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Lord Boswell of Aynho
Chair, European Union Committee
House of Lords
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Dear Lord Boswell,

Thank you for your letter of 4 May following my evidence session before the Lords EU Committee. I have responded to each of your questions in turn. I hope these responses provide the Committee with the clarity that you are seeking.

1. In our letter of 21 March, we asked you if paragraph 49 of the December Joint Report meant that the UK as a whole, or just Northern Ireland, would maintain full alignment. Your reply of 19 April quoted the words of the December Joint Report, that “the UK will maintain full alignment”. Does this mean that the full alignment referred to in the Joint Report would apply to the UK as a whole?

The Joint Report makes clear that in the absence of agreed solutions, we will ensure no new regulatory barriers develop between Northern Ireland and Great Britain, unless distinct arrangements are agreed by the Northern Ireland Executive and Assembly. In all circumstances, the United Kingdom will continue to ensure the same unfettered access for Northern Ireland's businesses to the whole of the United Kingdom internal market.

2. A Norwegian parliamentarian recently told us that Brexit would turn the UK from an EU member into a lobbyist. Is that a fair assessment? What thought have you given to the mechanisms and resources necessary to ensure continued UK engagement with and influence over the EU post-Brexit?

From 30 March 2019, the UK will no longer be a Member State of the EU. The UK will no longer sit at the European Council table or in the Council of Ministers, and we will no longer have Members of the European Parliament. However, as set out in the agreement endorsed by the March European Council, common rules will remain in place for the time-limited implementation period and the UK may continue to participate in EU bodies where the presence of the UK is necessary and is in the interests of the European Union, or where the discussion concerns acts addressed to the UK and its citizens.

No decisions have yet been made on our future relationship with the EU's bodies after the implementation period. The Government is considering very carefully a range of options. Where there is a demonstrable national interest in pursuing a continued relationship with an EU body, the Government will carefully examine whether we should pursue this.

This will be a matter for negotiations. The UK Parliament may also wish to consider options for continued engagement with the European Parliament through the creation of an inter-parliamentary committee. The Government will look carefully at any detailed proposals put forward by members of either House.

3. What is the basis of the UK Government's agreement with the Welsh Government regarding returning powers from Brussels, devolved competences and UK frameworks? How can the continuing impasse with the Scottish Parliament be resolved? Regardless of its outcome, what are the ramifications of the Government's legal challenge to the EU Continuity Bills passed by the Scottish Parliament and National Assembly for Wales?

Together, the UK and Welsh governments have reached an agreement on changes to Clause 11 of the EU (Withdrawal) Bill, covering the management of otherwise devolved powers returning to the UK from Brussels after EU exit. This agreement has been possible because of the progress we have made on the 153 policy areas that we have identified currently operate under an EU framework across the UK.

The UK Government tabled amendments in the House of Lords which were passed on 2 May to give effect to this agreement, building on the suggestions put forward in the constructive Lords Committee Stage debate on Clause 11 last month. It means that after we leave the EU, power will sit closer to the people of Wales, Scotland and Northern Ireland than ever before and there will be a significant increase in the decision-making powers of the devolved administrations.

Under the agreement reached with the Welsh Government, they will introduce and recommend that the National Assembly for Wales support a Legislative Consent Motion (LCM) for the EU (Withdrawal) Bill.

As part of the implementation of the agreement, the UK Government and Welsh Government have agreed to seek to withdraw the reference to the Supreme Court of the 'Law Derived from European Union (Wales) Bill', known as the Continuity Bill. We have also agreed with the Welsh Government that steps will be initiated to secure the repeal of the Continuity Bill. This is all without prejudice to the UK government's position on the National Assembly's competence to pass that Bill.

We are disappointed that the Scottish Government has at this stage declined to join this agreement between the Welsh and UK governments. The UK Government remains hopeful that the Scottish Government will join the agreement, which builds on extensive work between the UK, Scottish, and Welsh governments over recent months and reflects considerable and constructive joint policy development.

