

## Public Administration and Constitutional Affairs Committee

### Oral evidence: [The Government's Constitution, Democracy and Rights Commission, HC 829](#)

Tuesday 8 December 2020

Ordered by the House of Commons to be published on 8 December 2020.

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Members present: Mr William Wragg (Chair); Jackie Doyle-Price; Rachel Hopkins; Mr David Jones; David Mundell; Tom Randall; Lloyd Russell-Moyle.

Questions 89 - 130

#### Witness

**I:** Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice.

#### Examination of witness

Witness: Rt Hon Robert Buckland QC MP.

Q89 **Chair:** Good afternoon and welcome to a hybrid public meeting of the Public Administration and Constitutional Affairs Committee. I am in a committee room in Portcullis House with a small number of staff required to facilitate the meeting—suitably socially distanced from one another, of course—and other colleagues are in their homes and offices across the United Kingdom.

Our witness today in the room with me is the Lord Chancellor. Lord Chancellor, thank you for appearing before PACAC, which is not your usual Committee. We are very interested to hear about the Government's proposals for a commission on the constitution, democracy and rights that were set out in the Conservative Party manifesto at the time of the last election. For the record, Lord Chancellor, could you please introduce yourself?

**Robert Buckland:** Thank you very much indeed, Mr Wragg. It is a pleasure to be here. I am Robert Buckland, Lord Chancellor and Secretary of State for Justice, and I am happy to answer questions relevant to my particular portfolio. I am conscious that you will be joined by the Chancellor of the Duchy of Lancaster on Thursday, who no doubt will be the second part of the duo, I suppose, where we have a joint ownership of many of the issues that I know your Committee is seized of.



Q90 **Chair:** Thank you very much. A flurry of Chancellors this week, certainly. The Government have committed in this parliamentary session, I believe, to set up a constitution, democracy and rights commission to, “look at the broader aspects of our constitution” and produce, “proposals to restore trust in our institutions and in how our democracy operates”. Could you update the Committee on the progress that has been made in developing these proposals?

**Robert Buckland:** Thank you, Mr Wragg. Indeed, the proposals have been developed in what I think can be described as an incremental way. We can look already at what is happening this year. In July of this year I set up the Independent Review of Administrative Law—or IRAL to give it its acronym—which is now moving towards its final phases following the conclusion of its call for evidence.

Yesterday I launched the independent review of the Human Rights Act, which will particularly look at two themes; namely, the relationship between our domestic courts and the European Court of Human Rights in Strasbourg, and the impact of the Human Rights Act 1998 on the relationship between the judiciary, the Executive and the legislature. It is through workstreams like that and others to be announced in due course that we will deliver the commission on constitution, democracy and rights.

In other words, rather than having—without being too flippant—a Royal Variety Performance of a range of different issues being dealt with at one sitting, having thought about it carefully, taking into account the effects of Covid-19 as well and the need for the Government to get on with their business, I concluded that a series of focused reviews of independent men and women were, in fact, the better way of dealing with some of the important and sensitive issues that we pledged in the manifesto to address.

Q91 **Chair:** You are the member of the Cabinet with responsibility for this process, albeit in a piecemeal way?

**Robert Buckland:** Of course, as the Lord Chancellor, I have overall responsibility for rule of law issues. My colleague the Chancellor of the Duchy of Lancaster in the Cabinet Office holds the brief on what I will describe as mainstream constitutional issues and, therefore, together the product of these reviews will be brought to us and we will lead on what will, of course, be a collective decision-making process, a response to the options set out in the reviews, which will then form the basis of Government policy.

Q92 **Chair:** Earlier this year we were written to as a Committee to confirm the Government’s intention to consult with us as a Committee on what would have been a broad approach, so can we have that assurance in terms of consultation on the incremental processes you are embarking on?

**Robert Buckland:** You can, Mr Wragg. I think it is right of us to get the phrasing correct. I want the independent panels to do their work, and by independent I absolutely mean independent. They will work in a way that is supported by Government but which is not influenced or involving



Government. The balance and range of panels that I have managed to assemble I think will give people a high degree of confidence in that independence, not just formally but also in terms of independence of thought.

At the second stage, when the Government are considering their response and developing their policy, it seems to me at that point or thereabouts that we can talk to and involve the appropriate Committees of Parliament and, indeed, no doubt there will be debates in this House that Members will want to play an active part in, which Ministers will respond to. I anticipate an active role for your Committee and, indeed, other parliamentarians with an interest in these important subjects.

Q93 **Chair:** How are you ensuring that independence of thought on those separate commissions?

**Robert Buckland:** Without going into the biographical details of each of the members, I would say that in the range of opinion and, in particular, on the Human Rights Act review, the geographical spread, we have a proper diversity, which isn't just paying lip service to it but which genuinely represents diversity of thought.

On the Human Rights Act review we have the esteemed former Lord Justice of Appeal, Sir Peter Gross, chairing it. Apart from his duties as a former senior presiding judge, he was responsible for international relations as a senior member of the Court of Appeal. Therefore, he is very familiar with other jurisdictions and other courts and other judges holding national and international roles. Working with him will be a range of practitioners and academics, academics from the four corners of the Kingdom and beyond.

We have a leading Scottish academic who is well respected. We have, in fact, an academic from the Republic of Ireland, a professor at the University of Cork, who will no doubt provide a particular insight into not just aspects of the Belfast/Good Friday Agreement but also the constitutional settlement on both sides of the border. We will also be joined by a distinguished former Police Ombudsman for Northern Ireland, Baroness O'Loan, a former member of the Committee on Human Rights here in Parliament. I think you are getting the flavour of a diverse committee that no doubt will look at things robustly and independently.

In the first matter, the Independent Review of Administrative Law, Edward Faulks—who is well known as a former Minister but at the moment is now an independent peer—is chairing the commission. He has been out of Government for some years now, for four or more years. He is somebody who, because of his strong background as a senior lawyer and silk in practice for many years, can be relied upon to be entirely independent of thought and action.

With him are a range of academics and practitioners who again represent diverse thinking. Carol Harlow could not be described as a creature of the right, for example. She is somebody who is robustly independent and often



takes different political viewpoints than perhaps mine. I can think of other examples as well within that group that will reinforce the diversity of the panels that we have assembled.

Q94 **Chair:** Thank you. That is very helpful. There is certainly a breadth of geography and intellectual thought, but what thought has been given to consulting other political parties in these processes?

**Robert Buckland:** This was a manifesto commitment. It was put before the British people. It was put to an election at which the Government won a decisive majority. While it would never be the case that I would not want to hear from, engage with, have debate with and reach agreement with, where appropriate, politicians and parliamentarians from other parties, I think it is right as a Government that want to get on with our manifesto commitments that we do that.

Therefore, it was my role—a particularly acute responsibility for me—to make sure that, in getting a panel of experts, we genuinely got the sort of balance that could command at least acknowledgement from people from other parties who would not necessarily agree with what the outcomes might perhaps be. The approach that I have taken is very much in accord with previous practice. There is nothing unusual or unprecedented about it. In fact, I would submit that it compares rather favourably with approaches that I have seen in the past taken by other Governments who have embarked upon sometimes quite significant constitutional reform without any attempt to create a committee of inquiry or an independent review or a commission, so I would suggest that we are going about our work with great care and deliberation.

Q95 **Chair:** Thank you very much. Just in terms of the timescales of those separate reviews, do you have a particular end date in mind that you are working toward?

**Robert Buckland:** The first review, the IRAL, I am expecting to report quite soon, so within the next couple of months. There would then need to be some consideration of work done within Government to consider their response to the range of suggestions or options that might be put forward. That response will take another several months to complete. It would be in the spring that we would emerge with a proposal or proposals. That would then need to be put to colleagues in Parliament. Whether that would take the form of legislation is yet to be seen. I certainly would not commit to anything yet—bearing in mind the fact that we have not seen the product of the independent review—but that is the sort of timescale I am looking at in terms of full policy development.

With regard to the human rights review, that work has just begun. I expect the review to complete its work by the summer of 2021 and then again a period of some months for the Government to consider their position and to publish an appropriate response, so that would be late summer, early autumn I would have thought for the Human Rights Act review.



**Chair:** Thank you very much for that exposition, Lord Chancellor.

Q96 **Mr David Jones:** Good afternoon. As we have heard, the Government have said that the purpose of establishing the committee to look at the broader aspects of our constitution is to, “restore trust in our institutions and in how our democracy operates”. Do you believe that trust needs to be restored in our institutions?

**Robert Buckland:** There is a genuine point to be made about aspects of the working of a democracy and democratic practice that have caused quite serious dislocations of trust, or a sense of hopelessness sometimes among the general public: that, whatever they say or think, they will not be listened to and they can make no difference to the process.

I think you can take that right down to local government, whether it is a controversial planning application, perhaps, that ends up in the hands of an inspectorate that the public don’t know much about and find to be a remote institution. That is not making any criticisms of the individuals within the inspectorate, but it is certainly an observation that I think many of us share as constituency MPs. Or whether it is the decision on an important complaint that might have affected the life of a member of the public quite significantly, where they find the process, first of all, to be rather impenetrable and, secondly, even if they did not agree with the outcomes they could not respect the process.

Therefore, it is very important that in all that we do in terms of getting the processes right we end up in a position where even if, let’s say, a member of the public did not agree with a decision they could at least respect it and know that it was reached as a result of a fair system and a fair process.

I suppose I am sounding a bit like somebody defending the justice system, which I do believe in the main delivers that sort of outcome, but I think you can read that sort of issue across the piece and sum it up in a way that you could describe as not a complete loss of trust but a decline or a deficit in trust or a decline in faith, actually—“faith” is a word that perhaps could be used—in what is sometimes termed as “the system”.

The way that all of us restore or enhance trust is by our actions rather than by our words. That is why in this particular sphere of activity it is very important, in the actions that I have determined upon, that we can demonstrate that every step of the way we are doing something with an independent input, with a clear deliberative approach, with a series of stages that will result in a policy rather than just announcing something to a surprised audience that had not been the product of such deliberation.

I think we can apply that across the piece, as I said. I am sure there will be further discussion as the afternoon wears on about what that might mean, particularly at a local level, but certainly that would be my initial general observation, that the deficit is something that we can and should try to restore.

Q97 **Mr David Jones:** The word “restore” tends to imply that trust was once



there but is there no longer, or at least has declined. Do you think that is the case and, if so, what would you say are the causes of that decline or loss of trust?

**Robert Buckland:** David, first of all, normally we would see perhaps evidence of a lack of trust in declining turnout. In fact, that has not been the case as we all know.

Q98 **Mr David Jones:** At elections?

**Robert Buckland:** Yes. In fact, what has been happening—we can trace it right back to 2010—is the turnout has increased again. It went through quite a steep decline after 1997 in general elections. Indeed, that was reflected across the piece in local elections as well. What I think we have all noticed is that nationally general election turnout has increased. I think there was a slight dip in 2019 but it was about the same level as 2017, which was much healthier than we had seen. For example, 2001 was a particularly low point in turnout in our recent parliamentary history.

We have seen an increased engagement in local government. Turnouts have certainly been rising ever so slightly there and referendums, of course, have involved many millions of people taking part in the process, so I don't think you can look to voter turnout as a loss of trust.

What I think has happened is that, ironically, it is the product of greater scrutiny than ever before. Let's face it, modern politicians are now not just facing daily scrutiny through the columns of newspapers but hour by hour scrutiny via social media. The glare and the intensity of that has perhaps contributed, first of all, to what would be I think a fuller and clearer view of what is going on in politics.

At the same time, perhaps there is a disappointment, a failure to meet expectations, a frustration sometimes with the length by which certain processes have to operate as opposed to, let's say, the individual's experience in other spheres of life, whether it is ordering something over the internet, whether it is conducting a transaction online, which of course can now be done in seconds and minutes, whether the experience of members of the public in other walks of life isn't fully and properly reflected to their way of thinking in the political process, and I think it is our job—

Q99 **Mr David Jones:** There is one point there I would like to press on a bit. The word "trust", and your use of the word "faith" earlier, tends to suggest that that equates to a loss of faith in the probity of the political process and the institutions that are set up by the political process. Is probity a concern of yours?

**Robert Buckland:** Always. Mr Jones, you were here at the time of the expenses scandal. I had not been elected and I was about to be elected. I was a year off election but it affected all of us, candidates and Members alike. That was a very solemn and serious moment for all of us and for representative democracy. I don't think we can deny that. It left very deep scars, which in some measure still endure today. I think that every episode



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that involves that sort of question of probity is something that does have an effect on the body politic.

That, combined with the incessant accountability—perhaps I am being kind—or the access I think is a better word of social media and the glare that that creates and the intensity of that spotlight on politicians does mean that, in a world where accusations and assertions can be made very, very quickly, any perceived slowness to respond, which of course is often the result of very careful thought or deliberation and a taking stock, is seen as weakness, is seen as indecision, is seen as indifference or worse.

I think all of us know what I am talking about because we face it virtually every day sometimes with all the interactions that we now have with our constituents and, indeed, the wider public. I don't think any political generation in this country has been in a position where they can now have so many interactions with members of the public.

On one level it is an extraordinary and great thing. The fact that politicians can be so accessible via a Facebook message or an Instagram post or a direct message via Twitter is in many ways extraordinary and a matter for some celebration. At the same time, it can lead to difficulty in the sense that one is expected to make an immediate response, whereas very often that is not the appropriate thing to do because it requires careful thought.

That is what I worry about here, that the casualty of all of this intensity of interaction is proper thought and consideration and the time and the space that our predecessors in these roles would have had is no longer there.

**Q100 Mr David Jones:** Presumably, the Government have carried out research to establish, first of all, that this loss of trust does actually exist but, also, to establish the causes of that loss of trust. Can you help us with that, please, Lord Chancellor?

**Robert Buckland:** I do not think it is something you can measure on an actuarial table.

**Q101 Mr David Jones:** No, I appreciate that, but presumably it has been a matter of research and it is not just a gut feeling that people don't trust politicians and political and other institutions anymore. There surely has been some research carried out.

**Robert Buckland:** I don't have the figures before me but I think all of us have seen over the years various surveys with large control samples of the population, the sort of surveys where people are asked to assess their trust in certain institutions. We have to be honest that national politicians do not emerge terribly well from it.

However, there is a very interesting contradiction in some of the research, which very often shows that a local named MP will have a much higher degree of trust from the local population because of his or her work, case work and service as a local MP, but when the category or class of politician is put together the figures tend to be extremely low compared to perhaps



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members of the armed forces, NHS workers and care workers. The judiciary scores very high. Those categories are still commanding very high levels of trust and support.

Clearly, we cannot ignore regular surveys of that nature, which do place us quite low. It is one thing to shrug it off and say, "Well, politicians are never going to be popular. We have to make difficult decisions and that means we are going to upset people". I accept that up to a point but I think it would be wrong not to think carefully about why it is that, as a group of people, we seem to be scoring low points for trust and respect.

**Q102 Mr David Jones:** Thank you for that. Finally, do you think you could possibly assist the Committee by maybe writing to us and pointing us to the research that you just mentioned, so that we can look at it further?

**Robert Buckland:** Mr Jones, I will endeavour to do my best. I think a lot of these issues are probably carried more centrally than in the Ministry of Justice but, through my officials, I will see what I can do to help furnish the Committee with any relevant information.

**Mr David Jones:** That is very helpful. Thanks very much.

**Q103 Lloyd Russell-Moyle:** Do you think that trust in our political institutions can be restored?

**Robert Buckland:** I don't think I would be in politics, Mr Russell-Moyle, if I did not believe that. It is probably in all of us—whatever political view we might have—that by taking part in the political process, by seeking election and by getting elected, there is an inherent strand in our thinking that means that we do believe in the power of politics to change things and the power of representative democracy to achieve things on behalf of the people we represent.

Remembering that essential truth is a very good place to start. We might then differ as to the way in which we can do that. Of course, that is why we are all sitting in various differing political groupings and having often lively and heated debate, but I think all of us—

**Q104 Lloyd Russell-Moyle:** I am not thinking about the use of politics. The public do not think that politics changes things. It is that trust in politics and the institutions is not there. That is different from saying whether they are effective or whether they can produce political change. Do you think that politicians are the right people to restore trust in themselves if they are the damaged brand anyway?

**Robert Buckland:** I will stick to what I said about degree and about the process, but I take your point about whether or not we alone can do that. I think the answer is no. Inevitably, it is going to involve more than just those directly elected or in the system itself. There will be many people who are either observers or, indeed, people who might have participated in politics in the past but are no longer involved, or people who have had



no involvement in politics who certainly could make a contribution to helping to restore that collective trust.

Yes, I think the point you make is right. We cannot do it alone but we have to try to lead and set an example. That is not just about the way in which we conduct ourselves, important though that is. It is in the way that we interact with the citizens that we represent. Therefore, the point I made about judging us on our actions rather than just words is I think a very powerful one.

**Q105 Lloyd Russell-Moyle:** The other Chancellor famously said that the public were fed up with experts. That might be a bit out of context and unfair for me to quote that, but the gist I suggest is that the public were not really interested in just academics or senior judges or senior former CEOs telling the public what they should think. Why is a commission of those same kinds of people any different?

**Robert Buckland:** If the commission was the be all and end all of the work that we are doing, I would agree that we would be placing vast and undue weight on one way of developing policy, but it isn't going to be the only way that this is developed. Clearly, it will have an important part in terms of feeding in recommendations but, as I have already said to the Chair, the engagement and involvement of elected parliamentarians is going to be part of this. Inevitably, that will involve a wider public debate as members of the public become more interested—if they aren't already—in the issues and will no doubt seek to influence and make representations to their Members of Parliament.

Obviously, experts have an important part to play. Like everything else, they can give us their opinions, their views and their advice but, ultimately, it is for the elected politicians to make the decision based upon that advice and, indeed, other considerations that will no doubt come into play as these policies develop.

**Q106 Lloyd Russell-Moyle:** The proof will be the public's perception, not necessarily politicians' perceptions of this, if this is what we are trying to restore trust in.

Going back to the Chairman's question about reaching out to other political parties or other ways of working, such as citizens' assemblies or other NGOs, is there not a case to try to do this in a much more collaborative way so it is not just about one group of experts or one political party pushing through a set of ideas that they may have won an election on but might not be the settled will of the problem as people see it?

**Robert Buckland:** Mr Russell-Moyle, that is a really interesting point. I do believe in the electoral process and the importance of a mandate and a manifesto commitment. I do think that sometimes we are a little bit too self-effacing about that sort of thing, frankly. Previous Labour Governments have had weighty majorities here in Parliament and, although I did not vote for any of them, I did not fundamentally disagree



with their authority to get on and do what they said they were going to do in their manifestos.

Having said that, the point you make about the wider deliberative process is an interesting one and I have been reading about the people's assembly concept, indeed engaging with some of the leading members of that. I take you back to the point I was making about some local decision-making and how a lack of faith or a lack of belief in the system can often emanate from a particularly unfortunate experience at a local level.

I wonder whether there is more merit in starting local with this sort of approach, particularly, let's say, before an important planning application is to be determined that might well affect the quality of life for many thousands of people in a local area, if there was more work to be done well before applications were put in, involving wider sections of the community and that sort of deliberative approach.

In a nutshell, I am certainly not dismissing the concept, but I am just querying whether or not it would actually have more potency, and see a higher take-up and a willingness and an enthusiasm to be involved, if it was taken at that level first and the concept explored to see how productive it could be. I don't want to give you the impression I would be sceptical about it. I am not, but I have been thinking very carefully about the context in which we could start to use this.

**Chair:** Forgive me for interrupting an exchange, but we will touch on that I think later in our session. Mr Russell-Moyle, do you have any further questions at all?

**Lloyd Russell-Moyle:** No, thank you, Mr Chairman.

**Chair:** In which case we will go to Jackie Doyle-Price.

Q107 **Jackie Doyle-Price:** Lord Chancellor, you have just given a very good exposition of some of the factors that inform our political culture and the context in which we operate. You also highlighted the fact that individual actors in the system can drive more trust, and you particularly highlighted the role of individual MPs or individual politicians at a local level who can be more trusted generally than politicians as a class.

In that sense Government themselves are significant actors in this, so what do you see as the role of Government in terms of rebuilding that trust? Clearly, in terms of leadership, they hold the biggest responsibility to improve the general trust in our institutions.

**Robert Buckland:** That is a huge question, Ms Doyle-Price, and it is almost difficult to know where to start. Again, while it would be a glib solution for us to come up with yet another strategy to deal with it, you will know as a former Minister what that means. It is far better for us perhaps at a departmental level to get to grips with a particular area of activity that we are engaged with and to see how we can improve the input that people might have into policy making.



I will give you an example. A sentencing White Paper that was published by my Department in September contains a little noticed but important section about the work that I want to lead on neurodiversity. You will be very familiar with that from your work in the Department of Health. I want to do a major call for evidence about neurodiversity and the criminal justice system, and I want to start to work with the third sector and, indeed, with wider society about autism, ADHD, acquired brain injury, all those issues that we know have a very high prevalence in the system but which we have taken far too much of a piecemeal approach to in the past. There are some real pockets of excellence going on but not enough of a really co-ordinated approach.

That is going to take time. I want to start work on that in the next few months but, genuinely, I am very open minded as to where it might lead us. I can obviously see some potential policies emerging, perhaps more liaison and diversion work to be done to help people with an identified disability. There might be other consequences that I cannot yet foresee until I see the evidence. It is that sort of open-mindedness and a willingness to learn, which is perhaps a small but important example of how in government we can do some genuine policy-making in areas that are, frankly, too big for one Parliament or too big for one party. Let's see how it goes. I am hoping it is going to be something productive and, if it is, perhaps that is a model that we can replicate elsewhere in government activity.

**Q108 Jackie Doyle-Price:** That is a perfect example of leadership, a perfect example of the kind of behaviours that we need to see from Government and, dare I say it, quite a stark contrast with some of the other behaviours that we have witnessed from Government.

We have heard from witnesses basically saying that if we want the public to have more trust in Government and in the process, it does not help to have briefings coming from No. 10 Downing Street about how useless civil servants are and how useless the courts are. I have known you for far too many years and they are not the behaviours that I associate with you and many Ministers, but they are the behaviours that have been increasingly associated with this Government.

In that sense, can we actually get some behaviours where the Government can be seen to be positively driving this process, and where do you think that leadership should come from?

**Robert Buckland:** I readily agree with you, Ms Doyle-Price. I am a great believer in—we know, sadly, how politics and the media interchange with each other. You have the unattributed source. My belief is if politicians are going to make comments on an unattributed basis they should be positive comments.

The concept of briefing against people is something I find utterly abhorrent, frankly, or briefing against different parts of the Government. It is something that in my view is not new. Sadly, we have seen it before. We



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have seen it develop over probably the last 25 years I would say. I am not going to sit here and suddenly come up with a prescription and a solution for it, but I very much deprecate that sort of approach.

You know that I am always quick to act if I think that, for example, members of the independent judiciary are being traduced because they cannot answer back. Their public statements are their judgments in court. I feel very strongly that, as the guardian of the judiciary, it is my job to intervene and I will do so without hesitation, and I do so unilaterally and independently as Lord Chancellor, may I say.

I think the exhortation can go out from all of us that we need to improve the way we conduct ourselves. We need to remember that if we are speaking in public frankly about colleagues within Government be positive or say nothing at all. Perhaps in that way we can obtain a better equilibrium when it comes to engagement with the media and the wider public.

**Jackie Doyle-Price:** Yes, a simple enshrining of good manners, really. I think we all appreciated the leadership that you showed and the respect for your role in defending the independent judiciary. I commend you for that and I commend you for your work on neurodiversity as well. That is fantastic and that is enough from me, Chair.

Q109 **Chair:** Thank you very much, Jackie, for that brevity. Just following on briefly, Lord Chancellor, is there not a sort of Gerald Ratner approach to the constitution, that if enough people say it is rubbish people start to believe that and do not have particular faith in the product, if I can put it that way?

**Robert Buckland:** That is a very good way of putting it. I mentioned earlier that sometimes we are too self-effacing about manifestos and election platforms. At the same time, sometimes we are a bit too self-effacing about the constitution. It is not our job to be self-congratulatory and always say how wonderful everything is, because there are things that we can always do to improve. There are manifest imperfections in our system of government as there are in every other system of government across the world.

I am a strong believer, Mr Chairman, in the organic evolution of our constitution. I think the way that it has emerged is as a result of human experience, an evolving and improving human experience that, of course, resulted in universal suffrage, the widening of suffrage in its forms and, indeed, a deepening in the quality of our parliamentary democracy, and I am confident that process will continue. Whether one needs to totally write it down, put every jot and tittle down in a written constitution, is something that I am not persuaded by. I do believe that we have a lot to note, to mark and, indeed, to celebrate when it comes to how far we have advanced in just the span of a few generations.

