



HOUSE OF COMMONS

Public Administration and Constitutional Affairs Committee

Oral evidence: [Dissolution and Calling of Parliament
Bill, HC 376](#)

Wednesday 23 June 2021

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

Questions 1-85

Witness

[\[I\]](#): Chloe Smith MP, Minister for the Constitution and Devolution, Cabinet Office.



Examination of witness

Witnesses: Chloe Smith MP

Q1 **Chair:** Good afternoon and welcome to the Public Administration and Constitutional Affairs Committee. Today we are going to be taking evidence from Chloe Smith, Minister for the Constitution and Devolution at the Cabinet Office, on the subject of the Government's recently introduced Dissolution and Calling of Parliament Bill. I will ask Chloe to introduce herself for the record.

Chloe Smith: Good afternoon. I am the Minister for the Constitution and Devolution and I will be in charge of the Bill in the Commons.

Q2 **Chair:** Thank you. On that note, Minister, can you tell me when the Second Reading of the Bill will be?

Chloe Smith: Soon is my understanding. I don't want to get in the way of the usual channels by revealing the date as soon as I open my mouth. I do expect it to be soon, and I am certainly looking forward to the debate with you today, and obviously in the Chamber as soon as we can.

Q3 **Chair:** Might we anticipate that "soon" means before the summer recess?

Chloe Smith: Yes. That is certainly my expectation.

Q4 **Chair:** Looking even further into the crystal ball, I wonder whether you could confirm whether the Committee stage will be of the whole House and how many days that might be.

Chloe Smith: Again, I am not able to confirm all that; that's normally for the usual channels to do. Given that it's a Bill of a constitutional nature, I am expecting it be a Committee of the whole House.

Q5 **Chair:** Is there perhaps a certain amount of flexibility if additional days are requested, or do you see this as a piece of legislation that should not be rushed?

Chloe Smith: On the one hand, questions of how many days are allocated are, in part, for the usual channels. On the other, you open us up rightly to the issues that are at the heart of the Bill and the repeal of previous legislation. Yes, that does require good scrutiny. I am sure that Parliament will give it that. When we consider constitutional arrangements, it is important that we do give it that scrutiny.

Q6 **Chair:** I hope that the Committee will this afternoon be undertaking some of that good scrutiny. Thank you for that.

Moving on, the Government have stated that the Bill seeks to revive prerogative powers of dissolution and for the calling of Parliament. What is the effect in law that you think clauses 1 and 2 have?

Chloe Smith: We have aimed to be very clear in the Bill about the effect that we are trying to have. We are expressly legislating to revive the



previous arrangements, which, as you note, are based on a prerogative power. We know that there has been a debate on the subject of whether such things can be revived or restored, or whether they are abolished or put into abeyance. Your Committee has heard evidence on that, as did the Joint Committee that looked at the Bill. We think the correct answer is to be expressly clear, and that is what we have been in the Bill. We think that is backed up by clear voices in the debate, and in the academic and legal commentary, which suggests that that is the right course of action to achieve certainty and give people clarity about what has been revived and what has been repealed.

Q7 **Chair:** What do you say is the legal basis—I don't always like using that phrase—on which the Bill revives the prerogative? Would you comment on that?

Chloe Smith: It is there in clause 2. It is expressly put there that we are making provision to revive the prerogative powers relating to dissolution and that the Fixed-term Parliaments Act 2011 is repealed as if it had never been. Those are the words on the page in the Bill that we have put there in order to have that clear legal basis.

Chair: We now go to David Jones.

Q8 **Mr Jones:** Thank you, Chairman. Good afternoon, Minister.

To continue that discussion, clause 2 of the Bill, which you have referred to, provides that the powers "exercisable by virtue of Her Majesty's prerogative" are exercisable again, but that does not actually provide that the prerogative is revived or restored. Why is that?

Chloe Smith: This goes to the heart of the matter. It is because it is not possible or desirable to define fully a prerogative in the same way. It would be helpful to us to be quite clear at the outset. It is simply not the kind of thing where the prerogative could be or should be fully defined or laid out in clauses. That is why the words on the page refer to the prerogative power, but do not take that definition any further. Of course, that is at the heart of the concern that some had with the Fixed-term Parliaments Act, which endeavoured to put such things on a different basis and lay them out in statute. That was found to be inadequate at the key moment.

Q9 **Mr Jones:** But you know that there has been a great deal of academic debate about this and it has been suggested that, once a prerogative power ceases to be, it cannot be revived. Is not the truth of the matter that what we are doing here is using a statute to reconstitute something that looks like the prerogative, but is not in actuality the prerogative? Would you agree that what we have now is a statutory power, not a prerogative power?

Chloe Smith: No, I would not agree that something different is being revived. I maintain very clearly that what we are seeking to do—as I say, as expressly and specifically as we can in the Bill—is revive what went



before. There is case law and commentary to support that quite amply. For example, the Supreme Court most recently commented on this by saying, "If prerogative powers are curtailed by legislation, they may" sometimes "be reinstated by the repeal of that legislation".

There is older case law such as the 1965 case in which it is clearly put that the prerogative can re-emerge. That is what we are seeking to do. Moreover, we think that our approach will suffice, and the practical effect is that we want everybody to be clear about what is the law. That is why we are being so explicit in repealing the Fixed-term Parliaments Act as if it had never been, and so explicit in saying that we are reviving the prerogative so that the practical effect—regardless of the legal debate—is absolutely clear.

- Q10 **Mr Jones:** I take your point about it being possible to revive the prerogative simply by repealing a piece of legislation, but this Bill goes further. It does not simply repeal the Fixed-term Parliaments Act; it actually states explicitly on the face of the clause that the power continues, and it would have done had it not been affected by the operation of the Fixed-term Parliaments Act. It seems to me that that is the difference between the scenario you set out and what is actually in the Bill.

What we have here is a statutory revival of something that looks like the prerogative power, but is not actually the power itself. Is it your argument that it doesn't really matter anyway?

Chloe Smith: I think the major argument is that it doesn't and that the practical effect is most important.

- Q11 **Mr Jones:** So it doesn't matter how you get there? It is where you get to that counts?

Chloe Smith: I think that's the key point. The practical effect is most important. I don't think we could be any clearer about the desired practical effect in the words that we have used in the Bill. You will know from the Committee's work that, yes, there is plenty of debate on this subject and commentators have put the argument in different ways. I thought Stephen Laws' evidence to the Joint Committee was quite powerful in saying that this was in some ways, in his words, a "red herring". What matters is the effect, and that is achieved by what we have done.

- Q12 **Mr Jones:** Did the Government consider any alternative legal route to achieve this? For example, why not simply repeal the Fixed-term Parliaments Act?

Chloe Smith: For exactly the reasons that are highlighted by your line of questioning. There has been some debate, and we wanted to be as clear as possible. We acknowledge that debate, and we acknowledge that in modern times this is perhaps an unusual thing to do. It has been moving from statute back to a prerogative basis, so we wanted to be absolutely clear. We have looked at various ways of achieving that objective, and we



have benefited greatly from talking to academics and lawyers, as you have, and also the work, as I say, of your Committee and the other Committee. So, we have looked across ways of doing this, and we think we have found the most straightforward way of achieving that goal.

- Q13 **Mr Jones:** Could you tell us why the Government decided the best way to proceed was to revert to the situation that prevailed prior to the enactment of the Fixed-term Parliaments Act, rather than trying to build some sort of consensus within Parliament and more widely as to what is the best system in the long term for triggering elections to Parliament?

Chloe Smith: I will dwell on the premise of your question if I may. I very much do want to build that consensus. The way we have gone about it has, I hope, allowed for that to happen. We were very keen to put the Bill out for pre-legislative scrutiny, which, obviously, your Committee has been part of, and the Joint Committee assembled as well. That work is incredibly valuable in allowing debate on these issues, allowing enough time for debate on these issues, and letting the depth and the complexity come out. My hope is that that is a very important way to build consensus.

If you are to return to a system based on a prerogative power, accompanied by conventions, consensus is what is required. You can only have conventions if they are commonly understood and if everybody is willing to operate them, whoever may be in power at the time. It is quite obvious that consensus is highly desirable. It is certainly my intention to carry on that attitude, and to continue to try to achieve that through the passage of the Bill from hereon as well.

Coming back to the other part of your question on why we are seeking to return to the previous arrangements, principally it is because they are tried and tested. Indeed, the consensus of history, if you like, is that they are tried and tested. They have operated for many decades, they have worked, they have broadly kept the sovereign out of politics, broadly allowed for Governments to govern, and broadly allowed for elections to take place when they have been needed. Those are signs of the system being tried and tested. Of course, with that, you have to confront the fact that the Fixed-term Parliaments Act was less successful and did not work at a moment of paralysis, and that is why we were clear in our manifesto that we would repeal it. On that basis, we have brought this Bill to the House with that rationale for action.

- Q14 **Mr Jones:** Is it a concern of yours that, under what you now propose, there will be no real role for Parliament in the triggering of elections?

Chloe Smith: I do not think that is quite the right characterisation. I certainly appreciate that there is an argument, if you want to continue with a statutory system with votes in the House of Commons as part of that, but there is a more powerful argument for returning fully to the previous arrangements, for the reasons that I have set out, which is that they work. We know that they worked. On the other hand, we know that the Fixed-term Parliaments Act arrangements did not work.



That said, the role of the House of Commons in all this is absolutely central because that is where confidence flows from. The Prime Minister is only the Prime Minister by virtue of having the confidence of the House of Commons. Indeed, being able to go to the sovereign to request anything at all is only done by virtue of having the confidence of the House of Commons. So, I do not really accept the argument that the House of Commons is in some way diminished in this, but I do recognise that this is one of the axes of the discussion between what you could design into a statutory system compared with the previous arrangements.

- Q15 **Mr Jones:** I was not actually suggesting that the House of Commons was diminished as a consequence of this process. I was suggesting that some have said that a more enhanced role for the House of Commons and for Parliament as a whole in this process could have been allowed for in the legislation, and there has been a decision not to allow for that enhanced role.

Chloe Smith: That is true, Mr Jones, because of the rationale of returning to the previous arrangements. We have a few small exceptions to that in terms of a much lower level of detail of things that relate to the electoral timetable, for example, that we are keeping and that work in the system, but in terms of that quite major design point of, "Ought you to have a vote in the House of Commons?", we think it best to go more wholesale back to the previous system.

- Q16 **John McDonnell:** To follow up the point that David Jones was making about the process of restoration of the prerogative, you have quoted Stephen Laws. For the record, could you comment on what Professor Anne Twomey said? She said, "Parliament may, by enacting a statute, abolish the prerogative. If it does so, it cannot create a new prerogative, or revive it as prerogative, because by definition a prerogative is a non-statutory Executive power. But if the source of this power is now statute—if it is statute that does...the revival—then it is, of its nature, a statutory power."

That is reinforced by Daniel Greenberg, the counsel for domestic legislation in the Office of Speaker's Counsel, who said the Bill if enacted "will direct the courts to behave as if the prerogative power were not converted into a statutory one but had never been diminished. But as a matter of incontrovertible historical fact the continued power of dissolution vested in the Crown will now be owed to statute, simply because it was previously diminished, and then restored, by statute."

On David Jones's point, there are other sources that are quite clear that the restoration of prerogative power by statute does mean it is, therefore, of a statutory nature.

Chloe Smith: I don't dispute that there is debate on this point. I quite understand that the Committee will have had witnesses who put a variety of legal points on this.



My approach and that of the Government, and what is in the Bill, is, as I said in the previous line of questioning, that we think the key thing here is to be clear about the intentions. The courts, if they were relevant, would understand that that is the clear will of Parliament. We have been explicit in both the repeal and the revival of what went before. We think, moreover, that that delivers the desired practical effect.

Q17 John McDonnell: You are in a Catch-22. You abolished the prerogative, virtually, or overrode it by statute. You have now restored it by statute. Therefore, you have now established prerogative on the basis of statute itself. This is a Catch-22 for the Government, isn't it?