Irrespective of our ongoing discussions, the UK Government will honour the commitments it has made towards the Scottish Government in these documents, including seeking their agreement before maintaining a temporary framework.

As was explored during the debate at Lords Committee and Report stage, it cannot be right that one part of the UK holds a veto that impacts on the rest of the UK.

The Attorney General has been clear that if the Scottish Government were to reach agreement on Clause 11 of the EU (Withdrawal) Bill, and an LCM was passed in the Scottish Parliament, the UK Government would seek to withdraw its reference to the Supreme Court. This would be on the understanding that the Continuity Bill would be repealed.

4. The Prime Minister has stated that the draft agreement “correctly applies to Gibraltar”. Can you explain the significance of the asterisk in the draft agreement stating that “the territorial scope of the Withdrawal Agreement, including as regards the transition period, should fully respect paragraphs 4 and 24 of the European Council guidelines of 29 April 2017, notably as regards Gibraltar”? What is your understanding of Spain’s aims in relation to Gibraltar?

As the Prime Minister has said, the draft agreement reached in June applies to Gibraltar – as set out in Article 3.1(b). The UK has always been clear that as we negotiate with the EU, we are negotiating on behalf of Gibraltar, and that we are seeking a deal which works for all parts of the UK family. Indeed, in initial talks we briefly discussed the territorial scope of the Withdrawal Agreement and the EU agreed with us that the negotiations cover Gibraltar. We have been similarly clear that the EU’s guidelines are a matter for the EU and the other Member States.

We welcome the constructive approach taken by Spain so far, particularly the clear statements from Foreign Minister Dastis that Spain is not seeking to use the UK’s withdrawal from the EU to pursue its sovereignty claim in regards to Gibraltar. This provides the necessary basis for constructive discussions about how we can work together to deliver shared prosperity to the mutual benefit of the whole region. Gibraltar remains a motor of prosperity for the Campo de Gibraltar and we are confident that the Spanish Government will have an interest in reaching a solution, not least given the tens of thousands of Spaniards who cross the border every day to work in Gibraltar.

5. In light of the provisions in Article 123 of the draft withdrawal agreement regarding the provision of documents to the UK Parliament, does the Government intend to continue to deposit documents and provide Explanatory Memoranda during the transition period?

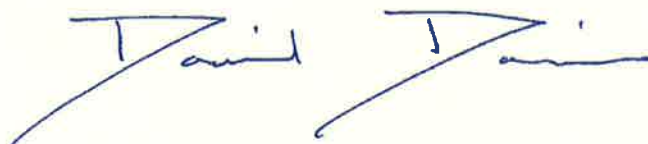
The Government fully recognises the long standing contribution made by both the Lords EU Committee and European Scrutiny Committee to parliamentary scrutiny, and we appreciate that the depositing of EU documents and production of Explanatory Memoranda is integral to this scrutiny process.

The Government will continue to support and facilitate a strong scrutiny process for as long as EU legislation will continue to affect the UK, and we will be happy to engage in dialogue with the Committees as to how this may best be achieved during the implementation period.

6. In answer to our questions regarding parliamentary involvement or oversight of the work of the Joint Committee envisaged under the Withdrawal Agreement, your letter of 19 April states that "the Joint Committee will publish an annual report on the functioning of the agreement, and be composed of representatives from both the EU and the UK". What further detail can you give on how parliamentary scrutiny of the Joint Committee will be facilitated?

Further detail on exactly how the Joint Committee will be configured is still to be confirmed. We will keep the Lords EU Committee informed on further developments regarding how the Joint Committee will operate in practice. Of course, as I made clear in my letter of 19 April, the level of scrutiny that Parliament wishes to provide is a matter for Parliament.

Finally, thank you for your invitation to give further evidence to the Committee. I would be happy to give evidence to the Committee after June European Council.

A handwritten signature in blue ink, appearing to read 'David Davis', with a stylized flourish extending from the end.

**RT HON DAVID DAVIS MP
SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION**