doing what they need to do for UK citizens in the EU. The Northern Ireland protocol was also on the agenda. We also agreed to increase the pace of discussions in the Specialised Committees, and also touched upon the issues of Gibraltar and our sovereign base area in Cyprus. Those were the items on the agenda. What took up the most time was our discussion around citizens' rights, and also, as you would expect, follow up from the previous committee around the issues related to the UK Internal Market Bill.

Q3 Chair: The EU made clear before and after the Joint Committee meeting that it is "dedicated to the full and timely implementation" of the withdrawal agreement and "will not be renegotiating". How do you



reconcile this with the Government's insistence that they will not withdraw the provisions of the Internal Market Bill, giving Ministers the power to disapply parts of the Northern Ireland protocol?

Penny Mordaunt: We have described that legislation as a safety net, but we hope that the negotiations and the work that is going on in Specialised Committees and the WAJC will mean that we not require that. We have been very clear on why we think that is necessary. In terms of the negotiations that have been going on and the obligations that the EU has under the withdrawal agreement, we are concerned that they are not being upheld in a number of areas. We have expressed concern about the EU still not having confirmed that it will give us third-country status listing, and, as I have alluded to, we remain deeply concerned about the lack of progress around the EU honouring its responsibilities, although we appreciate it is member states that are in the driving seat in terms of their own legislation and schemes that they will be running to ensure that our citizens' rights are protected. Those are issues of major concern, and that has been our focus on the withdrawal agreement Bill.

Q4 **Chair:** You will of course be aware that the European Scrutiny Committee took written evidence from a wide range of academics and QCs of great eminence, on both sides of what could be generally described as the pro-Brexit and anti-Brexit divide. All of them agreed that there were serious questions remaining on the table regarding the jurisdiction of the European Court itself, and also that the agreement was pretty well riddled with a whole range of matters in respect of which EU law would continue.

Furthermore, there is another issue, which is that the power that is given under the withdrawal agreement and the protocol to the European Union institutions effectively means that, after we have altogether left on 31 December, they would be able to continue to make law and the European Court would continue to have degrees of jurisdiction. We would not be at the table. Furthermore, the consequence of that would be that they would do it by majority vote, over our heads, into the indefinite future. This seems to be common ground with a great number of people who have looked into the wording of the Northern Ireland protocol.

All I would say to you is that the question of the importance of section 38 and the powers that have been taken under this United Kingdom Internal Market Bill remain at the heart of our sovereignty, because there is every reason for us to assert that we are not going to remain under the jurisdiction of either the European Court or, for that matter, the law of the European Union. I will leave that as it stands, unless there is another point you would like to make in reply to what I have just said.

Penny Mordaunt: I would just reassure you that the Government well understand the issues that your Committee and others have raised around the economy, state aid rules, finances and potential liabilities that might lie there, and of course ensuring that we do not end up in perpetual discussions about citizens' rights and related issues. I recognise



the frustration that the Committee has, because of the importance of those other matters, that these things are tied up in the negotiations. It is difficult for us to be as transparent as the Committee would like; we do not wish to reveal our negotiating position, although we have obviously committed over negotiations for other matters to keep the Committee informed about those things. It is just to recognise that we understand these issues very well. The points that you have made with regard to the integrity and sovereignty of the United Kingdom are well understood by us and chime with our views very well.

Chair: That is very interesting.

Q5 **Mr Fysh:** Thank you, Paymaster General, for your time this afternoon. What are the issues on which the Joint Committee is required to take a decision to ensure the smooth operation of the Northern Ireland protocol at the end of the transition period, and how far have discussions advanced before the Internal Market Bill was published?

Penny Mordaunt: Before the end of the transition period the Committee has to have decided on who will serve on the arbitration panel. It must adopt specific decisions with respect to the Northern Ireland protocol; as I have said before, it is tied up as part of the negotiations. There are issues relating to security co-ordination, citizens' rights provisions relating to [inaudible] and other matters that might be raised, for example, with the Specialised Committee [inaudible] on which they will be asked to take a decision on. Those things have a hard deadline. There will be other functions of the Committee for as long as the withdrawal agreement and protocol are in effect that might be taken after that decision, for example around the independent monitoring authority.

