

Joint Committee on the Fixed-term Parliaments Act

Oral evidence: [Review of the Fixed-term Parliaments Act](#), HC 1046

Thursday 11 February 2021

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Members present: Lord McLoughlin (Chair); Lord Beith; Aaron Bell; Jackie Doyle-Price; Dame Angela Eagle; Maria Eagle; Peter Gibson; Mr Robert Goodwill; Lord Grocott; Lord Jay of Ewelme; Baroness Lawrence of Clarendon; Alan Mak; Lord Mancroft; Mrs Maria Miller; John Spellar; Alexander Stafford; Mr Shailesh Vara; and Craig Whittaker.

Questions 327 - 374

Witnesses: **Rt Hon Michael Gove MP**, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office; **Lord True**, Minister of State, Cabinet Office; and **Peter Lee**, Acting Director General of Constitution Group, Cabinet Office, gave evidence.

Examination of witnesses

Chair: This is a meeting of the Joint Committee on the Fixed-term Parliaments Act. We are joined this morning by the Chancellor of the Duchy of Lancaster, Michael Gove; Nick True, Minister of State in the Cabinet Office; and Peter Lee, acting director general of the UK Governance Group. I am sure that Committee members would like to express our thanks for your attending today, Chancellor, and to pass on our best wishes to Chloe Smith, whom I know is unable to join us this morning. Welcome, everybody. Chancellor, I know that you will be under tight pressure today. We are keen to cover as much of the area as possible, and while fully accepting that we need full answers, we want to make brisk progress if we can. I ask John Spellar to ask the first question.

Q327 **John Spellar:** Thank you, Chairman. Michael, could you start off by enlightening us on why we seem to be doing this in a roundabout fashion, in that the Government prepared the legislation and then put it to the Committee, rather than the Committee reviewing the legislation and then making an assessment and recommendations?

Michael Gove: Thank you, John. May I first thank Patrick for his kind words about Chloe? We are all anxious to ensure that she is feeling better as soon as possible. As I understand it, John, the existence of this Committee is a provision of the original FTPA, and that the Committee should review the Act's working and would have done whatever the composition of the House of Commons and whoever was in Government. That was a statutory obligation



However, at the last general election we had in our manifesto a clear commitment to repeal the FTPA. I think that commitment was also shared by Labour in its manifesto. We believe that it is right and appropriate for us to be expeditious in seeking to replace the FTPA. The Joint Committee's thoughts on the means by which we do so will of course inform the approach that we take.

Q328 John Spellar: That's exactly the point, isn't it? You are absolutely right that both of the main parties had a commitment to repeal, so the "whether" has been resolved. It is really about the "how". On recommendations, section 7 of the Act says that arrangements must be made for "a committee to carry out a review of the operation of this Act and, if appropriate in consequence of its findings, to make recommendations for the repeal or amendment of this Act". That is the legislation. I just wonder if you could make it clearer why the Government decided not to follow the legislation, given the time we have left in the life of this Parliament and the Government's clear majority, and bring forward legislation, which would clearly go through?

Michael Gove: I hope it will go through. We wanted to crack on. Of course, it is the case that, as we seek to introduce this Bill, we will take account of the thoughtful contributions that the Joint Committee has to make.

Q329 Alan Mak: Good morning, Ministers and director general. I would be grateful if you could also pass on my best wishes to Chloe Smith. I have three interlinked questions. First, you said that the FTPA was passed by the coalition in unique circumstances. What were those circumstances, as you see it? Secondly, wouldn't the rules in the FTPA be helpful in enabling coalition Governments generally in the future, rather than only the 2010 coalition? Thirdly, do you think you are creating a situation where the repeal Act will simply be replaced in the future by another FTPA when there is a need, such as if there is a coalition Government in which the minority party does not trust the larger party not to call an election? Thank you.

Michael Gove: No, thank you, Alan. I think those three interlinked questions are spot on. You are absolutely right that, while there are people who have argued for the intrinsic merits of a fixed-term Parliaments Act, nevertheless this Act was brought forward specifically in order to ensure that both parties in the 2010 to 2015 coalition could have confidence that neither party would prematurely end that Parliament in order to secure electoral advantage. That point was made by, among others, Chris Huhne and so on during the course of the framing of the legislation. As the Committee knows, we have experience of how the Act has worked, and its operation has generated more problems than perhaps even some of its early critics could have imagined or conceived, which means that it is appropriate to repeal it, and there is a clear democratic mandate for us to do so.

I think it is entirely possible that you could have a future coalition or other Governments formed, or, indeed, confidence and supply or other arrangements, that would not require something similar to the FTPA. We take the view that, generally, no Parliament can bind its successors, but there is a clear need to replace the FTPA with arrangements that are more in keeping with our best constitutional traditions and proper parliamentary accountability.

Q330 Mrs Miller: Thank you for giving evidence today; we are very grateful. You were just talking about the importance of replacing the Act and the mandate that you have

from the general election, but it is really important that we understand why you feel that the Act does not work. In particular, the Government have said that “the Fixed-term Parliaments Act has not had its intended effect.” The ability to call an early election is already included in the legislation, so what do you mean by its not having its intended effect? And do you think that, with the repealing of it, there will be a return to a more uncertain election timing regime, which is what we perhaps have seen in the past?

Michael Gove: I absolutely take that point, but I think that, in its own terms, the FTPA has not met the expectations of its framers, in that the general elections that were called in 2017 and 2019 were not called at the end of a full fixed term and were called in different circumstances, of course. There is also the experience of the 2017 to 2019 Parliament, where you had a Government that could not get its business through but at the same time a reluctance on the part of the House of Commons to have a Dissolution and a general election. That demonstrated that the FTPA was not working in the way in which it should: it neither ensured that business could be done nor ensured that the fixed term anticipated could be secured.

There is a broader discussion, of course, about the rightness of allowing a Prime Minister to seek a Dissolution and the potential political advantage that will accrue to any Prime Minister who seeks that, but I think that in the evidence that Vernon Bogdanor and others put forward to this Committee, the point was well made that there are Prime Ministers who have chosen election timings and that has not turned out to their advantage because the electorate have smelled a rat.

Q331 **Mrs Miller:** May I ask a supplementary question? So it was the trigger for calling a general election that was wrong within the Act, you feel?

Michael Gove: Yes—well, I think that the whole architecture of it was wrong. The way in which the 2017 to 2019 Parliament operated was, I think, the most vivid example of that, in that during that Parliament there were all sorts of manoeuvrings and considerations of what might happen in the 14 days after the loss of a vote of confidence and so on, which did create uncertainty and paralysis. The public reaction, when a general election eventually occurred in 2019, would strongly suggest—well, I would certainly say that it reinforced the need to move on from what were specific arrangements that were introduced for understandable reasons by the coalition Government, but which were not the best way of ensuring proper accountability.

Chair: Shailesh Vara, you want to ask a supplementary question on this?

Q332 **Mr Vara:** I do. Thank you, Lord Chairman, and thank you very much, Chancellor and your team, for joining us this morning.

On the point about certainty of elections, many people say that the Fixed-term Parliaments Act would provide that. You have rightly pointed out that 2017 and 2019 prove that it doesn't. But would you also agree that on the whole there is certainty, because most general elections—other than the odd exception—tend to be every four or so years and it is perfectly clear that there are some times of the year when elections do not take place: Christmas, Easter, summer holidays and so on? It is extraordinary that most of the major political parties seem to know when the election is going to be, in that months beforehand they are able to buy up billboard space and



advertising space, and candidates are in place and they have got their photographs with the leaders and so on. Would you agree, therefore, that there is actually a fair bit of certainty already in the system, without the Fixed-term Parliaments Act?

Michael Gove: Yes, I think, Shailesh, you are absolutely right. I can't remember which witness it was, but someone used the phrase "the biorhythm of Parliament", which is generally around four years, but obviously there is provision for it to be extended—absolutely. But again, going back to the point that Maria made, if you have a Prime Minister who cuts and runs early, for perceived advantage, or indeed one who tries to evade the electorate by prolonging their term, there are consequences. Poor Ted Heath lost out by calling an election in February 1974, and John Major was similarly unlucky, albeit in a different way, when he prolonged the length of the 1992 Parliament. I think most people would reflect that the Conservatives would have had a less severe defeat in 1997 if he had gone earlier. But of course the Prime Ministers in both cases exercised those powers and the electorate then formed a view about the exercise of those powers.

Q333 **Chair:** Chancellor, if the position is changed as far as a general election is concerned, would you see a need to review what the Electoral Commission does as regards the controlled period? At the moment, it is for 12 months before a general election that the spending of a political party is much curtailed or monitored. If you don't actually know when the general election is going to be, how are parties going to fall in line with what the requirements on spending are?

Michael Gove: It is a very important point. We all know that there is an appropriate short campaign, which is highly regulated. The broader issue of controls on spending is one that the House of Commons will want to look at overall, because the question of party funding and election spending goes beyond simply the timing of elections, important though that is. I think that the House and its Committees would want to look at and take evidence from the Electoral Commission and others on effective spending controls overall. Looking at election timing is one of the issues.

Q334 **Alexander Stafford:** You indicated that the use of bespoke legislation in 2019 meant that the Fixed-term Parliaments Act had failed, but in previous evidence to PACAC, Sir Stephen Laws, who was the first parliamentary draftsman of the Act, and Lord O'Donnell, who was the Cabinet Secretary, told the Committee that an overriding Act was always understood to be possible and even a safeguard against the Fixed-term Parliaments Act creating gridlock. Were they wrong?

Michael Gove: No, but I think it is preferable to return to a more stable and better understood constitutional framework, rather than having to have bespoke legislation. In that way, it is better if the train driver can put on the brakes, rather than the passenger having to pull the emergency cord, as it were. That is the approach that we are taking.

Q335 **Maria Eagle:** It is good to see you this morning, Chancellor. You have said that the Act "created uncertainty" as to what happens when a no-confidence motion is passed—that is in one of the Government's statements. Will you explain what that uncertainty consists of, please?

