Select Committee on the Constitution

Corrected oral evidence: Parliament’s role in relation to the terms of Brexit

Wednesday 18 April 2018

10.30 am

Watch the meeting

Members present: Baroness Taylor of Bolton (The Chairman); Lord Beith; Baroness Corston; Baroness Drake; Lord Dunlop; Lord Hunt of Wirral; Lord Judge; Lord McGregor of Pulham Market; Lord Morgan; Lord Norton of Louth; Lord Pannick.

Evidence Session No. 1 Heard in Public Questions 1 - 11

Witnesses

I: Steve Baker MP, Parliamentary Under-Secretary of State, Department for Exiting the European Union; Suella Braverman MP, Parliamentary Under-Secretary of State, Department for Exiting the European Union.
Examination of witnesses

Steve Baker MP and Suella Braverman MP.

Q1 **The Chairman:** Welcome to you both for your returning and first visits. As you know, we have spent a lot of time discussing the European Union (Withdrawal) Bill and moving wider to think of the longer term. One of the things we would like to talk about this morning is the idea of a meaningful vote for Parliament, perhaps not at the end of this process but later in this process. We would like a bit more clarification about how you see that vote happening and the status of that vote. Will it be take it or leave it? How far will Parliament be involved? We would like broader information about that to start with.

**Steve Baker:** Thank you for the opportunity to appear before you and for your previous scrutiny of our work, which is much appreciated. As you know, the Government take seriously Parliament’s role in scrutinising what we are doing with the EU exit, which we believe puts a tight constraint on Ministers and improves the quality of legislation. We believe it is our responsibility as a Government to provide ample opportunity for scrutinising the approach that we are taking to the EU negotiation and to implementing the EU exit legislation.

We set out our approach in the Written Ministerial Statement, which we laid before Parliament on 13 December. That commits us to holding a vote on the final deal. We have said that this vote will take the form of a resolution of both Houses of Parliament and will cover both the withdrawal agreement and the terms for our future relationship. That reflects Article 50, which requires that the withdrawal agreement is negotiated in the context of the future relationship. It is not possible to say exactly when that vote will be held, but we expect to bring it forward as soon as possible after we have reached an agreement. Both sides are agreed that we should achieve that by October.

We have also said that we intend that that vote should take place before the European Parliament has a vote, and of course we know that Parliament will need time to scrutinise the content of the withdrawal agreement and the terms of our future relationship.

We think the country will require that Parliament gives a decisive verdict on the deal that we have reached. We will then bring forward the withdrawal agreement and implementation Bill, provided that both Houses have approved in their resolution the way we intend to proceed, and each treaty will then go through a CRaG process at the appropriate moment.

Finally, we are doing everything we can to provide for continuing scrutiny through this process, including regular statements. DEExEU Ministers have given evidence to a broad range of Committees on 30 occasions, have made 77 Written Statements to both Houses and will continue to put material into the public domain, whether it is through ministerial...
speeches, position papers, White Papers, publication of papers from the negotiations themselves and even publication of draft texts.

You asked me a fairly wide-ranging question, and I hope that is a good introduction.

The Chairman: It means that the vote taken when the Government has completed everything will be a fait accompli. And the only alternative to Parliament accepting what the Government has done will be—?

Steve Baker: We have made it clear that once we have reached an agreement with the European Union we will ask Parliament to accept the agreement or to move forward without an agreement. We believe that we will reach both a withdrawal agreement and a future relationship agreement with the European Union which both Houses of Parliament will want to support.

Lord Judge: You have said that both Houses will approve it. What happens if the House of Commons approves it but this House does not?

Steve Baker: As you know, we have put down that it would be a resolution in both Houses, but at the moment our working assumption is that we would be surprised if the House of Lords chose to frustrate the decision of the elected House of Commons on this issue.

Lord Judge: Just assuming for the moment that you are surprised, what will happen constitutionally? What is envisaged if—and it certainly could happen—one House said yes and the other said no?

Steve Baker: You raise a very good point. As I say, at the moment the Government’s expectation is that we will put before both Houses an agreement that we believe both Houses will feel able to support. The Government will be very interested to see what conclusions your Lordships reach on such a scenario.