Chair: Paymaster General, you sound a little muffled. I wonder whether you would be kind enough to come a little closer to the microphone.

Penny Mordaunt: Yes. I was trying to balance audio quality and social distancing. Would you like me to repeat that answer?

Chair: I think the answer came through.

Q6 **Mr Fysh:** Has either side put forward proposals for determining which goods moving from GB to Northern Ireland are at risk of crossing the border into the EU single market and should therefore be subject to EU customs duties?

Penny Mordaunt: These matters are part of the negotiations. The Joint Committee, as opposed to the Specialised Committees, has not looked at these areas and taken decisions on them; they are tied into the negotiations. I recognise the frustration of the Committee in keeping tabs on the Government's position and the progress of those negotiations. We have made some moves to provide as much reassurance and transparency on these matters as possible, but the Committee will appreciate that we are not revealing our hand in that.



Q7 Mr Fysh: What are the legal defaults if the Joint Committee, as far as its responsibilities form part of what you have just described, fails to take decisions on these issues? Do you share the Prime Minister's view that the legal defaults in the Northern Ireland protocol might be unacceptable?

Penny Mordaunt: I refer you to my response to the Chair's opening statement. We want an outcome from all of this that is compatible with sovereignty. That is why we have put in place the safety net, but we are committed and we are making progress in negotiations to ensure that is here.

Q8 Richard Drax: The Internal Market Bill seeks to address the Government's concerns with Articles 5 and 10 of the Northern Ireland protocol on export formalities for Northern-Ireland-to-GB trade and on the application of EU state aid rules. Did you raise these concerns in the Joint Committee before publishing the Bill?

Penny Mordaunt: The short answer to that is clearly yes. There are issues that have been raised in discussions, formal and informal, in the Joint Committee and, perhaps more importantly, in negotiations as well. This is a step that the Government have taken to ensure that we have an outcome that respects the integrity of the United Kingdom. That is the purpose. It is correctly described as a safety net. We hope—I am always optimistic—that these provisions will not have to be drawn upon, and we have obviously made it clear that there will be further steps should we have to do that, with regards to the House of Commons. I would also point out that, despite the controversies and concerns raised, that Bill received overwhelming support in the House of Commons. I hope that will give people food for thought.

Q9 Richard Drax: Yes, it did receive everyone's support because obviously we do not want to break the integrity of the UK. Just reading the notes that accompany the question, I understand that more was going to be set out in the Finance Bill, but we are not going to have that, are we? That has been postponed. Where do we stand? It was Robin Walker who said that.

Penny Mordaunt: Is this with regard to financial provisions?

Richard Drax: Yes—that further provisions would be set out in the Finance Bill.

Penny Mordaunt: This is with regard to future liabilities. Some of these issues will clearly be resolved in negotiations. You are not going to hear the Government's particular position on certain aspects of the Northern Ireland protocol until the negotiations have concluded, so if you are asking about further scrutiny on that, it would be at the conclusion of the negotiations.

Q10 Richard Drax: What is your view on the way the EU is negotiating? It just strikes me that they are, as always, belligerent and unhelpful, intentionally; as we all know, Mr Barnier has been told, as I understand,



that no deal must be reached as a punishment to us to prevent others from doing what we are doing, which is regaining our sovereignty.

Penny Mordaunt: I would say two things with regard to that. Despite the trials and tribulations in the last few years, I have always thought that ultimately both sides would do what was in the interests of our citizens, and that is why I have always thought that a good deal could be reached, whether that is on the economic benefits of our leaving the EU and ensuring that we can trade well together, or with regards to other aspects around the security and protection of our citizens. That is the case, and certainly my experience on the Withdrawal Agreement Joint Committee is that it has been conducted in a very convivial, constructive and positive way.

What I would say is that, in terms of progress on some of the obligations that have been in the withdrawal agreement and in terms of the inexplicable position that we have still not been given the go-ahead to be given third-country status, I find that amazing on a personal level.

I would again come back to the issue of UK citizens' rights living in the EU. Just to give you a sense of the disparity between progress that we have made in the UK on behalf of EU citizens, we are processing 3.9 million applications; 3.7 million are already processed. Some member states have still to publish the deadlines for their schemes, with very large numbers of UK citizens still left with uncertainty about their future. That is obviously a matter in part for member states, but it is the responsibility of the EU to ensure that is the case, and I do not need to speculate whether it is bad faith or anything else. It is something that should be being done that is not, and that is obviously a concern. We have made those representations in the WAJC.

Brendan Threlfall: The question on the Finance Bill might have related to the statement the Government have made on at-risk tariffs under the protocol. As the Secretary of State for Northern Ireland said in the House the other day, that is still the plan and that commitment still stands, There is a plan for a narrow Finance Bill in the absence of a Budget.

Q11 **Mr Jones:** Paymaster, at what point was it decided to include in the UK Internal Market Bill the provisions that allow Part 5 of that Bill?

Penny Mordaunt: If I get into the heart of your question, we have exhausted other avenues in terms of giving ourselves the confidence as to whether we would need that safety net or not. We have negotiated in good faith; we have made reasonable demands in those negotiations. We would not have needed the safety net in place if we had had reassurances that it would not be needed.

Q12 **Mr Jones:** I am seeking to ascertain whether there was something that happened during the negotiations that made the Government decide that they had no option but to include those provisions of Part 5 in the Bill.



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Penny Mordaunt: I can tell you my view on that; obviously I am not part of the negotiating team, so this may not be a fully comprehensive answer. I think it is perhaps not an event or a change of position. It is the fact that we have been having negotiations for some time and still have not had either certain things that we would have expected to have been agreed to or reassurances that we would expect to have seen. Although I fully appreciate the controversies around it, it is necessary, pragmatic and proportionate to protect ourselves from the considerable concerns that we have.

Q13 **Mr Jones:** Did the Government give a warning to the EU? Did they raise these questions in the Joint Committee before the Internal Market Bill was published?

Penny Mordaunt: All of these issues have been continually raised throughout our discussions, in negotiations, but also with regard to our discussions in the Withdrawal Agreement Joint Committee and the meetings that take place around those formal proceedings. It has been well established and evidenced concern that has been expressed.

Q14 **Mr Jones:** It was made clear to the EU side that, unless they became less obdurate, the Government would have no option but to include those provisions in the Bill.

Penny Mordaunt: I cannot personally comment because I have not been privy to any sharing detail around particular aspects of that legislation, but what I would say is that the principles and our concern and resolve to protect the sovereignty of the United Kingdom has never been in doubt.

Q15 **Chair:** That is regarding those provisions in that Bill. The reality is, according to the opinions of many—including myself, and also the lawyers who I referred to earlier, experts on both sides of the equation—that the issue of how far the question of sovereignty extends is very important indeed. I am very glad to hear what you had to say, albeit it was in very diplomatic language. It was von Clausewitz who said that diplomacy is war by any other means.

There were two things that we could always say from the very outset. I am now going back to the previous Government Administration of 2017-19, when negotiations were starting up, and we made our point clear in this Committee that we were dissatisfied with the way in which the negotiations were then being conducted. There are two principles that the EU continuously asserts and effectively puts into practice. The first is that we must never be allowed to compete effectively with the EU. That is a cardinal principle.

The second thing is that, for all its words in the documentation on the withdrawal agreement and the protocol regarding sovereignty, it simply neither gets nor wants to get nor appears to be prepared to concede that when we leave we leave as a sovereign nation. In the words of Lord David Frost, we achieve full independence. The Prime Minister again made that quite clear in what he said yesterday, when he referred to



control over laws. I wonder if you have any observations on that point that I have just made in supplementary to Mr David Jones.

Penny Mordaunt: In addition to the Government's view, many people have pointed to the fact that the EU has struggled to treat the United Kingdom as a sovereign equal in certain aspects in these negotiations. We must ensure, not just at the end of the transition period but also looking further down the line, that our sovereignty is fully protected and restored. We want to conclude issues. We do not want them to be rolling on. We do not want debates to be opened up or challenges brought against arrangements that have been settled. That is why we are doing all parties in this negotiation a favour by being polite but blunt about ensuring the outcome we get is supportive of that sovereignty. That is what the British people voted for and that is what they want to see, whether they supported the original referendum result or not. That is what collectively they have resolved they want to see, and it is our job to deliver that.

Q16 **Allan Dorans:** Paymaster General, which other parts of the Northern Ireland protocol do you consider to be problematic? Do you intend to seek special derogations or exemptions from EU law in areas such as VAT and customs to protect Northern Ireland's place within the UK's internal market? Are there areas in which you will be seeking further powers in domestic law to interpret or disapply provisions of the protocol, for example on at-risk goods?

Penny Mordaunt: These issues are part of the negotiations, and it will not be until those negotiations have been concluded that the Withdrawal Agreement Joint Committee, and the Specialised Committee under that Joint Committee, will be able to conclude their work on issues around the protocol. That is the timetable that we are working to. Again, I understand the Committee's frustration because we are not able to talk about our negotiating position. Is there anything you would add in regard to that?

Brendan Threlfall: On the at-risk-tariffs question, as the Minister said, we have a specific negotiation in the Joint Committee, which is yet to conclude. Some of our discussions in the Joint Committee go beyond that specific question, as we set out in our Command Paper in May. We also cover some of the agri-food issues at play as well. It is a bit broader than at-risk goods, but there is a specific negotiation on that in the Joint Committee, which we need to conclude.

Penny Mordaunt: The only other thing I would add to that is that I am obviously aware that members of the Committee and others have raised other matters that are not dealt with regarding the UK Internal Markets Bill that still raise questions about our compliance with sovereignty. Those matters are parts of the negotiations. Those aspects of the UK Internal Markets Bill that the question referred to are quite exceptional, but clearly there are other matters that are part of those live negotiations.



Q17 Craig Mackinlay: My question is regarding state aid and how that applies to Northern Ireland and the rest of GB within Article 10 of the Northern Ireland protocol. State aid is always a bit of a nebulous subject. What is it? There is little codification in the treaties. You then have what it means rather filled in over the years by ECJ judgments. There would be probably no EU member that has not faced infraction proceedings at any time under the state aid provisions, so it could be said that just about every EU member at any time is technically breaking—whatever it really means—international law. The average state aid across the whole of the EU is about 0.76% of GDP, amounting to over €100 billion per year. The UK is in the bottom quartile at 0.34%, with Germany at 1.45%, so infinitely more involved in the use of state aid in their activities. Would it be fair to say that the concept of state aid is a bit of a nebulous one? Has the Paymaster General got her mind around what looks like state aid and what does not? If you were to ask me, I am not sure I could fully answer the question.

Penny Mordaunt: You make a number of good points. Clearly, with the issues around state aid, the negotiations and the matters that the Joint Committee are concerned with will be looking at relating to goods and obviously focused on Northern Ireland. In terms of the nebulous definition of what constitutes it, we want clarity; what we do not want is the ECJ being able to suddenly throw a googly in, years hence, that causes difficulties for us wanting to deliver on our economic plans for every part of the UK.

Q18 Craig Mackinlay: Can I get to the nub of something else on this? Article 10 says that the state aid rules—whatever they are, nebulous as they are—applies to the UK without geographical limitation, and therefore to and within Great Britain as well as Northern Ireland. That raises the spectre of a variety of issues, whether it is agricultural support in GB or vital industries such as steel, somehow then being used in the Northern Ireland market and the EU being concerned about leakage and cross-border use. Did the Government really consider all of these issues before accepting the wide remit of Article 10 and what state aid would mean across Northern Ireland and the rest of GB, and its inveiglement into ECJ current and future interpretation?

Penny Mordaunt: The points you raise are well understood. We have a narrower definition of that, which my colleague will talk about.

Brendan Threlfall: On that important point, we are clear that Article 10 solely relates to trade between Northern Ireland and EU member states. We take a tight view of what that should mean. It also only relates to trade subject to the protocol and the article, so it is goods trade and electricity markets in Northern Ireland. For example, even within Northern Ireland, it does not include aid to farmers; Northern Ireland would be out of the common agricultural policy. There is still a Joint Committee decision to be reached on overall ceilings there, but we are clear that that is exempt. It should not start reaching substantively into Northern Ireland's services or technology centres because it is about



trade in goods. Even in the Northern Ireland context we take a restricted view, and the continuation of restrictions that are there will be subject to democratic consent by the Assembly. We are certainly very clear that there should not be substantive reach back into GB as a result of the protocol.

Penny Mordaunt: However, we are also alive to the fact that we want to guard against any creep in that in any future rulings or definitions that might come from the ECJ.

Q19 **Craig Mackinlay:** We have accepted that if there is a new EU treaty—we obviously will not be part of that; we are not EU members—there will be new ideas and grand thoughts of the Commission and new outputs and interpretations by the ECJ into the future. Those definitions that would then be established would be applicable to Northern Ireland, unless obviously its domestic arrangements decide to overturn the Northern Ireland protocol, and potentially abstractly, despite what has been said, across GB as well. This is an unknown moving escalator, and we do not have a seat at the table. Is that understood, or has the interpretation always been, “It is a fairly flexible bit of elastic. The rest of the EU members tend to pay a fair bit of lip service to it. They will not be looking at us too carefully either”. What has been the reason for accepting this?

Brendan Threlfall: On the question of reach into the future, we do not accept that this article provides a vehicle for that substantively in relation to GB, for the reasons I set out. Because of some potential concerns about how this will play out, the Government have introduced the safety net provisions of the UK Internal Market Bill, which deals specifically with the state aid question.

In relation to Northern Ireland, we do not accept that EU state aid rules apply to Northern Ireland en masse. We have a defined definition that is about manufacturing and wholesale electricity markets, and that is clear in Article 10 because it all relates to trades subject to the protocol. That specifically defined area will continue in Northern Ireland, but only subject to democratic consent, so it will be subject to elections in Northern Ireland and votes by members of the legislative assembly there.

Q20 **Chair:** It is not just lip service, is it? It actually goes deeper than that. I have been on this Committee for 35 years, and I have seen the way in which other member states have flagrantly broken state aid rules. Ambrose Evans-Pritchard of the *Daily Telegraph* continues to take a very active interest in this, and what he says is excoriating on it. There are also the Court of Auditor reports that demonstrate the extent to which there is massive corruption historically in all these matters. I could give a massive list of the things. It also affects tax and the manner in which we will be able to run our own tax system, free ports, free enterprise zones and all that kind of stuff, as well as carbon emissions; the list is very considerable.

In all these areas, Article 10, if construed in accordance with what it



seems to say, would leave us very much in the situation of an unlevel playing field, unless it is bypassed completely. As I said in the House on 4 June and in subsequent debates, this is really a system where we are completely and totally outflanked by the European Union and have been for many decades. Against that background, Minister, I trust that you will, as you have indicated, construe this as a matter of sovereignty and stick very strongly to the line that is taken in the United Kingdom Internal Market Bill.

Penny Mordaunt: Yes. The reason why certain aspects of that Bill are in place is because we concur with many of the things the Committee has said. Again, just to reiterate, this is not just about what is understood and set in place at the end of the transition period. It is about safeguarding and being alive to the fact that things might happen; years from now the ECJ might take a particular view that could, unless we are alive to that fact, potentially open up problems for us wanting to run our own economic policy. I can reassure the Committee that the points that you have raised are well understood and that we share your objectives in ensuring that we have the freedoms that we wish to be able to support every part of the United Kingdom.

Q21 **Andrea Jenkyns:** We have been told that the UK Internal Markets Bill will provide a safety net in the case of the EU state aid rules that apply to the UK by virtue of the protocol. In such a situation, we would follow WTO state aid rules, but it has been said that we should devise a new UK state aid regime that would offer greater benefits to the UK than the WTO rules. Are WTO rules insufficient regarding state aid provision? If so, do the Government intend to publish a modified regime?

Penny Mordaunt: There are several things there. First of all, I would again just reiterate that the UK Internal Markets Bill deals with some aspects of ensuring that we are sovereignty-compliant, as I would term it. We have already said what our arrangements would be on reaching the end of the transition period. Again, some of these issues will be tied into negotiations, but we have already set out to the EU what our position would be, and we have done for some time.

Q22 **Mr Jones:** The Northern Ireland protocol includes a mechanism for applying newly adopted EU Acts to Northern Ireland if they are within the scope of the protocol; in other words, it is a dynamic alignment. How do you envisage that this will operate in practice?

Brendan Threlfall: There are probably two different mechanisms in the protocol that are worth touching on. Where there are updates to some of the EU legislation that is listed in the annexes, there is an alignment mechanism, and we have envisaged the governance arrangements in the protocol. There is a consultative working group. The Specialised Committee and the Joint Committee would pick up and discuss those issues. Importantly from our perspective, there is another mechanism where the EU seeks to add new legislative provisions to the list in the annexes. At that point, the EU has to present that proposal to the UK and



the Joint Committee, and the UK has to decide whether to agree to it or not. That is a clear decision for the UK, and in that context there would be a future parliamentary scrutiny role with respect to those decisions. There are two different mechanisms in the protocol.

Penny Mordaunt: It is still to be decided on, but there are several areas which Parliament and particularly your Committee would want to have scrutiny of, this being one example. There is the Joint Consultative Working Group under the Withdrawal Agreement Joint Committee and the Northern Ireland protocol. There are certain key areas where we need to develop mechanisms where the European Scrutiny Committee and Parliament more widely can scrutinise these things going forward. Quite what they are and the shape of them is still to be determined and will not be settled until negotiations are concluded. It is very much appreciated by the Cabinet Office and elsewhere that we need to create these mechanisms to ensure proper scrutiny.

Q23 **Mr Jones:** As I understand it, the Joint Consultative Working Group has not met yet. Is that right?

Penny Mordaunt: Yes. This is something that would be at the end of the of the transition period, and although the Withdrawal Agreement Joint Committee stays in existence for as long as it is needed—as long as the withdrawal agreement and the Northern Ireland protocol are in effect—its meetings would be infrequent and the Joint Consultative Working Group would meet on a monthly basis. That is something that is there for the future.

Q24 **Mr Jones:** Could you explain in a little more detail how you anticipate the law-making process would work in practice? At what stage would you expect the European Union to tell the UK of any plan and EU Act that it considered might be within the scope of the protocol? What would be your strategy for monitoring and influencing the development of those acts?

Penny Mordaunt: Again, these are difficult questions to answer in substantial detail because they are still live issues in the negotiations, but I can reassure the Committee that it is very clear that there needs to be a clear process that has transparency and ensures that not just Government but those there to scrutinise it are fully aware of the implications of such an intervention.

Q25 **Mr Jones:** That process has not yet been developed; is that right?

Penny Mordaunt: That is correct. It is part of, and will need to be led by, the conclusions of the negotiations.

Q26 **Mr Jones:** It is possibly the case that, if that process ever did come into operation, the United Kingdom would not necessarily agree with certain EU Acts applying to Northern Ireland. That is right, is it not?

Penny Mordaunt: Yes, that is possible.



Q27 **Mr Jones:** If there were a continuing disagreement, is it right that the European Court of Justice would be the final arbiter of any dispute?

Penny Mordaunt: The short answer to that is no.

Brendan Threlfall: If it is a new Act that is being added to the annexes, there is a clear Joint Committee process for that. The UK has to decide whether to agree or not on the Act being added to the annexes. If the UK decides not to agree, which is the scenario that you raise, there is a period of time for consultation to see if there is an agreed way forward; if not, the EU is able to take proportionate rebalancing measures; that is the way it is described in the protocol. There is no mechanism for the UK to be forced to accept the new Act to be added to the annexes.

The existing list of regulations is always subject en masse, if you like, to the democratic consent of the Assembly. That will be governed by the unilateral declaration the UK made alongside the protocol, and the procedure for that is set out.

Q28 **Mr Jones:** That rebalancing process that you mention could therefore result in an outcome that might be inimical to Northern Ireland and the wider United Kingdom. Is that right?

Brendan Threlfall: Rebalancing measures from the EU could only be within their competence. There would be no ability to force the UK to accept any additional obligations on the protocol, so it would just be measures that the EU could take, applying it within the European Union, not within Northern Ireland.

Q29 **Mr Jones:** Paymaster General, you indicated that you understood that there would be a need for this Committee and possibly other Committees of Parliament to scrutinise and report on any proposal to add new EU Acts to the protocol before the Joint Committee came to a decision. How would you anticipate that that would operate in practice? Has that been given consideration, and at what stage of consideration are you at the moment?

Penny Mordaunt: Clearly, as things have developed a great deal of consideration has been given to what the opportunities are for scrutiny in the future. These mechanisms clearly need to be developed with you, as the Committee, and Parliament more widely. It is you who are holding the Government to account. What I would say is that, once certain matters are settled and once we are further on, hopefully imminently, in the negotiations, we will be able to have a clear view of what those opportunities are. I have mentioned a couple in my evidence session, and clearly the Committee has a well-established process of being able to horizon-scan and call in the things that it is particularly interested in and focused on. There would be a mix of formal processes and formal scrutiny as part of any process going forward, but if the Committee wished to do a deep-dive or look at particular implications of something that was not a formal part of legislation or a formal process or part of the agenda of one



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of these Committees, it still could do that. That needs to be developed in partnership with Parliament and its committees.

Q30 **Mr Jones:** When do you anticipate being in a position to put those proposals to the Committee for our consideration?

Penny Mordaunt: There should be some discussions before the proposals are drawn up. We need to wait until the conclusion of the negotiations. A lot of questions about the shape of things to come will be at the point those negotiations are concluded. I know CDL has been very focused on these matters; he has been very responsive to suggestions and changes to our practices that the Committee has suggested. I know it is frustrating for the Committee because of the complexity of the situation and the fact that it is not just Cabinet Office; it is every Government Department. Scrutiny has been very difficult, and that is why I welcome CDL wanting to ensure that your clerks are kept fully briefed about what is happening. This does need to be developed in discussion with you and with Parliament.

Q31 **Anne Marie Morris:** In a way, as has been alluded to, we are well aware from our own experience of EU document scrutiny that the Government do not consistently consider how not only existing but proposed EU laws or policy initiatives may have impact on the UK after transition, or in Northern Ireland under the protocol. We are looking very much at the future and the ability to influence, which is something that this Committee on its own cannot do, because it will not necessarily have that information. What assurances can you give that the Government themselves will have appropriate arrangements in place to monitor and influence developments of EU law and policy that may be relevant to part or all of the UK, so that we have the opportunity to influence what might happen, rather than simply being left with a done deal that we are then having to unpick?