Chloe Smith: No, I don't think it is, and I think I have explained why we have taken the approach we have taken.

Q18 Chair: In the interests of balance, Minister—thank you for answering those questions—there is a shift in power, clearly, isn't there, from the Fixed-term Parliaments Act and the role for the legislature to the Executive? Why is that shift in power appropriate?

Chloe Smith: The important thing to put alongside the discussion on the Executive and the legislature is the electorate. What comes into play by returning to the previous arrangements is the fact that, actually, power resides in the hands of the electorate. All we are talking about, of course, is a mechanism for getting to them. We think that is entirely legitimate, entirely valid—indeed, entirely necessary at times of crisis.

In addition to the points I made about the question of a role for the House of Commons...

In addition to the points I made earlier about the question of a role for the House of Commons in any design of a statutory scheme, if you were going to go that way, I would say that a strength of the previous arrangements that we are returning to is that it puts power in the hands of the electorate rather than the Executive or the legislature.

Chair: Thank you. I will go to Lloyd Russell-Moyle, if I may.

Q19 Lloyd Russell-Moyle: One of the key justifications for this Bill is that the Fixed-term Parliaments Act caused paralysis in the previous Parliament, and that needs to never happen again. How would this Bill have dealt with the 2017-19 period differently, given that politicians were working to try and put forward their own particular views on that constitutional issue?

Chloe Smith: I should say at the outset there were plenty of other kinds of difficulty and conflict going on at the time. I do not think anybody would argue that the Fixed-term Parliaments Act was the beginning of the troubles, but the point is that, at the moment when all those difficulties most needed resolving, the Fixed-term Parliaments Act stood in the way. Not only did it stand in the way by changing the understanding of confidence motions and by failing to provide a clear road map for how



things could be resolved, it was also proven to be entirely ridiculous, you might say, because it was simply overcome in a bound by separate legislation. I don't think there is any argument for a piece of legislation so unloved that it can be easily undone by people legislating their way around it. What we need on the books instead is a clearer way to do things and more certainty about how to do things. This Bill will do that by allowing the previous arrangements to revive.

- Q20** **Lloyd Russell-Moyle:** Isn't the point that it is not on the books? If you are saying that this is on the books, we are talking about statute, so you are removing something from the books, but you acknowledged there in your answer that at that moment of crisis we probably needed something on the books that would have helped us navigate that without the psychodrama that we all lived through, probably unhelpfully.

Chloe Smith: You have got me there, Lloyd. That was a loose use of "on the books". I was talking about the quality of law generally, but you are quite right in this case.

- Q21** **Lloyd Russell-Moyle:** That is fine. I will take that. You talked about confidence there. The old Act did redefine what confidence votes looked like, and confidence beforehand was something that we did, not because of prerogative but because of convention. Do you expect, therefore, that the convention will just go completely back to this area, or do you think that we need some more concrete understanding of how confidence is maintained in the House? At the moment there is a vacuum.

Chloe Smith: I think that the previous arrangements on confidence suffice as well. One of the core problems with the Fixed-term Parliaments Act was that it divorced confidence motions from their more natural meanings or practical usage. The effect of that is to put something in the way of resolving a difficult situation. What we will have with the return to the previous arrangements is the ability for the Government to designate any matter if necessary as a confidence motion. I think that is entirely legitimate and sensible because, again, the key point underpinning all of this is that the Government are the Government because they have the confidence of the House of Commons. If there should come circumstances where that needs to be tested, it needs to be tested. It does not add a great deal for that to be put into codified terms, which is what the Fixed-term Parliaments Act did, when it can just be done naturally and practically. Moreover, the problem with the codification that the Fixed-term Parliaments Act attempted and, you might argue, the problem with any kind of codification is that it cannot take into account every scenario. This is the other key point to make about the difference between a statutory version of a Dissolution scheme and the return that we will be looking to make to the previous arrangement.

- Q22** **Lloyd Russell-Moyle:** But this scheme and the Bill and its subsequent schedules do outline how, effectively, the prerogative is going to be run; they do explain. They explain nothing about confidence votes, how confidence votes should run and how the Queen should interpret those



confidence votes—potentially politicising her more. Considering that you have a significant majority in the House, what is the urgency of this legislation when there are significant questions about how confidence will be considered, how “Erskine May” might end up being updated and how the ouster clause might be? Why the rush to push this through now? Why not go through a slightly more deliberative process to get the whole package, so that everyone knows what is going to be on the table?

Chloe Smith: With respect, Mr Russell-Moyle, I think everybody does know that. It’s quite clear what confidence motions consist of. You either win them or lose them. If you lose them, the House of Commons has to go through a different process of working out whom it does have confidence in. If you win them, you remain the Government. That isn’t actually very difficult to understand. And it is underpinned, of course, by what is in “Erskine May”, which we do not propose to change; “Erskine May” still stands. So, together, those things, I think, do give clarity.

Q23 **Lloyd Russell-Moyle:** But there are no time limits on that. There is no process in which an alternative Government would regain confidence. All of that was laid out in statute. Yes, convention existed beforehand, but once you have got rid of convention and run roughshod over it, you can’t just expect everyone to have amnesia on 2017 to 2019, can you?

Chloe Smith: On the contrary, I have much more confidence than you do in parliamentarians’ memory, which is that the previous arrangements worked. They have been shown to work time and time again. You can go through the history books as well as I can. Time and time again, they have been shown to work.

Lloyd Russell-Moyle: We have had many constitutional crises in this country; when we have had hung Parliaments, the hung Parliament was the problem, not necessarily particular Acts. But I will let the next questioner come forward and I will come back to you on some of these things later.

Chair: Thank you, Lloyd. We go now to Jackie Doyle-Price, please.

Q24 **Jackie Doyle-Price:** Actually, following up on that, I reject Lloyd’s attempt to write our constitution. We have had an unwritten constitution that has served us very well. I was particularly interested in what you said, Minister, about codification of these things. One of the great things about our constitution is its ability to flex at times of constitutional crisis. Because the Fixed-term Parliaments Act was very specific, it prevented that ability. I guess my point is that we need to keep that flexibility as far as possible in going back to the status quo ante, which prevailed before the Act. In that sense, I am not persuaded that the ouster clause in the Bill as currently drafted is helpful at all. I can understand why the Government wishes to put that in and to be explicit that the courts should not be able to interfere, but I want to press you on the Government’s thinking on this. Essentially, is it the Government’s position that non-justiciability was part of the pre-FTPA system, and if it is, why do we



need this clause?

Chloe Smith: Yes, it is the Government's position that this clause, the non-justiciability clause, simply states what went before. In fact, that is one reason why I don't call it an ouster clause—because it's not ousting anything. It's actually just restating that these things have always been non-justiciable. So your next question is a very wise one: why do we need that clause in there at all? This is actually part of the same reasons that I was offering in terms of how and why we are reviving what went before. It's to give maximum clarity. It is actually simply to be able to put in one place, for the avoidance of doubt, that that is how that is seen to be working.

Q25 **Jackie Doyle-Price:** But that clarity— I am worried about the dangers of this. Let me put it this way. On what basis were the previous arrangements non-justiciable? It is my understanding that they are non-justiciable because it is a decision made in Parliament, with the Executive requesting the monarch, as the head of Parliament, to dissolve Parliament. Therefore, it is Parliament's decision. Is that the Government's understanding of why it was non-justiciable in the past?

Chloe Smith: The Government's understanding is that the personal prerogative powers have never been justiciable.

Q26 **Jackie Doyle-Price:** Okay. In which case, why do we need this clause? Are we not setting an uncomfortable precedent by legislating for what is the royal prerogative by putting it in statute in this way?

Chloe Smith: An answer in several parts. First, we think we are doing the correct thing in terms of reviving the prerogative, as we have already gone through. Secondly, we think it is also sensible, in the same place, to state for the avoidance of doubt the existing position that that is non-justiciable. It may be that we are providing too much clarity. I don't know whether too much clarity can ever be a bad thing, but that is our intention with that—nothing more and nothing less. But at this point, it is fair to draw in the wider debate that has been had about this, and it is quite right that this Committee and the Joint Committee have gone through this and looked at it carefully. I thought the Joint Committee were quite helpful in the way that they found this clause to be "acceptable", in their words.

Q27 **Jackie Doyle-Price:** Well, we put it in those terms, but I think it is fair to say that there were very vigorous discussions about that, and a substantial minority were very concerned about this clause. We came at this very much from the perspective that, by definition, a decision by the monarch is not justiciable. What you just said—that providing more clarity is not a bad thing—is in stark contradiction to what you just said to Lloyd about excessive codification. It comes back to the fact that it is in all our interest to pass a law that will stand the test of time in the way that the Fixed-term Parliament Act did not. That flexibility—the ability of the constitution to flex—is really important in this context.

We felt very strongly in the Joint Committee that the courts would not get



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involved in this, because ultimately a Dissolution leads to an election, where the people are sovereign, so why would there be any need for that? But equally, there could be unforeseen circumstances where you would actually want the courts to get involved, if there was an abuse of Executive power. Ultimately, the monarch is being the guardian of the interest of the public in this. If we then take that away from statute— This comes back to the fact that having less written in our constitution, and having it rely more on good behaviour by Ministers and not abusing those powers, acts as a better check than if there is too much codification. That sat behind all the debates on this. My overall conclusion was that, ultimately, this is a decision by the monarch, and putting this in is, at best, superfluous and, at worst, potentially dangerous. On that basis, what is the Government's real objective here? Is it to codify and make sure that what happened in 2019 can never happen again, or is it to repeal the Fixed-term Parliament Act and go back to the status quo ex ante? This clause does not belong in it, if that is the case.

Chloe Smith: There is a point here that I would really like to address, which is the idea that there is a contradiction between the types of clarity that we might be seeking. I really want to clear up the idea that there is a contradiction in terms between upholding a prerogative power and, on the other hand, being clear in the legislation that we have in front of us. These are apples and pears. It is not the right comparison to say, "Both types of things ought to be crystal clear, and you are a fool, Minister, if you argue that one can be clear and one can't be clear." The fact is that we are being clear, in quite a binary way, that there is a prerogative system—either there is or there isn't—and that it's not justiciable—either it is or it isn't. Those types of things are quite binary: they exist or they don't exist.

The arguments around a statutory system, on the other hand, are not binary. The question of what you include in your piece of law if you choose to make a statutory design of something is definitely not binary. That is enormous, and gives rise to an nth degree of detail that you could specify, and that might one day catch you out if you did not specify. I really want to make that point: that this question of whether I am offering clarity on the one hand and a lack of clarity on the other hand is a false comparison. They are apples and pears.

In answer to your main question, Jackie, about what we are trying to achieve here, as I have been saying across a couple of answers, we are trying to achieve the simplest possible return to a prior system. That is not necessarily a familiar thing that we do often in Parliament, so it is no wonder we are discussing it in some detail. We are trying to do that as straightforwardly as we can, as openly as we can, and with as much debate and consensus on it as we can, because we want these conventions to once again stand the test of time.

Jackie Doyle-Price: In which case, you are going back to the status quo ex ante, in which the Government believe that the decision is non-justiciable, but you still want to put this clause in. I still say it is



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superfluous. I guess my final comment to you would be that constitutional legislation is always fraught with difficulty as it passes through Parliament, and I think that is something on which there is going to be quite considerable debate. Is it really necessary? For me, it is a row that the Government do not need to have, because as you say, it was non-justiciable before the Fixed-term Parliaments Act was passed, but I will leave it there.

Q28 Mr Jones: I cannot resist pursuing that point a little bit, though. Isn't the fact that although the Government are asserting that the prerogative power has been revived, they are using a statute to seek to revive it? The concern is that that statute is justiciable, and that is why you need what you would prefer not to call an ouster clause, because it is a creature of statute and it is not a revival of the prerogative.

Chloe Smith: The answer to that, surely, is one of the points that the Joint Committee made, which is that Parliament may legislate on what it wishes.

Q29 Mr Jones: I don't deny that, but what is the purpose of legislating for an ouster clause when, on the basis of your argument, we have a prerogative power?

Chloe Smith: I think I have already answered this question, in terms of what the Government's intention is with it. It is to put in one place, in this short Bill, the clearest expression of what we are returning to.

Q30 Mr Jones: Yes, indeed. I don't deny that either, but the point I am making is that that is a statutory creation. We are now moving to a statutory position: we must be, because otherwise we would not need a statute.

Chloe Smith: It is obviously correct that this Bill forms part of statute, but the powers that we are reviving are seen to be a different kind of thing. Again, I think we are being as clear as possible about that in this Bill. I do not deny, as I think I have said a couple of times now, that this is certainly not familiar territory for many parliamentarians. Dealing with both a piece of statutory work and the prerogative at the same time is not a thing that we would do very often in Parliament, but it is the nature of our constitution, and the fundamentals here are that that is what we have in this country. I am sure there is at least one member of this Committee who would like to make it entirely different, but the fact is that this is our constitution, so that is the job we've got to apply ourselves to in this Bill.

Q31 Mr Jones: Could we move on? In what circumstances do you think it would not be appropriate for a Prime Minister to seek an earlier Dissolution?

Chloe Smith: Excuse me—as I said, I have a cough that I am dealing with, as well as trying to answer all your questions. One of the points I have already made to the Committee today, and indeed before, is that it is not going to be possible for me to articulate all those circumstances. I



hope that if I say that at the beginning, that can be accepted as the basis for this part of the discussion. It is simply not going to be possible to articulate all those circumstances, and nor do we try to put them in statute.

Mr Jones: And we don't expect that, either.

Chloe Smith: Perhaps the best thing to do with this answer is to just give a general indication. This goes back to the point about the confidence of the House of Commons. The Prime Minister is the Prime Minister because he or she can command the confidence of the House of Commons, and of course that comes after an election. I have already made the point that the electorate obviously has a very important role in these arrangements. It is to do with having confidence; that would mean that a Prime Minister is acting legitimately.

Q32 **Mr Jones:** So if the Prime Minister had lost the confidence of the House, it would not, on that basis, be appropriate for him or her to seek an early Dissolution. Is that right?

Chloe Smith: It would not be possible to say that in all circumstances. Again, you know from a reading of history that there have been variations on that over time. What is quite obvious is that the first port of call might well be to see if there were a different configuration of confidence in the House of Commons before Dissolution and before reaching for the tool of an election, because that could serve the country in a different way if it were a moment of crisis.

Q33 **Mr Jones:** If it were not appropriate for a Prime Minister to seek an early Dissolution for whatever reason—let's say the Prime Minister did not command the confidence of the House—what protection would there be under this new system against the Prime Minister seeking that Dissolution inappropriately?

Chloe Smith: Sorry, could you repeat the question?

Mr Jones: If it were not proper for the Prime Minister to seek an early Dissolution, but the Prime Minister nevertheless sought to do so, what protection would this piece of legislation afford to that sort of situation arising?

Chloe Smith: This legislation, as we have already discussed, does not in itself provide for that or afford protections on that topic. This legislation is not the thing that does that, but the powers that it revives go to the sovereign, in the sense that that is the backstop that you were asking for in your question.

Q34 **Mr Jones:** If it goes to the sovereign, is there not a danger of the sovereign being involved in political controversy as a consequence?

Chloe Smith: This is one of the other central points of the discussion. We would all agree that the sovereign should not be drawn into party politics.



I think that is absolutely clear on all sides. Indeed, from the Government's perspective, we thought that it was very important to draw that out in the Dissolution principles that we suggested alongside the Bill. This has rightly been the subject of lots of debate, and I hope it will carry on being so because that is how we get to a greater and better understanding of our conventions.

Q35 **Mr Jones:** So what protection is there for the sovereign in those circumstances?

Chloe Smith: I think the main place to look is, again, the point about confidence in the House of Commons. If there were a Prime Minister who had lost the confidence of the House of Commons, and if there were a person who could command it instead, that is the kind of business that I think everybody would expect the politicians to do, rather than forcing the monarch to do it. It is clearly incumbent on all involved in such a scenario to do that in order to keep the sovereign out of politics.