Lord Judge: I am sorry. Could you posit the possibility that one House said yes and one House said no? What is the strength then of the Government’s position in relation to a meaningful vote by resolution?

Steve Baker: If we were to reach such a position, there would be a considerable flurry of conversation through the usual channels and between both Houses and we would find ourselves in rather an interesting and uncharted position.

I would observe that in the CRaG procedures if a resolution rejects the ratification of the treaty and if Ministers lay a Statement to explain why it should proceed, if the House of Lords objects again the Government can proceed and ratify. If the House of Commons objects, we would end up indefinitely postponing the ratification of the treaty under CRaG. That indicates a constitutional convention whereby the elected House is more powerful in its ability to affect what the Government do.

Lord Judge: That is exactly what I was driving at. Ultimately, the House
of Commons has to win, does it not?

**Steve Baker:** Ultimately, the House of Commons has to win. Your Lordships’ House generally seeks to respect the convention that the House of Commons has primacy.

Q2 **Lord Hunt of Wirral:** Turning to timing, it would be very helpful to probe how you envisage Parliament’s scrutiny of the withdrawal agreement and the political declaration on the framework of the future relationship. How long do you expect parliamentarians and committees will have to examine the agreement and the political declaration for before the meaningful vote is held? What is the minimum time that would be acceptable for parliamentary scrutiny, in your view?

**Steve Baker:** We will bring forward the vote as soon as possible after we have reached an agreement, and we will bring forward the withdrawal agreement and implementation Bill as soon as possible after Parliament has approved the position we have reached. We are committed to Parliament having sufficient time for scrutiny, but the exact amount of time will be agreed in the usual way and it would be dangerous for me to pre-empt the usual conversations about the amount of time allocated. We are all alive to the reality that both Houses will want to scrutinise these agreements in detail.

The withdrawal agreement draft text is already available. The text in green is already locked down as far as the negotiators are concerned. That is a very large proportion of the withdrawal agreement, and that will change only in the event that technical amendment proves necessary. It is not as though scrutiny will begin only in October; scrutiny is possible on very large sections of the withdrawal agreement immediately.

**Lord Hunt of Wirral:** That is really helpful, but the key question is how final the text of the withdrawal agreement will be when Parliament has that meaningful vote.

**Steve Baker:** The withdrawal agreement text will be the final legal text that we have agreed.

**The Chairman:** Will the Motion that is put to the House be amendable?

**Steve Baker:** I believe the position is that Parliament can always seek to amend Motions, but the Government’s position is that we will ask Parliament through a resolution of each House to accept the withdrawal agreement and the Statement on the future relationship as it is presented.

**The Chairman:** What would happen if there was an amendment and the amendment was carried?

**Steve Baker:** We would have to see exactly what those amendments were at the time. At the risk of boring the Committee, it is our policy to ask Parliament to resolve, accept or reject the withdrawal agreement in the context of the Statement on the future relationship at the time. While
I recognise that Parliament can seek to amend these things, we all need to ask Parliament to proceed within the context of the negotiations and within the framework of the time available, and to work constructively in the national interest.

**Lord Morgan:** What is meant exactly by EU approval? I understand that it would have to be approved by 27 other countries, which would take a certain amount of time and compress Parliament's opportunity to say anything.

**Steve Baker:** Our vote will come before the European Parliament’s vote. There is a translation process, which means that there is some delay. Article 50 requires that the Council concludes the agreement after consulting the Parliament. They will go through their procedures, and while they are doing that, and assuming that the resolutions have been passed, we will be working through primary legislation to implement the agreement and following our own domestic procedures.

**Lord Morgan:** Do your calculations take account at all that there might be a delay? I am thinking, for example, of a country like Hungary, which might have particular views on the agreement.

**Steve Baker:** We can foresee many circumstances where different parliaments will have views. In the usual way, political parties might have views to express in the European Parliament and in the Council, but we believe that by the time we get to October we will be in a position where the nations of the European Union, the EU 27, are content with the proposed agreement as being in everyone’s interest. For example, we have worked hard to agree the citizens’ rights and financial settlement and I am very proud of our citizens’ rights agreement. It is in the interests of all the nations of Europe that that agreement should be concluded in a proper manner.

**Suella Braverman:** On your point about agreeing the terms of the withdrawal agreement, Michel Barnier has made it very clear that from the European perspective they are working to agree with the UK the totality of the agreement by October of this year. That will be followed, as Minister Baker has said, with EU approval mechanisms. In line with Article 50, that requires the European Parliament to approve it by consent and final sign-off by the Council by qualified majority. It does not require individual member states to go through a domestic ratification process.

**Lord Pannick:** You said that our Parliament will be looking at the final text of the withdrawal agreement when we vote, but that will precede consideration by the European Parliament. It is possible that the European Parliament will kick up difficulties and that may lead to consensual variations in the withdrawal agreement between the EU and the UK. One hopes not, but that is a theoretical possibility, is it not? In which case, will you come back to the Westminster Parliament?

**Steve Baker:** The European Parliament is engaged in the negotiations through Mr Verhofstadt. I believe that the formal requirement is a yes/no
vote in the European Parliament, and I would not expect us to be in a position where the European Parliament has sought to amend the international agreement, which is the withdrawal agreement.

I do not doubt that a considerable range of views will be expressed, but again I would say that the European Union Parliament has been very strong on citizens’ rights in particular. We are proud of the agreement and I very much hope and expect that the European Parliament will agree with us that that agreement should be concluded.

**Lord Beith:** There is a body of opinion across parties and in both Houses of Parliament—I am not asking you to agree with this as it is not the Government’s position—that the consequence, if both Houses of Parliament were dissatisfied with the withdrawal agreement, should not be that we leave without a deal but that there should be reconsideration about whether we should proceed to leave the EU. Some people believe that reconsideration ought to involve going back to the British people.

I am not asking you to agree with that, but what do you think would be the appropriate constitutional and procedural way in which that opinion, which is certainly there, should be reflected in this process?

**Steve Baker:** It is clear to us that that body of opinion exists, and all the matters that you have set out have been debated, but it is for us as a Government to select our policy and put it to Parliament and ask Parliament to agree with us.

If I may refer back to the exchange that Lord Pannick and I had at my last appearance, through the notification of withdrawal Act Parliament has enacted a statute to allow us to leave the European Union within the terms of Article 50, and that does not make provision to reverse our decision. It would be for us whether we held a referendum and so on. Parliament has decided to trigger Article 50 and uphold the result of the referendum.

From my point of view as a Minister, I see a very clear democratic chain. Parliament asked the public to take this important strategic decision for our country, the public voted to leave, we passed a statute triggering Article 50, and now we need to work through that process and negotiate effectively to leave.

I would be very cautious in relation to the point you have made. It would be a considerable constitutional innovation if Parliament were to bind the Government in the conduct of their international negotiations.

**Lord Beith:** It is simple. In the process that we are describing, how does that opinion, which you do not share, legitimately find expression? What is the procedure, given that you intend to present to Parliament a vote that says, “Either you can have the agreement we have negotiated or we leave with no agreement at all”? There is a body of opinion that differs from that. It is a proper means of expression.
Steve Baker: I am aware of the amendments being tabled, but my point is that it would be a considerable innovation if Parliament were to choose to pass statutes that bound the conduct of international negotiations by the Government.

We would also have to ask ourselves if it is in the nation’s interest to send messages to our negotiating partners about who they are negotiating with. It is very important that Parliament gets behind the Government’s policy, in particular having passed the statute to trigger Article 50.

I know you wish to press me to give a specific example of how that expression might be given effect, but it is not for me to encourage parliamentarians to take steps to oppose my own and my Government’s policy. We have a policy. I believe it is the right policy for fulfilment of the democratic mandate and I intend to carry it through.

Lord Beith: They will find ways of expressing their view. Will there be many matters not fully resolved in the withdrawal agreement that will be decided in effect during the transition period—or implementation period, whatever you call it—but will take effect under very general powers in the withdrawal agreement Bill?

Steve Baker: That is not my expectation. By the time we get to October, we should have a nailed down, agreed withdrawal agreement in its final form that everyone is comfortable with and which, once it has been ratified and implemented, is final and will endure.

Quite rightly, there has been a tendency to focus on the implementation element of the Bill—it has been our foremost concern in recent weeks and months—but we do wish the citizens’ rights element in particular to endure indefinitely.

Lord Beith: I come to another point that will otherwise be dealt with later. The process of producing statutory instruments cannot begin until Clause 9 conditions are satisfied. The Clause 9 condition is the passing of the withdrawal agreement Bill, which has to have gone through both Houses. How are you going to manage this? It is a pretty late stage to begin and get through a massive statutory instrument process.

Steve Baker: As the Committee will know, the text of Clause 9 has been amended. It was amended in the House of Commons to require that prior statute. Had it not been amended, I would have envisaged using those Clause 9 powers for relatively minor matters, such as dealing with privileges and immunities, which ought to be a relatively uncontroversial matter, while the withdrawal agreement and implementation Bill was going through Parliament to implement the substantive areas of law.

I am saying that we need to look very carefully at how the Bill emerges from the House of Lords and see where that lands us in relation to Clause 9. The fundamental point is that the withdrawal agreement and implementation Bill is the mechanism for implementing the withdrawal agreement in UK law for which Minister Braverman is responsible.
Lord Beith: Can you do it in time to allow the parliamentary scrutiny that you have agreed with us we ought to have?

Steve Baker: In relation to the withdrawal agreement and the statutory instruments relating to the rest of the EU withdrawal agreement, I have every expectation that we can complete those processes in time, but it is subject to the co-operation and will of Parliament. If Parliament passes certain amendments that frustrate or slow the passage of these measures, the time is always running down and 29 March is the fixed date.

We will need work constructively together to pass the withdrawal agreement and implementation Bill. I hope we would all agree that, if the resolution is passed supporting our trajectory, everyone would work together to implement the agreement.

Q4 Lord Dunlop: Can I come in on that point and ask you about the scope of parliamentary scrutiny of the withdrawal agreement and implementation Bill? As you say, we will have completed complex agreements between the parties and we would have had the meaningful vote. Given that context, what is the scope for substantive amendments to that Bill?

Suella Braverman: Hopefully, as soon as both Houses pass the meaningful vote the Government will present the text of the withdrawal agreement and implementation Bill. That has the purpose, the raison d’être, to implement domestically the withdrawal agreement, which has a different status as an international treaty.

As the Minister said, it is expected that the withdrawal agreement and implementation Bill will be considered and pass through both Houses within the parameters and the context of the meaningful vote, which will have been a very strong and decisive vote of confidence in favour of the withdrawal agreement and all that it covers.

As it goes through the Commons and the Lords, parliamentarians will have their democratic right to scrutinise and debate, but it would be very surprising if there were to be amendments that would be at odds with or would undermine the meaningful vote that had preceded it and which was the trigger for the withdrawal agreement and implementation Bill.

Lord Dunlop: But you do conceive of the possibility that there may be different options for giving effect to that agreement?

Suella Braverman: Of course. It is going to go through the usual, standard process of scrutiny in the House of Commons and the House of Lords.

Q5 Lord Norton of Louth: I have a quick question on a comment made by Mr Baker that I would like to tease out. You mentioned that the withdrawal agreement engages Section 20 of the Constitutional Reform and Governance Act and that the provisions that are engaged have already been identified. You mentioned that it would be used at an
appropriate stage. What do you think that stage is relative to the meaningful vote?

**Steve Baker:** At this point, that is to be determined. What we are committed to goes over and beyond the CRaG process, not least because we envisage a set of treaties to implement this result. I have said before in the House of Commons that we would not expect to ratify the withdrawal agreement before the withdrawal agreement and implementation Bill had finished its passage through the House of Commons. My expectation is that we would commence the CRaG process at some point during the passage of the withdrawal agreement and implementation Bill.

**Suella Braverman:** May I add that the Written Ministerial Statement of 13 December sets out in detail that there is a clear commitment to subject the issue to the CRaG process. The meaningful vote is over and above the usual process that other international treaties are subject to. This reflects the importance that the Government afford to parliamentary endorsement and scrutiny.

**Lord Norton of Louth:** As you say, it is a second vote. Is it superfluous in the sense that it is a second meaningful vote, or is it a second vote when you have already had the meaningful vote?

**Steve Baker:** I would never describe complying with the law as superfluous. This is an unprecedented set of circumstances, and one that I hope one will never be repeated, but we do need to have a vote that reflects the Article 50 process where we asked Parliament to approve the withdrawal agreement in the context of the future relationship and then go through each set of treaties through the usual CRaG process. They should be seen as complementary, and the preceding vote does not diminish the CRaG process.

**Lord Norton of Louth:** If it is complementary, CRaG would follow on, but you already had the meaningful vote that to some extent would constrain the CRaG process.

**Steve Baker:** I think we are on a fairly clear trajectory to implement the referendum result. The set of speeches, and in particular the Prime Minister’s recent speeches, set out the trajectory on which we would like to continue. The Council has made statements that agree that we would like tariff-free trade covering all sectors and including services to deal with potential absurdities relating to flights and to have a security partnership to co-operate on research and innovation. These are the things that President Tusk has recently said.

A landing zone is coming into view. We have withdrawal agreement text of which a considerable majority is in green. A trajectory is emerging, and we need to work together in the national interest to land in that zone. Of course, there will be many disagreements. As Lord Beith has indicated, there is a body of opinion that would prefer to reverse the whole business, but the Government’s policy is to carry through the
referendum result to have a meaningful Brexit and to carry through that
democratic decision. That will require us to comply properly with the law
as we go through, and of course we will.

Lord Pannick: Scrutiny is a jolly good thing, but surely this third process
is superfluous. We are going to have a meaningful vote on the withdrawal
agreement. We are going to have a Bill that will implement in domestic
law that agreement. What is the point, therefore, of a third process—the
CRaG process? You say that there is a legal requirement, but could you
not put a clause into the withdrawal agreement that says that this
particular international agreement does not need to go through a third
process, because Parliament by definition will have approved it twice?

Steve Baker: Before this Committee session, this conversation had
never arisen. We simply have the CRaG process to comply with on each
treaty and that is what we will do. You can speculate on what we could
do, but that is not our intention.

Lord Pannick: Will you consider whether it serves a useful purpose?

Steve Baker: I will read with great interest what your Lordships
recommend in your report.

Baroness Corston: If we may turn now to the withdrawal agreement
and the implementation Bill, the Government said that the legislation
would be introduced before the UK exits the EU and that the substantive
provisions will only take effect on the moment of exit.

How much time do the Government anticipate will elapse between the
meaningful vote and the introduction of the legislation to give effect to
the withdrawal agreement?

Suella Braverman: If Parliament supports the resolution to proceed with
the withdrawal agreement in the form of the meaningful vote, which also
includes the terms of our future economic partnership, the Government
will bring forward the withdrawal agreement and implementation Bill to
give the withdrawal agreement domestic legal effect.

Our intention is to do that as soon as possible. I cannot give you a fixed
number of days or hours or weeks, but it will be very shortly afterwards.
Assuming the meaningful vote is passed positively, that will be the trigger
for the withdrawal agreement and implementation Bill to start its journey
through Parliament.

Baroness Corston: There is no anticipation of any kind of interim.

Suella Braverman: No interim process is envisaged. We have 29 March
by which to secure the passage of the withdrawal agreement and
implementation Bill, and as soon as possible after the meaningful vote,
assuming it is approved by Parliament, the withdrawal agreement and
implementation Bill will be presented to Parliament.

Baroness Drake: What happens if the withdrawal agreement and
implementation Bill is not passed before 29 March 2019? I know you have
every intention that it will, but life can be unpredictable. What happens to the legal status of the transition arrangements in the citizens’ rights in that case?

**Suella Braverman:** We are working to a schedule whereby in October we have the meaningful vote, following agreement at the European Council between the EU and the UK on the issue, and that will start the process. On that assumption, we will have sufficient time for the proper passage and consideration of the Bill. We are working within that timeline and are very confident that it will be achieved.

**Baroness Drake:** Do you have any contingency if it is not? Do you know what the status of the transition arrangements would be in that case?

**Suella Braverman:** The withdrawal agreement and implementation Bill is essential in its purpose. It will enshrine and give a statutory footing to issues pertaining to citizens’ rights, as you referred to, to the implementation period and to the financial settlement, among other issues. Therefore, it is a prerequisite for those issues to have that statutory footing after exiting.

**Q7**

**Baroness Drake:** The Motion that the Government are going to put will embrace both the withdrawal agreement and the framework for the future relationship, and you have drawn our attention to the wording of Article 50. What if Parliament wants to assert its right to consider those issues separately?

**Suella Braverman:** The meaningful vote will be on the withdrawal agreement covering all those issues, including citizens’ rights, implementation period and financial settlement, among others. We have reached agreement on a large part of it. It will also cover the framework for the future economic partnership as referred to in the text of Article 50.

The legal text of the agreement between the EU and the UK on the future economic partnership will not be the subject of that meaningful vote nor will it be the subject of the withdrawal agreement and implementation Bill. That will come afterwards. The meaningful vote and the withdrawal agreement and implementation Bill will consider the legalities and the detail of the withdrawal agreement in its treaty form.

**Baroness Drake:** What if your timetable or your consensus was if not challenged then upset by the fact that people became very engaged with the future relationship element of the vote and wanted to separate it out from the withdrawal agreement?

**Suella Braverman:** As is happening now, we have had significant political agreement on the withdrawal agreement, and what has followed is agreement on the detail and the letter of the text. Our future economic partnership will get political level agreement and hopefully a meaningful vote supporting it.
What will follow is negotiating teams thrashing out and agreeing the detail of the text of that treaty, and that will go through a similar process. That will happen only after exit day, because under the treaties the EU cannot sign or ratify an agreement with the UK until we are a third country.

**The Chairman:** On the withdrawal agreement and implementation Bill, will there be a full impact assessment and analysis? Presumably there will be explanatory memoranda and other material produced at the same time. How comprehensive will that information be?

**Suella Braverman:** As is usual, accompanying the withdrawal agreement and implementation Bill will be the appropriate impact assessment as well as other explanatory documents, including Explanatory Notes that set out the consequence and the practical application.

There will also be an opportunity for delegated powers memoranda, if appropriate, setting out how those issues may be relevant or live. There will be explanations and contextual provision of information supporting the Bill.

**The Chairman:** Will that be comprehensive, because we are talking about a very wide range of areas?

**Suella Braverman:** Yes. We want to ensure that Parliament is fully informed and apprised of the information and the impact.

**Q8 Lord Morgan:** Does the withdrawal agreement and implementation Bill need the consent of the Scottish and Welsh legislature?

**Suella Braverman:** If appropriate, we will be seeking the legislative consent of the devolved Administrations. We respect the terms of the Sewel convention, and, if applicable, that convention will be adhered to.

**Lord Morgan:** It looks now as though particularly the Scottish legislature will find some difficulty in accepting fundamental aspects of the provisions with regard to devolution.

**Suella Braverman:** With regard to the withdrawal agreement and implementation Bill, that is very difficult to see at the moment, because the text of that Bill has not been prepared. It is contingent on the agreed and final content of the withdrawal agreement. If appropriate and relevant, legislative consent will be sought.

**Lord Morgan:** What attitude do the Government take to the emergency legislation passed by the Scottish legislature and visualised by the Welsh one? Will they be treated as if they are of no account? They have agreed to pass emergency legislation that they will continue irrespective of the terms; their internal arrangements will continue.

**Suella Braverman:** As we know, there is legal challenge to some of the legislation that has been put forward by the Scottish Administration. I
cannot comment on the legal challenge there, but there is considerable engagement with the devolved Administrations. The Joint Ministerial Committee ensures that dialogue is effective and robust, and we want to ensure adherence to the Sewel convention that ensures that if there are devolved matters they will not be legislated for without the consent of the devolved Parliaments.

Lord Dunlop: On the devolved aspects, Mr Baker showed the draft text, a lot of it in green. Has the department assessed the extent to which the text of the agreement as it currently stands impinges on devolved competence?

Suella Braverman: It is still a moveable feast, because it is all still subject to negotiation and has not been finalised. Large sections are marked green, indicating agreement, but we do not have the whole document agreed. Only when we have a whole document agreed and we have the full context will that work be done.

The Chairman: Will that not compress the timescale for any discussion?

Suella Braverman: The issue here is that this is an ongoing negotiation and I would not want to pre-empt the outcome of these negotiations. Once the withdrawal agreement is finalised and we have 100 per cent confidence that it is agreed by both parties, we will then be on the safest possible ground to start the work pertaining to what the domestic legislation will look like. There are teams looking at the exploratory levels of that work, but it will continue into much more detail once that text is agreed. I think that is the most appropriate way to proceed.

Lord Judge: To return to the European Union (Withdrawal) Bill provisions and in particular Clause 9, the current government amendment says that the Henry VIII powers may not be used until a statute has approved the final terms of withdrawal. If you get the powers under Clause 9 of the current Bill, we are going to wait for a meaningful vote by both Houses, which hopefully will say we agree. Then we are waiting for a withdrawal agreement and implementation Bill which has not yet been drafted and which certainly has not been voted on. When that is enacted, these powers will be available to be used. What is the constitutional justification for having a Henry VIII power in this Bill in those circumstances?

Steve Baker: This was a matter of controversy in the House of Commons, as you know. We argued strongly that we should continue to have those Clause 9 powers available without a preceding statute for some of the reasons you have articulated, particularly the time available. The House of Commons took another view, and we respected the decision of the House of Commons by putting the Bill to your Lordships in the position it is in.

I understand your point, but once we have voted on the withdrawal agreement, the withdrawal agreement and implementation Bill will be the statutory implementation of the withdrawal agreement. Although at this
stage we cannot say how we would meet that condition if we were to attempt to use the Clause 9 powers, we would have to meet the statutory requirement, and it might be the withdrawal agreement and implementation Bill that met it, but at this point it is too early to say. If the point you are driving at is the time available, the point is well made.

**Lord Judge:** No, my point is the constitutionality of an extraordinary power to the Government Minister to do virtually anything he likes.

**Steve Baker:** We are in a position where the withdrawal agreement, and indeed the implementation period, which is part of it, will be implemented through the withdrawal agreement and implementation Bill. Therefore, it will be primary legislation that overwhelmingly implements this agreement and the Clause 9 power is clear it is not available to the Government without a preceding statute.

**Lord Judge:** Why can a Clause 9 power, if it is ever justified—that is a separate point, but let us assume for the moment that it is justified in this particular context—not be postponed and form part of the withdrawal agreement and implementation Bill? Why do you need it?

**Steve Baker:** For the reason I gave earlier in the session. Our original intention was that we would be able to get on with some of the less controversial matters while the withdrawal agreement and implementation Bill went through the usual procedure. At this point, the position is that we respect the will of the House of Commons. The House of Commons decided to amend the clause but leave it in the Bill, and that is why the Government have presented it your Lordships in that condition.

**Lord Judge:** The House of Commons narrowed what the Government wanted, but it still leaves a very broad Henry VIII power. Why do you need it at this stage in this Bill?

**Steve Baker:** I am sorry. I do not wish to frustrate you by going round in circles.

**Lord Judge:** If we are going round in circles, I am part of the circle, but I would like us to stop.

**Steve Baker:** Indeed. The point is that the House of Commons would not have welcomed the Government omitting Clause 9, following the degree of controversy over it. The House of Commons chose to amend it and require a statute. That was positioned by the advocates of that amendment in a particular way, and the Government have judged that the House of Commons would not have welcomed us omitting Clause 9, so it is still in the Bill.

I hope you will forgive me if I do not go much beyond that. It is a matter of the politics of the House of Commons in this amendment.

**Lord Judge:** Constitutionally, what is the justification?
**Steve Baker:** Constitutionally, we are in a position now where we should make sure that the withdrawal agreement and implementation Bill is categorically seen as the primary means by which we implement the withdrawal agreement. We will ensure that Parliament has the usual mechanisms through primary legislation to give complete scrutiny to those powers.

**Q10 Lord Pannick:** Could I ask your views on whether the relationship between the current Bill, the EU withdrawal Bill when enacted, and the withdrawal and implementation Bill when enacted before 29 March next year, is actually more complex than Lord Judge was suggesting? It raises concerns not just about Clause 9 of the withdrawal Bill but generally.

I suggest that the reason for that is that when the withdrawal and implementation Act receives Royal Assent, it will be retained EU law under the current Bill, the European Union (Withdrawal) Bill. The reason for that is that Clause 2 of the Bill that we are now debating defines EU derived domestic legislation very broadly. It includes any Act relating to the EU under Clause 2(2)(d).

It seems that there is a strong argument that the Act that will be approved before 29 March will be retained EU law, and the importance of that, if that is right, is that it means all the delegated powers under the current Bill can be used in relation to the Bill that is approved before 29 March. That means that Ministers not only have enormous powers under Clause 9 but have all the other powers to amend what Parliament approves. Is that right, and is it a matter of concern?

**Steve Baker:** I am grateful that you have raised this issue. There was some confusion in where we were going with this. To be clear, you are referring to the withdrawal agreement and implementation Act?

**Lord Pannick:** Yes.

**Steve Baker:** The withdrawal agreement will be an international treaty. You raise an interesting point about the EU withdrawal Bill, and I will need to reflect carefully on what you have said.

**Lord Pannick:** One way of dealing with it is that when you bring forward the Bill before 29 March 2019 you make absolutely clear in it that it is not categorised as retained EU law. It does not fall within Section 2 of what will by then be the EU withdrawal Act.

**Steve Baker:** I should probably let my colleague comment on that.

**Suella Braverman:** There will be some interactions between these two pieces of legislation. You make an interesting suggestion, which will be considered.

**Lord Pannick:** I just ask you to consider it.

**Lord Beith:** The withdrawal Bill is to be seen as no more and no less than a snapshot of EU law transferred into UK domestic law. That is not
what this would be if Clause 2(2)(d) were to have the effect that Lord Pannick describes.

**Steve Baker:** I am very grateful that you have clarified this point of relevance to both pieces of legislation, and I undertake to think carefully about it. If we need to ask your Lordships particular questions to clarify the line of inquiry, we will contact you.

**The Chairman:** We try to be constructive.

**Steve Baker:** Of course, and it is most appreciated.

Q11 **The Chairman:** Can I go back to what you said on the meaningful vote? You said that you did not anticipate any amendments, although it is technically possible for somebody to try to amend the Motion that the Government put forward because it is a take it or leave it agreement. What would the possibility be of someone putting forward an amendment for example to accept the withdrawal agreement that you are putting forward but subject to a second referendum? What would happen in that case?

**Steve Baker:** That would be extremely controversial. On this point about a second referendum, the public have made a democratic decision and would overwhelmingly expect us to carry that decision through. The polling shows that people expect us to deliver on that result and not go back and ask again. It is important that Parliament is seen to respect that democratic decision.

This is a political point rather than a constitutional one. We need to show the millions of people in this country, whichever way they voted, that when they vote that vote has meaning. If constitutions have any purpose at all in a democratic society, surely it is to make absolutely plain and sure that power rests on the consent of the governed. The governed have given a view that we should leave the European Union, and that is the policy of the Government: that we will leave and there will not be attempts to stay in by the back door; or attempts to reverse the result, which is that we should leave the European Union.

My appeal to parliamentarians is not to frustrate that process, particularly the parliamentarians in a clear majority who supported the European Union (Notification of Withdrawal) Bill. Having sought to notify that we would leave, it is now incumbent on parliamentarians to support a smooth process of leaving in the national interest.

**The Chairman:** I was not advocating it. I was asking a technical question. What would happen if such an amendment were to be carried?

**Steve Baker:** If such an amendment were to be carried, we would have to look carefully at it. The range of possible amendments is within the bounds of the imagination of all Members of Parliament, but the Government propose to ask Parliament to consider resolving to approve the withdrawal agreement and the Statement on the future relationship together as a package, because that is consistent with Article 50. If
Members bring forward amendments, we will have to look at them carefully at the time to make our case that they ought not to be carried. Were they to be carried, we would have to assess them at the time.

**The Chairman:** Are there any other points that anyone would like to follow up on at this stage? No. In that case, thank you both very much for your time.