**Chair:** Those are heartening sentiments for the Committee, which has a strong Burkean tendency, if I can put it that way. On that note, we go to



David Mundell somewhere else in Portcullis House, I think.

Q110 **David Mundell:** Mr Buckland, how was the list of priority issues the commission should examine decided?

**Robert Buckland:** The work that was done on both the IRAL and the Independent Human Rights Act Commission was work that I led, in consultation with officials and others, as to precisely what the terms of reference should be. Of course, those terms of reference are agreed by those involved in the independent reviews themselves. That sense of joint participation was very much part of our preparations for both these reviews.

They have been carefully worded. I would argue that they have been very carefully focused and they are also deeply respectful of the devolution issues as well, the devolved settlements. I have had some criticism from SNP colleagues, but I genuinely believe that in both respects the ambit of the reviews utterly respect the devolved settlements in Scotland, Wales and, indeed, in Northern Ireland as well. I have given the assurance—in fact, on the Floor of the House today—that the product of any such deliberations will, of course, be the subject of full consultation with devolved Governments anyway.

I would argue that the process that I undertook was one that was entirely in keeping with good government and in a spirit of—I was going to use the word “restraint”; that might be a good word actually, a spirit of sensible restraint as to what it is that I want these reviews to get on with but not prejudging the outcome. In fact, when you look at the terms of reference they ask a series of questions rather than seeking to come to some predetermined conclusion. I can genuinely assure you and the Committee that that is not the intention that I harbour when it comes to the work of these reviews.

Q111 **David Mundell:** Do you not think in that context that part of what this work should involve is actually clarifying the relationships between the UK Government and the devolved Administrations? This Committee has heard numerous times in recent months about difficulties in those relationships or a lack of clarity as to who is responsible for that. Therefore, when a review is announced with the grand title that this one has, surely you would expect that part of that review would actually be to bring clarity to our system of government within the United Kingdom.

**Robert Buckland:** I certainly would not shy away from the claim that what I am seeking to do is to increase clarity across the UK, but what I have been very careful to make sure is that this work does not in any way disrupt or decrease the clarity that may or may not exist. In other words, everything that these reviews are doing is designed to enhance or to do no harm to the union of the United Kingdom.

The work that might be done in the future with regard to any reform or greater clarity, as you describe, to the devolved settlements is, of course, a matter for my colleague the Chancellor of the Duchy of Lancaster and his



team. I am sure that he will provide you with fuller answers when he gives his evidence.

I can assure the Committee that, for my part, bearing in mind the Lord Chancellor's role as Lord Chancellor of Great Britain—although primarily I am responsible for the courts and tribunals in England and Wales, I am responsible for the tribunals in Scotland as well that are not devolved and, indeed, a Northern Irish role as well in the context of human rights, and of course I am a proud Welshman as well—very much with that British concept in mind what I am trying to do, through the workstreams and through the work that I am doing, is to enhance that union but not in a way that would trample across the existing devolution settlements as outlined in legislation.

**Q112 David Mundell:** That sounds quite a change in tone to me, Mr Buckland, in relation to how perhaps this exercise was previously presented. I think there have been those who, certainly until recently, occupied Downing Street and positions there who saw these exercises as a disruptor and that that is how you needed to bring change about, by disrupting the current status quo. But you seem to be suggesting that, in fact, this review is about achieving incremental and consensual change.

**Robert Buckland:** I am a Tory, Mr Mundell, and I do not like revolution or disruptive change if I can avoid it. "When it is not necessary to change, it is necessary not to change," I think Falkland said. In many other respects I would not necessarily agree with his positions on everything, but I think that phrase was a particularly good one. It is in that spirit, in that philosophy, that I approach things. I am an incrementalist. I have described myself in the past as a bit of a plumber when it comes to these things, a constitutional plumber, if you like. The system is fundamentally sound, but in order to make it work better for the citizens that we serve, sometimes you do need to get your bag of tools and you need to repair and perhaps change it a bit and make it better, make it run better, make it more efficient and make it work better. It is very much in that sort of spirit that I approach these issues.

**Q113 David Mundell:** But on that analogy, you seem to be suggesting that we will perhaps end up changing the taps rather than ripping out the bath and having a wet room.

**Robert Buckland:** I like this analogy. We are going to take it to absurd lengths if we are not careful. I would say that there are times when you probably need to change a boiler and perhaps even change the way in which you power the system as we are moving to a greener and cleaner country, but that does not ultimately affect the objective. The objective is to make it work better for the citizens we serve. That is what it should be all about and I think incrementalism has a lot to commend itself. It is certainly a very Tory way of looking at things, which I am rather proud of and I will continue working in that tradition.

**Q114 David Mundell:** I think you have pre-empted my final question, but just



to confirm for the record, you do not have any predetermined outcomes for this work and that the commission and any review panels all carry out fully independent inquiries and reach whatever conclusions they so determine?

**Robert Buckland:** Precisely so, Mr Mundell. I can assure the Committee that I have no preconceived outcomes. I am sure that the reviewers do not either and that their work will be conducted in a robustly independent way, free from any interference or perception of interference from me or the Executive.

**David Mundell:** Excellent. Thank you, Mr Buckland.

**Chair:** Thank you for your application to be the constitutional Dyno-Rod in this instance. I will go to my colleague, Mr Randall, please.

Q115 **Tom Randall:** Lord Chancellor, you said at the beginning of this session that the commission was an idea that was put into the manifesto and that was voted on and the party has now been elected to Government. Do you think that is the limit of the public involvement in determining what any sort of commission should be looking at or is there scope for further public involvement in determining what should be re-examined?

**Robert Buckland:** I think the full range and ambit of work to be done in the constitutional area is yet to be finalised. I have taken forward the work of what would have been a commission in this distinctive way, by starting two important streams, by already indicating that more work will be done, for example, on the 2005 Act, which I would like to engage in. I need to then determine with colleagues in Government the precise mechanism by which we do that. What I can say, without committing myself to a particular course of action or a timescale, is that the principle of that wide consultation is one that attracts me. Of course, I would like to hear the views of either experts or, indeed, non-experts who might have had a poor experience of the public process and decision making and want to have their say.

That is something that can either be done directly to the process or via Members of Parliament like you, Mr Randall. I can give you that high degree of certainty that my inclinations would be to be open when it comes to receiving ideas as opposed to something that is just going to be a closed process. If I remember rightly, the 2005 Act itself did not come after much open and wide public debate and discussion. It was a significant change to the constitution. It clearly had full debate in both Houses, but I do not recall it being the product of many months or even years of work with wider society. While I want to get on with delivering what the manifesto says we were going to do—that is our duty to the electorate—I do think that a better balance can be struck with regard to public consultation than perhaps we have seen in previous measures by previous Governments.

Q116 **Tom Randall:** In terms of how that consultation takes place, as Mr Russell-Moyle touched on earlier, citizens' assemblies are flavour of the month in some quarters. You hinted earlier that that is something you may have



started to look at or think about. Is that something that you think might have a role in addressing some of these bigger constitutional issues?

**Robert Buckland:** I am speaking as an interested participant in our constitution, but also as somebody who will not be in high office forever and will be an interested observer and somebody who cares deeply about these issues to my dying day. I suppose with both perspectives, and respecting the fact that, of course, the wider constitutional issues are for the Cabinet Office, not for me, I allude to what I said earlier, that the concept is an interesting one. It is not something that I would entirely dismiss as impractical or adding nothing of substance. It has potential, but I think we need to choose the subject matter very carefully. Certainly from my experience, I think there is greater natural public interest in an issue that might be much more close to home to people than something that would be perceived as more abstract. That is not saying that people do not have views about abstract issues, of course they do and let's not insult people's intelligence, but I am just thinking about the way in which you engage the public. Do you make it something like jury service, where you summon people to take part in a process? We need to think very carefully about that.

My experience of jury service is considerable. I spent many, many years as a criminal barrister addressing hundreds of juries in England and Wales and I think I know a little bit more about them than most. I have to say I have huge faith in it. In fact, jurors who take part and respond to the summons take their duties extremely seriously and in the main their experience is a positive one and they emerge having been enhanced. Many of them would say that their experience was something that enhanced their sense of participation in society and the importance of the decision-making process meant that they realised they had done something of real value.

That is something that I do not think you can just create overnight. It is the evolution of many generations of that particular system and, therefore, I think that we all need to pause and think about how we engage the public. Being the product of a summons of a wet Wednesday night in November might not engender the sort of participation that you would see spontaneously on an issue of major local importance that might have national implications. I am speaking very openly here in a free-thinking way, but I think we have to go with the grain of the public rather than try to create another system imposed upon them that they might not necessarily take to in the way that well-intentioned proponents of this scheme would like.

Q117 **Tom Randall:** I suppose there is also a danger that those who speak loudest on constitutional issues are not necessarily the most representative of public opinion. You talk about engagement with the democratic process. The most obvious way that people engage with participating in democracy is at the ballot box and going to vote every couple of years. While it was not a scientific survey, this Committee did do a survey on issues that required examination by any commission and top of the poll was electoral



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reform and the voting system. That was not on the initial list to be considered. Do you think there is scope, as I say, to consult the public on a wider scope than perhaps had been originally envisaged by Government so far?

**Robert Buckland:** I preface my remarks by saying, of course, electoral matters are for my colleague, the constitution Minister, Chloe Smith, and indeed the Chancellor of the Duchy of Lancaster. It is not that long ago that we did have a major exercise in direct democracy on electoral reform—in 2011—and there was an overwhelming majority against change, 70:30. While I take the point that people will often talk about reform in the abstract, when it comes to particular choices and the type of system that one might want, I think then things become somewhat more vexed. Naturally, people are going to have myriad different views about whether the additional member system is better or whether STV is better or whether the list system, for example, is better.

My frank view is that the first past the post system—the erroneously titled first past the post system—is the worst system, apart from all the others. The reason why I like it is that the bond between MPs and constituents is particularly strong in our system. I think that that is getting stronger and stronger by the year. That perhaps helps me to further enhance my answer about trust, because I believe that the more and the harder we work for our constituents and the more work we do the greater that trust becomes on an individual basis. It is those myriad links that we make with our constituents on casework, where even if the result is not a positive one, the MP has done their best to help.

**Tom Randall:** Sure.

**Robert Buckland:** That is the way that you start to rebuild. It is those myriads of millions of different interactions that can really make a difference. I have to say that I am not persuaded that we should be embarking upon another debate about electoral reform.

Q118 **Chair:** Thank you very much for that. Just before we go back to David Mundell, Lord Chancellor, you mentioned or suggested there could be a commission looking at the 2005 Act. Is there any particular aspect of the 2005 Act that you would wish there to be focus on?

**Robert Buckland:** The 2005 Act, Mr Wragg, is quite a lengthy piece of legislation. There are some very sensible reforms in it. I do not think anybody would be saying that a complete return to the status quo ante would be the way forward. I have not committed to a commission on it. I am open-minded as to the type of consultation and the way that we do it, but I am thinking through carefully the best process that we can employ for it.

The Act, of course, fundamentally changed the role of the Lord Chancellor. Prior to that, they had been head of the judiciary. That was not always the case; they were not head of the judiciary before the 1873 Act. Now the Lord Chancellor shares responsibility with the person who is the head of



the judiciary, which is the Lord Chief Justice, and shares responsibility for Her Majesty's Courts and Tribunals Service. The function of the Chancellor of the High Court was created by that Act, which primarily had been the Vice Chancellor, working under the aegis of the Lord Chancellor. That was all changed.

Then, of course, there was legislation on the creation of the Supreme Court, so lots of strands within that Act. I am not going to commit here and now to saying which parts would not be looked at and which would be, but clearly 15 years on it is entirely legitimate for us to consider it afresh and to see whether we can improve upon it.

**Chair:** I will leave that there, although I am very tempted indeed. I am sure we will come to that, perhaps by the end of the session, but I am depriving us of David Mundell.

Q119 **David Mundell:** The Ministry of Justice has launched an Independent Review of Administrative Law, which you touched on in your earlier remarks, and you have told the Joint Committee on Human Rights that there will be an independent review of the Human Rights Act. Both of these you have said extend from manifesto commitments. Why are these being done separately then from the overall commission?

**Robert Buckland:** As I said earlier, Mr Mundell, the way that I am fulfilling the manifesto commitment for the commission is to undertake work in increments, so you have seen the first two increments emerge in the form of the Independent Review of Administrative Law announced in the summer and yesterday the independent review into the Human Rights Act. The commission-based work has begun and it will continue in different forms, both led by me and the Chancellor of the Duchy of Lancaster over the next months and several years.

I just want to put the reviews into their proper context. One of the determining factors that led us down this particular path was the importance, first, of what has happened since the election in terms of the Covid emergency and the potential for that to have, in effect, put back any work on these important issues until well into the Parliament. Secondly, the benefits of having individual focused reviews involving people with particular expertise on specific questions.

Again, I can reassure the panel, and indeed the wider audience, that when it comes, for example, to administrative law, it is not about a pending judicial review, it is about looking at questions as to, first of all, whether it should be codified, whether any powers of the Executive should be non-justiciable. That is not saying that all powers of the Executive should not be non-justiciable, far from it, but asking the question about that. Then also the issue about remedy, what sort of remedies should be applicable when it comes to judicial challenges and what they should apply to. Should they apply to decisions already made or should they be prospective?



All these sound very technical, they are important questions, I accept, but they are the sort of specific questions that I think really benefit from an individual review as opposed to—as I have described to you earlier—a Royal Variety Performance, where you have a bit of everything coming on the stage at different points and you are not necessarily getting the focus that you need on some of these quite detailed questions.

**Q120 David Mundell:** I am struggling to find an analogy with the Royal Variety Performance, although some would argue that maybe it is past its sell-by date in the nature of that sort of performance, but we will not go there.

Do you not think that that approach diminishes from the prospect of having some sort of broad consideration and package of constitutional changes, which could be set out as making a major difference and looking to rebuild trust, rather than what might be portrayed as simply continual tinkering at the edges?

**Robert Buckland:** I think what the Government wanted to achieve was a sense that these matters would be approached carefully and with deliberation. We are very much conscious of the fact that the last few years have seen quite a lot of tensions emerge about aspects of our constitution, a lot of controversy, let's face it, about certain interactions. I think it is important to let the heat go out of that and for us to allow for mature reflection and consideration, a deliberate approach, and then for Government to respond. I make the point that this is not about an attempt to, after the event, deal with political challenges and controversies that were experienced by the previous Government, for example.

This is about looking ahead and about seeing how we can further refine and reform our system to make it work better. I think that sense of perspective and getting away from the heat of some of the debate that we saw even last year has real merit. That is why I think that the proposal to have a commission was a reasonable one and a proper one, but facing the particular challenges that we have seen in 2020 means that the approach that we are now taking, delivering this work by specific reviews, is one that will achieve that degree of perspective and distance but allow us to develop policy in a more structured way, and I believe will yield fruit and fulfil our commitments.

**Q121 David Mundell:** I very much welcome what you are saying, Mr Buckland, but as I said in our previous exchange, to me it strikes a very different tone than some of the things that we have heard before in relation to this exercise. I welcome that change in tone, but I suspect not everyone else will.

**Robert Buckland:** I have never changed my tone in the approach to all of this, Mr Mundell. I have been constant in the way that I approach these things. People may come and go around me, but I am still here and it is my fervent wish to remain here to get on with this important work.

**David Mundell:** Excellent.



**Chair:** As we continue this afternoon's matinee, we are going to Rachel Hopkins, please.

Q122 **Rachel Hopkins:** I want to ask a few more questions around the details of the appointment process for the independent review panel members. Who was consulted over the membership, the scope and the terms of reference for the review?

**Robert Buckland:** As I was saying earlier, the work on the terms of reference, of course, had its genesis with me and officials. There was then a discussion and a consultation between the potential chair of the review and, indeed, those potential members. Of course, the draft terms of reference were shared with them as well so that anybody who was minded to take part in this was fully informed and aware of the ambit of the work. Rather than having a fully-fledged appointments system with interviews and so on, this was all about what I genuinely wanted to achieve with regard to independence and, therefore, making sure that there was diversity, as much gender diversity as possible, BAME representation wherever possible, but then diversity of thought is important, too, on these issues.

These were all matters that were prayed very much in aid when approaching and identifying and then inviting potential members of each panel. I think we have achieved that objective. As I have said, of course, the review panel's views are going to be of weight. They are not necessarily going to be conclusive as to what Government policy will be, but I think we have struck the correct balance between the need for flexibility with regard to the setting up of the review panels and that sense of wider balance that I think all members of the Committee would expect me to employ.

Q123 **Rachel Hopkins:** Just to clarify, you reached out and approached people rather than it being an opportunity for people to come to you, so it is more selected by you and your team?

**Robert Buckland:** Yes, but with very much a set of principles in mind. It was not a question of me thinking, "Do you know, I have an objective here. I want X to happen. I tell you what, let's try to find the group of people who will deliver that for me, people who all think the same". I wanted to avoid that sort of groupthink mentality that would be very dangerous and would diminish, I think, the work of any review. I know the particular chairs who have been appointed strongly share that view, too. I cannot think of two more robust individuals in terms of their independence.

I am pretty sure they would tell me where to get off if I had the presumption to try to surreptitiously suggest things or whisper sweet nothings into their ears about what it is that I might want. It is with all sincerity I say, Ms Hopkins, that I have no preconceived ideas here. I view this with the utmost seriousness and that is the approach that I will take throughout this, because I have to maintain the confidence of the chairs and, indeed, the whole panel in the important work that they are doing.

Q124 **Rachel Hopkins:** You touched earlier on the review process. Could you



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give a little bit more detail about how the review will be conducted and some of the stages you referred to earlier, and also be a bit more specific around the timeline for reporting?

**Robert Buckland:** I have given information about the timeline of both the reviews. I am expecting a series of recommendations or options by the Independent Review of Administrative Law within the next couple of months. That will then require a Government response. The product of its report and, indeed, the Government response will be published. There has been a call for evidence that IRAL has conducted. It is a matter for it, with regard to the information that it has received, as to how it wishes to present that. I am not going to get into prejudging how it might want to deal with the body of evidence that it has achieved because, frankly, independence has to involve the process as well rather than me dictating to that particular body what it should do with the material that it has obtained.

When it comes to the independent review on the Human Rights Act, again I am not going to preordain what it might wish to do with regard to obtaining evidence. I am pretty sure that principle of consultation is something that it will adhere to, but the precise mechanism that it deploys will be a matter for it. With regard to the timescale of its work, I anticipate that it will produce a report to Government in the middle of 2021, in perhaps the summer of 2021, June or July time. The Government would then need a period of a few months to consider their response and then the overall position document could then, I envisage, be published in the late summer, early autumn of 2021. You are getting a sense that in both cases a nine-month period is probably the timescale that will be the outcome here.

Of course, that is ahead then of any further policy development that might require or not require legislation. I am sorry to be a little non-committal but, frankly, that is exactly how I should be because it would be more surprising if I was able to, with confidence, predict what was coming and commit to a particular course of action. That would be totally against the independence of both reviews.

Q125 **Rachel Hopkins:** I appreciate that. The independent panel will determine some of the detail around it, but would you expect that the evidence to the inquiry would be published in full?

**Robert Buckland:** Again, I think it is right of me to respect the independence of the review panels and to say it is ultimately a matter for them, because the documentation has gone to them, not to me or to the Government. I do respect that division. That is not to say that we are averse to publication as a matter of principle, of course we are not, and the outcome of the reviews will be published together with our response. But in the spirit of that respect for their independence, that is a matter for them.

Q126 **Rachel Hopkins:** Just a final push here. Can you assure us that the report



of the review will be made available to both this and other relevant Committees and published soon after you have received it?

**Robert Buckland:** Yes.

**Rachel Hopkins:** Thank you.

Q127 **Chair:** Following on from Rachel Hopkins' questions on the review of the Human Rights Act, you mentioned publication in the summer of 2021. Will you leave a gap between its publication and the Government's response so that interested parties might comment?

**Robert Buckland:** What I would like to do is something slightly different. To explain it clearly, I expect the work of the review to finish then. It will then come to Government to consider and I would like to publish something in the round, so their report and then our response. Clearly, that is not going to be the end of the matter, that may well be a policy position of the Government, but there will then be opportunity after that for contributions and inputs and hearings that this Committee or other appropriate Committees might wish to conduct. I do not want to suggest in any way, Mr Wragg, that through the particular process we will adopt we are going to exclude important participants from the process.

Q128 **Chair:** In terms of the composition of this review panel, are you satisfied that there is, in fact, adequate breadth of experience, particularly—you will forgive me as I am not the most lawyerly of characters, but is there perhaps a lack of experience in common law human rights in this panel?

**Robert Buckland:** I do not agree with that.

**Chair:** As is your prerogative to do so, I suppose. On that note, we will go back to David Jones, please.

Q129 **Mr David Jones:** I have a final question, Lord Chancellor. As you know, the Law Commission Act 2009 puts a requirement on the Lord Chancellor to report to Parliament annually on the Government's progress in implementing the commission's reports. The last report was for the period January 2017 to 2018. When will the next report be published?

**Robert Buckland:** Thank you very much, Mr Jones. It is my intention to publish the eighth report as soon as possible in the New Year. I am well aware that the events of 2019 and, indeed, of 2020 have conspired against the publication of reports in the usual way, but can I reassure the Committee that I am a very strong supporter of the Law Commission? It does some incredibly important work for Government. I meet regularly with the current chair, Lord Justice Green, and will be conducting a remote engagement meeting with members of the Law Commission staff ahead of the Christmas break.

What I have done to strengthen and enhance working arrangements with the Law Commission is to agree a new funding model and an operational model with them. We have set it out in a joint memorandum of understanding on its website. In effect, it means that there is now more of



a direct grant from the MOJ to the Law Commission to give it greater stability in terms of its workstreams and its programmes of work through the year. It will allow greater certainty when it comes to preserving the expertise of commissioners and staff and the specialisations needed. That is going to really assist with regard to the 14th programme of reform work. I have recently written to colleagues across Cabinet to seek their assistance in coming up with new ideas to inform the 14th programme of Law Commission work. I have also highlighted the economic value of the work of the commission. As a result of a recent report that it published, it is estimated that the five largest projects conducted by the Law Commission generated a net present value of more than £3 billion nationally over 10 years.

For example, the very recent codification of sentencing law, which has come into force in recent days, Mr Wragg, will over the next 10 years yield an estimated saving of £250 million due to fewer appeals, fewer slip rule hearings to correct errors, and fewer hearings in general to deal with what was a miasma of sometimes contradictory and rather confusing sentencing law. I will continue to support the Law Commission in every way I can. Indeed, I am engaging closely with it about its next programme and some of the exciting initiatives that it is coming up with, for example, on issues like artificial intelligence and virtual legal documents, digital contracts and the like, which are increasingly relevant not just in commercial life but in the lives of all of us as citizens.

**Q130 Chair:** Thank you, Mr Jones. As we have been economical with the time this afternoon, Lord Chancellor, I wonder if I might give you a brief opportunity to explain issues around the Fixed-term Parliaments Act. I know that in the manifesto, from which the concept of this would-be commission emerged, the repeal of the Fixed-term Parliaments Act 2011 was one of the objectives. Obviously, the draft Bill has been published and the Joint Committee I think met this morning, but I just wondered if there was anything you wish to add from your perspective on that draft Bill, particularly with regard to the restoration of prerogative powers.

**Robert Buckland:** I strongly support the draft Bill and, of course, the lead for that again is my colleagues in the Cabinet Office. I am pleased that the draft Bill process is being used. I think that will only enhance and improve important parliamentary scrutiny. I have long believed that the Fixed-term Parliaments Act was a short-term fix that created a longer-term problem. I think that the approach that we propose to take is an elegant one and it is contained in admirably brief provisions within the draft Bill. I think there is nothing to fear from a return to a constitutional norm that delivered elections at appropriate moments in our modern history.

I do not think anybody at the time of, for example, the calling of an election by Harold Wilson in 1966 or the calling of an election by Margaret Thatcher on several occasions in the 1980s ever seriously said at the time that there was a challenge to the rule of law because of the use of the prerogative



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power by the Prime Minister. I think that what we see in that Bill is entirely within the traditions of our unwritten constitution.

There has been much talk about the so-called ouster clause, an entirely familiar provision when it comes to Acts relating to Parliament. The Parliament Act 1911 contains an ouster clause in relation to challenge of decision-making under the provisions of that Act, for example. Indeed, the Fixed-term Parliaments Act itself had an ouster clause within it when it came to the obtaining of a speaker's certificate, for example. I do not think anything in this Act is unprecedented or is a departure from the norm. I would commend it to colleagues on the Committee and more widely.

**Chair:** Thank you. I thought I would give you the opportunity to place something on the record, as you had answered our other questions so thoroughly. Can I thank you, Lord Chancellor, for your time this afternoon? If indeed there is any area of follow-up that you would care to write to us about, we would gratefully receive that correspondence. Can I thank in particular the broadcasting staff who facilitated the meeting this afternoon?