Penny Mordaunt: I would say three things and then ask my colleague if he has anything else to add. The first thing is that we have got more sophisticated in the Cabinet Office about understanding the implications of one course of action or another, whether it is a formal and highly transparent political decision or whether it is some decisions that are taken at a very technical level, at official level, understanding the interdependencies between our negotiations and our work on that track, alongside our ambitions and our negotiations on rest-of-world trade. The first thing is that we are getting better at anticipating what those consequences are in other areas of Government but also potential consequences further down the track.

The second thing I would say—I know that there has been some correspondence between CDL and the Committee on this—is that we are strengthening the amount of information that is coming from other Government Departments to Parliament, and particularly the Committee. There was a recognition that some Departments have not been as on the front foot as they should have been. We have put in place mechanisms to



ensure that that is the case and that they are thinking about these issues.

The final thing I would say is that, even though I cannot set out all of our position on the negotiations and other aspects, it is very well understood that when we conclude this, we want to be in a position of certainty and guarding against creep in whatever form it may arise, whether it is decisions that the European Court of Justice might take, private cases that are brought or questions around what our financial liabilities might be. We are very aware of these issues, issues that many of the members of the Committee have raised, and will ensure that we have an outcome that is compliant with sovereignty and those ambitions.

At this stage I can just put on record our recognition of that. What a good outcome looks like is that we are putting ourselves in the best position possible and that we will not have future decisions, whether they be judicial ones or political ones, taken by other nations, the EU or anyone else, that will undermine the sovereignty that we have reclaimed.

Q32 **Greg Smith:** Good afternoon, Paymaster General. I appreciate some of the points in this question may have come up in part in previous answers but I very much want to look at future scrutiny beyond transition scrutiny, and the thoughts that the Government have given to what that framework of scrutiny will look like for the United Kingdom Parliament and the devolved Assemblies and Parliaments, not just on incoming, new EU law, which we have already touched upon—although that is obviously important, and its effect under the Northern Ireland protocol is probably the most visible area where that is important—but also on things like international standard-setting bodies, bodies that the European Union has had quite a big say in, partially due to its size over the years, which will affect operations of businesses, particularly within the United Kingdom. Where is the Government's thinking on that future scrutiny model across the board?

Penny Mordaunt: I would refer to what I have previously said. We will not know the precise shape of this for a little while, but we need to really understand what is best scrutinised and which Government Departments are best placed on taking the lead on particular things. We will clearly have a seat around the tables that we have vacated years ago, and that opens up other areas that Parliament needs to scrutinise. Some of those areas might be better being scrutinised in the first instance by Defra or other subject-matter-specific committees. Others might be more appropriate for this Committee or a future shape of it, but that is all to be decided.

It is not for Government to have the final say on this. We can clearly point to what it is that needs to be scrutinised, and timetables and so forth, but it is really in partnership with the Committee and Parliament that we need to arrive at that. There will clearly be additional areas that need scrutiny; that is well understood. We are also aware that there is a timeframe in terms of setting up those new scrutiny procedures with



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Parliament, but hopefully it will not be too long before we will have the final shape of things that will enable those discussions.

Chair: I will just conclude by saying thank you very much for coming and speaking to us, and also to Mr Threlfall. I am very glad to hear that you are very well aware of the points that we have raised, because these matters are in line with paragraph 5 of the February White Paper, which says that, "whatever happens", there will be no European Court and, for that matter, there will be no interference in our political decision-making or life.

Ultimately, all this depends on full independence, as Lord Frost has said, and also the question of the European Court. The issues that we are raising about control over laws and insisting that we should have no European Court jurisdiction and no European control over our laws are intrinsic parts of our sovereignty in line with the Acts of Parliament that have already been passed. Any idea that any of the things that we have raised are absurd, as one former law lord said the other day, seems to me to be pretty preposterous. Having said that, I hope that you manage to achieve everything that you have said you will achieve, because the British people expect no less. Thank you very much indeed for coming.