Michael Gove: The first thing is that it has been the case in the past that Prime Ministers have been able to designate votes on particular issues as votes of confidence, and it is also the case that the terms on which a vote of confidence is sought or called for are defined more

narrowly in the Act. Secondly, there is uncertainty about what would happen in the 14-day period after a Government had lost a vote of confidence and different manoeuvres were in place in order to ensure, or to find, a satisfactory alternative Government. My view is that if a Prime Minister loses a vote of confidence, he or she should have the right to seek Dissolution, to go to the people and to allow the people to decide.

Q336 **Maria Eagle:** Fine, but are you suggesting that if a no-confidence vote were passed in this 14-day period and it seemed likely that an alternative Prime Minister could command a majority in the House, the existing Prime Minister could credibly, somehow, refuse to resign and could seek to try to continue? Are you saying that that is possible under the current arrangements? Or don't you think that?

Michael Gove: The key thing is that, if a Prime Minister loses a vote of confidence, the Prime Minister is the sovereign's principal constitutional adviser and if he or she believes that there is a credible alternative Prime Minister who can form a credible alternative Administration, it is their responsibility to do that. I know it is a long time in the past, but if one looks at what happened in 1924, I think, when Stanley Baldwin could not get his business through, he quite properly told the King to send for Ramsay MacDonald. That seems to me to be a more robust arrangement than the uncertainty that the 14-day period generated.

Q337 **Maria Eagle:** Is that not still the case, whether the Act is there or not? That would still be the Prime Minister's duty in the circumstances that you have described, so there is no real difference or uncertainty created by the existence of the Act as it currently is in that regard.

Michael Gove: Again, we never had that 14-day period in reality, but quite a lot of the scenario planning that political actors took part in for that 14-day period threw up a number of potential inconsistencies and difficulties in the way in which it operated. It seems to us to be cleaner and clearer to have a return to a more classical understanding of what a vote of confidence involves.

Q338 **Maria Eagle:** Okay. You think they are equally robust but that the previous arrangement was clearer. Is that what you are saying, in essence?

Michael Gove: Clearer, better and tested—because we have not gone through that 14-day period. As I say, when people looked at what might occur in that 14-day period, a number of unfortunate and unexpected scenarios were floated, so I prefer the tried and tested position of the past.

Q339 **Dame Angela Eagle:** Welcome to the Committee, Chancellor. The Government have used this issue of paralysis in the 2019 Session as a reason for repealing the Act. In his evidence to us, Lord Butler was of the opinion that the deadlock in the 2017 to 2019 Parliament was caused by the Government having a policy that didn't even convince its own side and therefore the deadlock and paralysis was caused elsewhere. Do you want to say why you think that the presence of the Fixed-term Parliaments Act caused paralysis? Was it not just that Brexit was an extremely difficult thing that divided many people?

Michael Gove: Yes, I think you're right that Brexit was a difficult issue; it did divide many people. Whatever the issue, if a Prime Minister and a Government cannot get their legislation through, repeatedly, then that Prime Minister has the right to request a Dissolution, in order to

ensure that the voters have the ultimate say. I am not criticising anyone—it was just a failure of the legislation. The House of Commons was held in suspended animation. People used phrases like “zombie Parliament” and so on, because the Government couldn’t get its business through, but, at the same time, the House of Commons wouldn’t allow an election to take place, until of course the legislation was passed late in 2019.

Q340 Dame Angela Eagle: Was it more about the Government’s unwillingness to compromise cross-party or deal with the Opposition in a fundamental way over an issue that divided the country down the middle, rather than a problem with this legislation? Aren’t you rather taking it out on the legislation rather than accepting that, whatever the situation, there would have been a problem with Brexit?

Michael Gove: I think there will always be challenges, yes, but I think that the electorate took a view in the 2019 general election about their overall perspective on how Parliament had operated between 2017 and 2019. That is not to say that people hadn’t behaved completely honourably from their own respective points of view. There were some very brave and principled people who lost their seats in the 2019 general election, but nevertheless, that allowed the electorate to take a view, which I think is right. Again, there can be future situations, perhaps on different issues, where it may be the case that a Government loses the support of some of its own MPs or fails to convince Opposition parties, and then it should have the right to go to the country for the voters either to give it the mandate it needs to carry forward its business, or to say, “Sorry—not working.” In February 1974, Ted Heath went to the country. Again, the circumstances were different, but in the end, the electorate thought that, despite his best efforts, it was better to send for another Prime Minister.

Q341 Dame Angela Eagle: Yes, I remember it well. You said at the beginning of your evidence that you wanted to take account of representations from this Committee. It is fair to say that we have quite a lot of criticisms in our evidence of the draft Bill and certain other aspects that surround it. Are you signalling, given that this has got such constitutional importance, that you are willing and open-minded when you are taking into account representations from the Committee and you are not just going to take them into account and then ram the Bill through unamended because you can?

Michael Gove: Perish the thought.

Q342 Dame Angela Eagle: That is good to hear but give us a bit more detail.

Michael Gove: Having been, like your Chairman, a Chief Whip, I know that it is always a very good idea, when you have got smart parliamentarians from both Houses and all parties making suggestions, to take them into account. It is just more trouble later if you don’t listen to reason.

Dame Angela Eagle: That’s good and that will make us determined, I am sure, Chair, to come up with a report that has some good, constructive suggestions. Thank you very much.

Chair: I am not sure if that answer has made my job easier or harder.

Q343 Lord Jay of Ewelme: I hope that after two eagles, a jay will be relatively comforting to you, Chancellor.



I wanted to go back to an answer you gave to a question from Maria Miller a little while ago. One of the stated purposes of the 2011 Act was to remove or mitigate the bias towards incumbent Governments in the old arrangements that came from the Prime Minister's ability to choose when an election would happen and to seek to do so for partisan ends. Research that we have had on this Committee, which has been described as incontrovertible, has shown that, under the previous system, incumbents have on average a realised vote share bonus, I think I am right in saying, of at least 3.5%, and a seat share bonus of 11.3%. You have rather suggested that that is not the case. What evidence do you have for saying that that was not the case?

Michael Gove: The first thing to say is that jays and eagles are both beautiful birds, appropriately protected by the right sort of legislation. The other thing I was going to say is that I think the evidence that was shared with the Committee came from research that was published in an academic journal by Dr Petra Schleiter and Dr Valerie Belu. It is important, but it is difficult to look at all the counterfactuals and all the different variables when it comes to these factors, because Governments that either call elections early, or seek to extend the length of the Parliament, tend to be Governments in trouble and therefore those that might be less likely to prevail. The ultimate test of whether or not this freedom is being exercised responsibly is the voter. Again, at different times when you have had election timing, voters have formed their judgment.

In 1966, voters believed that Harold Wilson had made a great start as Prime Minister and needed a stronger majority in order to be able to carry on. In 1951, voters formed a judgment that Clement Attlee, for all his great service, was not the right person at that point to take forward reform, so in both cases you had situations where Labour Prime Ministers went to the country early, with different results: '51 a negative judgment; '66 a positive judgment. In both cases it was the voters who were the ultimate arbiters, even though Prime Ministers chose the timing.

Q344 **Lord Jay of Ewelme:** May I ask a further question? If there were firm or clear evidence that there was an electoral advantage, would you think that that was the right thing to do?

Michael Gove: I think it is important to look at all the evidence but, ultimately, the most important thing is confidence in our democratic arrangements. On the broader arguments that have been shared with this Committee about the importance of making sure that if a Prime Minister—he or she—cannot command the confidence of the House of Commons we move quickly to a general election, that is critically important. But I also think that the approach that we have had has been well understood. Both Labour and Conservatives have benefited from the rub of the green at different points, and both Labour and Conservative Prime Ministers have been punished for making judgments that the electorate thought were not in the country's interests. One thing about constitutions and political arrangements is that the better understood they are, the better the public can use them to get what they want in a democracy.

Q345 **Lord Grocott:** Welcome, Chancellor. We have already established that both the Labour and Conservative parties committed in their manifestos to scrapping the Fixed-term Parliaments Act. I think it is fair to say that an awful lot of our witnesses, if not all of them, have said either, "Get rid of it," or, "Make substantial changes to it." The question is: what happens next—what changes might take place? The



fundamental decision that the Government seem to have taken in the Bill is that the way to deal with this is to revert to the prerogative powers prior to the 2011 Act, rather than to introduce new legislation. That is quite a significant judgment to make. What was the basis on which that was made?

Michael Gove: Here I will defer to Lord True, who I know will answer some of the following questions that you, Bruce, and others have in this area. Over to Nick.

Lord True: I am not sure that “deference” would be the appropriate word for the Chancellor to use when he is talking to me. I think that the answer to the question is that we see—we believe the Labour party saw this as well—that the FTPA was in effect an historical anomaly. As the Chancellor said, it was introduced in certain circumstances, and it replaced a tried and tested system—long-term constitutional arrangements under which the country had evolved peacefully and accomplished great social and political change in a stable manner. I think that the unwritten presumption behind the manifesto was that we would be removing what was a historical anomaly that had not proved successful in practice.

Q346 **Lord Grocott:** But couldn't the same objective be realised by means of legislation? For example, we heard earlier that one of the Government's main concerns about the Fixed-term Parliaments Act was the trigger to produce a general election, which of course is a two-thirds majority—I think virtually everyone thinks that that was not the best of ideas. If the concern is the trigger, couldn't this be achieved by a simple piece of legislation that said, for example, that a majority in Parliament could trigger an election, which was what happened in practice in 2019, just as a majority in Parliament could trigger a vote of no confidence that causes the Government to resign or causes a general election to take place? That seems to me a fairly simple way of dealing, through legislation, with the problem that the Government have identified. What are your views on that?

Lord True: First, we believe that the arrangements that we are returning to provide for more flexibility than a very narrow statutory provision. Secondly, on the trigger, one of the anomalies of what happened under the Fixed-term Parliaments Act was that an override Act was needed which, technically, needed the assent of the unelected House to procure a Dissolution. It so happened in the circumstances that everybody was ready for a general election at that time, but I do not think that, particularly constitutionally, it was a very comfortable place to be. These questions should be resolved by the great elected House of Commons, and in the traditional system, that is how it has been, on a vote of confidence. We maintain that the system of the Prime Minister's right to advise has not been abused and has enabled the Queen's Government to be carried on.

Q347 **Lord Grocott:** Just to make an observation, it would not be a novel piece of legislation if it simply required a majority in the House of Commons. There have been various get-out clauses where it was clearly not appropriate for the Lords to veto legislation during the passage of a Bill that was clearly a Commons issue, which a general election clearly is. That is not an insurmountable problem to deal with in legislation.

Lord True: That is an argument that you can put. I would be interested to hear what the Joint Committee says on that subject. Historically, there have obviously been difficulties. The House of Commons has not always been the most eager to accomplish a Dissolution when it has had control over the length of a Parliament, whether in the most recent experience, or if



you look back historically to the more unfortunate events of the 1640s. We will obviously reflect on what the Committee says, but our judgment is as the Chancellor and I have explained.

Q348 Lord Beith: Chancellor, I want to direct this question to you. We are fortunate to have you with us this morning when you have so much else occupying your attention at the moment with difficult issues—with due respect to Lord True, who is always ready to assist this Committee and others, and with whom I have had happy dealings. Is it the Government’s clear intention to return us to the situation that existed before the Fixed-term Parliaments Act, and is it the Government’s belief that they can do that?

Michael Gove: Yes. In so far as we can, absolutely.

Q349 Lord Beith: In that case, there are some issues they will have to resolve. The “Dissolution Principles” paper that the Government have produced, for example, takes an interpretation of the previous situation not shared by any witnesses who have been before the Committee when it says: “the Prime Minister...can advise the Sovereign to dissolve Parliament at a time of their choosing.” If that were the case, it would not be a personal prerogative; the sovereign would not be able to decline a request for Dissolution. Ought not the language the Government use be the language of “request” rather than “advise” in this context?

Michael Gove: The principles that we have outlined are designed to be just that—principles—and one of the things that I am most eager to hear from the Committee is its views on how those principles might best be framed. Again, without prejudice to the conclusions of the Committee, we will be looking at exactly how we can make sure that those principles can command the greatest level of confidence and clarity of understanding.

Q350 Lord Beith: The other issue, which is much more one that you can perhaps help us with by instructing a revision of the memorandum, is that some of our witnesses have questioned whether you can revive a prerogative in this way. It would be helpful to have a memorandum that goes further than the explanatory notes in dealing with that issue. Can that be done for us in a timely manner? We are getting close to the point where we have to produce a report.

Michael Gove: I am sure it can be. I know that a number of witnesses say that the whole tendency—the whole democratic thrust—of all of our times has been to limit the prerogative power, but the prerogative power exists for good reason. Without wanting to stray into other areas, it is important that we make the point that prerogative power is required at certain critical moments.

Q351 Lord Beith: I tease you with the thought that the 2015 Conservative manifesto said that the Fixed-term Parliaments Act was an “unprecedented transfer” of power from the Executive. It follows, does it not, that it is a major transfer the other way—from Parliament back to the Executive—to pass the legislation?

Michael Gove: Ultimately, it is a transfer of power back to the people. Without wanting to stray into too many other areas, I am one of those people who believe that sometimes the Executive need to be able to act—for example, when it comes to matters of war and peace,

and life and death. It is a separate essay and I shan't get into it, but it is a very fair point well made, Lord Beith.

Chair: Thank you, Lord Beith. I am afraid my internet dropped out. Baroness Lawrence?

Q352 **Baroness Lawrence of Clarendon:** I think part of the questions that Lord Beith put to you covered where my question goes. The 2010 Conservative manifesto was about seeking greater democratic control. Does your Bill represent a clear, if partial, reversal of that trend? What is the justification for taking power away from Parliament and placing it in the hands of the monarch or the Executive? Why should Parliament have no formal role in deciding whether and when an early Dissolution can take place?

Michael Gove: Again, it is a very important point. I think that the recent experience of the 2017 to 2019 Parliament shows what can happen when Parliament, for a period, withdraws the ability of the Prime Minister to seek a Dissolution, but at the same time resolves to block the Prime Minister when she is trying to bring forward appropriate legislation. In that sense, for democracy to work, we need to recognise the absolute supremacy of the Crown in Parliament, but we also need to recognise the way in which appropriate checks and balances ultimately depend on the people being the court of final resolution. That is why Governments should be able to request a Dissolution when they are not able to get their business through. Again, as I mentioned to Lord Beith, there are very good arguments either way about the prerogative power, the power of the Executive and how the legislature should hold them to account. But, ultimately, what I think we are talking about here is the effectiveness and responsiveness of our democratic system overall.

Q353 **Lord Mancroft:** Good morning, Chancellor and Minister; it is very nice to see you in your cosy little office. Can I turn to subjects around the timetable? As drafted, the Bill would enable a Government to dissolve Parliament without immediately triggering a statutory election period. A proclamation calling a new Parliament could potentially be delayed for some weeks. What is the reason for not tying the Dissolution of one Parliament to the summoning of the next?

Michael Gove: Again, I will defer to Lord True on this point, but if you want to follow up with any direct questions to me, I will absolutely respond to them.

Lord True: Obviously, as you say, Lord Mancroft, when the FTPA is repealed, the election timetable will be triggered by the royal proclamation that summons a new Parliament. As has always been the case, that will happen. Historically, as you know, it has always been the case that the proclamation of the new Parliament and the Dissolution have been combined, because they have been dealt with at the same Privy Council. Indeed, the writ that goes out to Members of the House of Lords to attend the next Parliament gives the date of the next Parliament, but it is not a legal requirement. I accept the point from the Committee that it must be combined in a royal proclamation. We have followed the evidence that has been given to your Committee with interest, and we look forward to hearing views on this point in due course, because we understand the importance of the point you make.

Q354 **Lord Mancroft:** Thank you. Could I just ask two quick supplementaries? In the event of the demise of the Crown in an election period, the poll is postponed for 14



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days. Why does the draft Bill allow polling day to be moved up to seven days either side of that default date? Secondly, how long do you think a Government could continue to operate in the absence of Parliament—in Supply terms, that is?

Lord True: Perhaps one should ask Charles I that question. On the demise, we looked at the dates that would have happened—what would have happened with an election technically and the dates of the 2019 election. The arrangements would have been that the election would have taken place—I am speaking from memory here, but we will supply the Committee with the figures if you don't have them—on 27 December, two days after Christmas. There is limited flexibility in the Act to allow movement in that respect, but it is not in any sense intended to allow for wider flexibility.

So far as a meeting of Parliament is concerned, obviously Supply is one of the factors. Historically, the other factor has been the need for the annual Army Act, which is now done by statutory instrument every year—it used to be an Act of Parliament. Looking at the spending rates of modern Governments, I don't think a Government would be able to exist for very long without Supply.

Q355 **Peter Gibson:** Good morning, Chancellor and Minister. There are three parts to my question. The typical biorhythm of a Parliament since 1945 has been for just under four years. Why have you set the maximum at five years? Don't Parliaments usually run out of steam by their fifth year? Why has that maximum term been set to run from the first meeting of the new Parliament, rather than from the Dissolution of the last?

Lord True: Michael asked me if I would take that one. Five years is obviously a continuance of the position in the FTPA, although in a different guise, and in terms previously. I think you have a point: some Parliaments do run out of steam, which is why Prime Ministers have often tended not to go the full term. The corollary of that is that if you reduce it to four years, as I know some argue, you might in effect have a three-year Parliament, because the Parliament would run out of course after three years.

A five-year term allows successive Governments to have a good four-year effective period of government and see through their policies in the run-up to a general election. I don't want to give too long an answer, because I know the Committee has little time, but if I look back at when I was in No. 10 in '91 and '92, the then Prime Minister, John Major, took a very specific decision, despite the fact that he had a poll bounce and there was the risk of a recession, to go on for an extra year because there was an important piece of work to complete—getting the Maastricht treaty through. I don't think the arguments are all one way. There is flexibility, and it is horses for courses. We think that five years allows that flexibility and enables a good four-year term.

Q356 **Chair:** You mean the Maastricht meeting. The legislation didn't actually go through until the '92-'97 Parliament.

Lord True: Yes, I meant getting the negotiation done. I am not recounting these memories accurately, but I assure you that they are very fresh in my mind of those difficult times.

Q357 **Peter Gibson:** Thank you, Lord True. Could you just address the point about the timing of the new Parliament running from the date of its first meeting rather than from the Dissolution of the previous Parliament?

Lord True: Yes, that is what used to happen; that is, in effect, what happened under the old system. I think that if you look at the dates of when Parliament has gone for five years, there is an absolute end of the Parliament in five years in this legislation; it is in the terms of the Bill. However, if you look at what happened in 1979 and—I believe—in 1964, you will find that in both those years the new Parliament actually met more than five years—a little bit more than five years—after the previous Parliament, although that did not mean that either Harold Wilson or Tony Blair were revolutionaries; it was a minor anomaly in the system. But the real control is that Parliament is automatically dissolved after five years—bang!

Peter Gibson: Thank you, Lord True; I have nothing further to ask, Lord Chairman.

Q358 **Mr Goodwill:** I would like to ask a question or two about clause 3 of the Bill, on the non-justiciability of revised prerogative powers—the so-called “ouster” clause. I suppose that, in short, my question is this: would that clause be there had it not been for the Miller/Cherry case, despite the fact that we heard in evidence from Lord Sumption that he did not believe that the logic of the Miller/Cherry case—I think that would be his choice of words, not mine—was not transferrable to the Dissolution? Sir Stephen Laws described it as a sledgehammer to crack a nut. So why is that clause there, if the Miller/Cherry case is not directly related to a Dissolution?

Lord True: The long-standing position is that the exercise of the prerogative power to dissolve is not reviewable by the courts and that had been the understood position since the Bill of Rights. And obviously judgments on any Government’s action should then lie with the people rather than with anybody else, as the Chancellor was saying earlier.

However, you are right to say—obviously, again we followed very closely and carefully all the evidence to the Committee, as we will consider your recommendations—there is a difference of opinion, which is acknowledged, between those who argue, whether post-Miller/Cherry or aside from Miller/Cherry, that there might be a difference of opinion on the situation.

So, we believe that to ensure maximum certainty on the timing of an election, the Bill should make clear—beyond doubt—that it is beyond justiciability. It gives a certainty on the face of the Bill—a parliamentary decision, the will of Parliament—to be absolutely clear.

Q359 **Mr Goodwill:** Is it possibly the case that the reason that the Government have not extended it to the Prorogation as well as to the Dissolution is that in that particular situation many people viewed the Prime Minister as trying to pull a fast one and that it is maybe something that, in hindsight, many people would not think was a good way of moving forward, and that maybe the courts had a point in trying to limit the power of the Prime Minister in that case?

Lord True: No, I would not make that linkage at all. I think the purpose of this Bill is to address the narrow point of the mechanism for the Dissolution of Parliament. That is the way it has been addressed in its creation and that is what it is seeking to do—to give clarity going forward about the position on Dissolution.

Q360 **Mr Goodwill:** Thanks, Nick. Almost all of our witnesses, including both former Supreme Court Justices, have said that the courts would only intervene in decisions about Dissolution or summoning Parliament in cases of extreme constitutional abuse. So why shouldn’t the courts be able to protect Parliament against severe abuses of



prerogative powers?

Lord True: If you are asking on the narrow point of Dissolution, I do not think that we see the evidence for, or the risk of, what you might call a severe abuse of prerogative power.

Q361 **Mr Goodwill:** Let us say that we had somebody of the character of Mr Trump in Downing Street rather than our excellent current Prime Minister. Would there not be a case that at some point maybe the courts would need to intervene, as the courts currently are intervening in America?

Lord True: I am not commenting on any President of the United States, present or past. [Laughter.] I believe impeachment is still possible in this country, technically.

However, the right recourse if a Prime Minister is behaving in a curious fashion would be for the members of his party in the House of Commons, if not the House of Commons more widely, to address that position. Without being invidious and naming names, that has happened in the past.

Mr Goodwill: I have broken my own rule of never asking a question starting with “what if”. Back to you, Chair.

Q362 **Mr Vara:** It has been suggested that having an ouster clause would put the Monarch in a difficult position, as she would be the ultimate safeguard against any abuse by the Executive in using the prerogative powers. Do you agree that this would put the Monarch in a difficult position in that it would draw the Monarch into party political matters?

Lord True: We would not agree with that. I believe the Committee wants to come on to discuss the “Dissolution Principles”. Obviously, in returning to the status quo, there is a continuing role for the Sovereign in certain circumstances to refuse a Dissolution. But the overriding position remains that it is incumbent on all of us involved in politics and in the political process to ensure the Sovereign is not drawn into party politics. Not leaning too much into the discussion the Committee is having, the advice you will give and what we will discuss in a minute, but we believe that the “Dissolution Principles” will help to protect the Sovereign from any such danger.

Q363 **Mr Vara:** If we have an ouster clause—for those who might still be worried that the Monarch may be drawn into party politics—what are your thoughts on just having a simple majority in the Commons, which of course would be compliant with Article 9 of the Bill of Rights?

Lord True: I think we discussed that earlier. In effect, no Government can exist unless they can command a simple majority in the House of Commons, theoretically, because the non-majority could deny the Government confidence. Returning to the point made by Lord Grocott earlier, in a slightly different guise, we say that we will reflect on and consider the points that the Committee makes. Our judgment is clear that we are returning to a tried, tested, and effective system.

Q364 **Mr Vara:** This is my final comment. If you have a simple majority, it is not failsafe, because if you have minority Government, which relies on a relationship with another party, it may not be in the minority party’s interest to have an election, and



they may deny the majority party that simple majority.

Lord True: These things can happen in party politics. Coalitions do not need fixed-term Parliaments acts, and arrangements can be made in Parliament—as they were in 1977, for example—where a minority Government can be sustained. It is not axiomatic to say that you must have a vote every now and again, to say that a Government be allowed to continue. The system allows for flexibility.

Mr Vara: Thank you.

Q365 **Aaron Bell:** Thank you to all our witnesses for their time this morning. I want to return to the “Dissolution Principles” document. I note the answers you gave earlier to Lord Beith. You said that you want to return to the status quo ante. Is it your belief that the “Dissolution Principles” document accurately and thoroughly captures the conventions on Dissolution, as they existed prior to 2011 and the passing of the FTPA?

Michael Gove: As far as we possibly can, but we are particularly interested in the Committee’s views on the draft principles statement.

Q366 **Aaron Bell:** I believe Lord Beith asked you about the distinction between “advise” and “request”. Lord Lisvane thought that the last paragraph was simply a drafting error, where it says that the Sovereign “is informed by and acts upon the advice of the Prime Minister so long as the Government appears to have the confidence of the House, and the Prime Minister maintains support”. Is it your understanding that the Sovereign still acts on the advice of the Prime Minister, even if it is apparent that the Prime Minister may no longer have the confidence of the House?

Michael Gove: The Sovereign always takes the advice of whoever the Prime Minister is at the time. The Prime Minister is the Sovereign’s principal constitutional adviser. It is axiomatic that there can only be one Prime Minister at any time. When a Prime Minister concludes that they can no longer command the confidence of the House of Commons, as Gordon Brown did in 2010, they ask the Monarch to send for an alternative.

Q367 **Aaron Bell:** That is my understanding, too. But does that not make the distinction between “advise” and “request” in the earlier part of the principles more important? It would not have been appropriate for Gordon Brown to advise a further Dissolution. In the same way, it probably was not appropriate for Harold Wilson to advise a further Dissolution in, say, March 1974. Is it not important that we go back to that being a request?

Michael Gove: I absolutely take your point, and that is something on which we will reflect.

Q368 **Aaron Bell:** Thank you. Secondly, the “Dissolution Principles” document makes no mention of the connected conventions on calling of Parliaments and Government formation, which you addressed earlier as well. That is quite striking, given that the Brown Government’s draft Cabinet manual chapter in February 2010 explained quite clearly how those conventions link up with those to do with Dissolution. Why did the Government decide not to address those closely related conventions in the principles document?



Michael Gove: The principles in “The Cabinet Manual” on how Governments are formed are relatively clear and relatively well understood. As we indicated earlier, what we sought to do with the Dissolution principles was to go back as closely as possible to the status quo ante, but take into account recent experience. As I say, the congruence of the Dissolution principles with the principles on the formation of Government in the Cabinet Office manual is one area where we will be grateful for the Committee’s recommendations when they come.

Q369 **Aaron Bell:** It would be helpful if you could set out your understanding, or the Government’s understanding, of those conventions about the calling of Parliaments and Government formation, either now or in a written document by 22 February, if that would be possible.

Michael Gove: Absolutely.

Q370 **Aaron Bell:** Finally, how in your political understanding, do those principles become convention? Is putting them on gov.uk the equivalent of writing to *The Times*, or do we need to do something more analogous to what happened with the Sewel convention, where we stated that Parliament would not normally do something?

Michael Gove: That is a huge question, and of course I think there is nothing better than a letter to *The Times* as a way of clarifying matters in the constitution, though probably not under a pseudonym these days. More broadly, I think that there are different ways in which things can be understood as conventions. One of the great merits of the British constitution is its flexibility; not everything has to be laid down in statute. The point about principles is that they can be, if they are well understood, flexible.

The point about the Sewel convention is a very fair one. Sometimes people misunderstand it, but the point is there. The UK Government will not normally legislate in a devolved Administration’s competence, but the whole question of what is normal is of course a matter for political judgment and interpretation.

Aaron Bell: Thank you very much.

Chair: Thank you Aaron, and thank you, Chancellor, for a reminder of the letters to *The Times*. I would have thought that *The Sun* was more appropriate these days as far as circulation is concerned.

Q371 **Craig Whittaker:** Several of our witnesses have considered that the effective enforcement of constitutional conventions is much weaker now than it was 20 or 30 years ago. What makes you confident that Prime Ministers will request and be granted Dissolutions only when they are genuinely appropriate? In other words, how can we trust that the old conventions on Dissolution and on the calling of Parliaments will be honoured?

Michael Gove: Ultimately, it is the common sense of the public. When the public regard any Prime Minister as playing fast and loose, or as pulling a fast one, that Prime Minister is punished at the ballot box. If some sections of political opinion think that any particular Government or Prime Minister is in the wrong, but the public think that they are right, the public take that view. Without getting into constitutional detail, an awful lot of stuff was thrown at Tony Blair in 2001-2005 Parliament, but in the end, in 2005, the country thought that he was the best Prime Minister. Similarly, towards the end of the 2019 Parliament, there

were all sorts of people making judgments about our current Prime Minister, but in the end, the people felt that he had behaved rightly and was the right person to carry us forward. Those are relatively recent examples where the common sense of the public has been a good guide to what the right political outcome should be.

Q372 Craig Whittaker: In other words, we can trust that the conventions will be honoured? Is that what you are saying?

Michael Gove: Yes. The ultimate safeguard is the public. The other thing is that, although we can romanticise how things operated in the past, again, if you look at how aspects of the constitution operated in the 1970s, not everything that happened during that decade was quite as squeaky clean as any of us would like to think in retrospect.

Q373 Chair: Chancellor, could I just push you on confidence in the Prime Minister? Of course, a Prime Minister may sometimes have the confidence of the House of Commons on a certain issue, when issues become the flavour of the day, but he may not have the confidence of the country. Surely the only way to test the confidence of the country, which is what the Prime Minister is governing on behalf of her Majesty for, is by general election.

Michael Gove: Yes. If it is the case that, for the sake of argument, Prime Minister A says, “I want to make this vote a vote of confidence,” that is well understood. It is also the case that the Leader of the Opposition, if they request a vote of confidence, can expect the Government to facilitate that debate and vote at the earliest possible opportunity. That would be an opportunity for the whole House to decide whether the Prime Minister retains the confidence of the country.

Q374 Chair: So you stand by the fact that a motion of confidence tabled by the Leader of the Opposition would be submitted to the House of Commons with what we understand to be normal arrangements, within a week?

Michael Gove: Yes, absolutely.

Chair: I thank you and your team very much, Chancellor, for giving very succinct answers to what is a vast subject, as we have found when taking evidence from all sorts of different areas of expertise on the subject. This is scheduled to be our last witness session, and we very much hope to have the report with you, by the date that the Government have allowed us, at the end of March. I thank you and your team very much indeed.