Q36 **Mr Jones:** So would there be a return to the Lascelles principles?

Chloe Smith: They were a product of their time, it is fair to say. They were a 1950s construction, but they still have some relevance. They will form part of the understanding that people generally have. We are not intending, at this point, to publish a fresh set or to republish the Lascelles set, but they certainly provide an insight into what might be relevant to these matters. We also made a contribution through our Dissolution principles document.

Q37 **Mr Jones:** Wouldn't it be dangerous, in any event, to publish a set of principles, as you discussed? Is it not something that really has to be left to the sovereign and those advising the sovereign at that particular time?

Chloe Smith: Yes, and this goes back to one of the vital points, which is that it is not possible to foresee every circumstance. It would be ridiculous if I, or anybody in the passage of this Bill, tried to do that. That is why, when we talk about reviving the prerogative power and returning to the arrangements that went before, there is this lack of definition, because it is not possible to describe every circumstance.

Q38 **Lloyd Russell-Moyle:** I understand that we have an uncodified constitution, but not an unwritten constitution. The new system established in the Bill is that the Prime Minister only has the right to request an early Dissolution if they command the confidence of the House, so why not demonstrate that through a vote of confidence?

Chloe Smith: By all means, but why put that vote of confidence into statute?

Q39 **Lloyd Russell-Moyle:** Well, at the moment you are suggesting to not do it via confidence. If there was a vote in the Commons, it is my understanding that then it would be quite squarely outside the scope of the courts under the Bill of Rights. Is that not your understanding?



Chloe Smith: I think the main argument you are making is that the House of Commons ought to have that role. Presumably, if you think the House of Commons ought to have that role, then you would argue that the courts ought not to have that role. We therefore focused this section on the House of Commons.

The point is already made, which is that once the Fixed-term Parliaments Act is repealed there is nothing stopping the House of Commons holding a vote of confidence. As I have already acknowledged, the ancillary provisions around that in “Erskine May” would apply—

Q40 **Lloyd Russell-Moyle:** There is nothing requiring an election to be called after a vote of no confidence. There is nothing requiring a Government to be formed. It could be formed within a certain number of days or within a certain time period, I should say. Is the problem that you have had to put the ouster clause in because you are insistent on not wanting to find alternative ways around this?

The ouster clause itself is a bit like a red flag to the courts. It says, “Please don’t look over here.” The courts, if they wish, will find ways of looking at the Bill, because it has got things written down in statute and they will find loopholes around it. Is it not better to find a way that excludes the courts sufficiently and gives a mandate to Parliament?

Chloe Smith: This Bill does that. It excludes the courts sufficiently. Various commentators have applied themselves to this point, and as I was mentioning earlier on, I think the Joint Committee put it particularly well in arguing why our clause does that job sufficiently.

If I may, I think you are muddling up two questions at once. I think you are arguing for a vote in the House of Commons on its own merits and saying, “Why shouldn’t we have one of those?”, and you are saying that would help keep everything non-justiciable.

Q41 **Lloyd Russell-Moyle:** I am saying that a vote of no confidence or a vote in the Commons does three things, does it not? One, it means the issue is non-justiciable. Two, it provides a check, without having to list the Lascelles principles or whatever, because it allows a quorate body of people who are elected to be there. Three, it is a clear way of keeping the monarch out of the politicisation of this. How is the monarch expected to determine who has confidence in the House?

Chloe Smith: I think we may be going back in a little circle here, because the result of a vote of confidence would speak for itself. There is nothing stopping a vote of confidence occurring outside the statutory confines that the Fixed-term Parliaments Act sought to put around it. The argument that you have to do these things through statute is a flawed one.

Q42 **Lloyd Russell-Moyle:** But you can lose a vote of confidence. Maybe I am wrong here, because I am only a 2017 boy and I have operated under the Fixed-term Parliaments Act and not the old system, but my understanding is that you can have a vote of no confidence but that there



is no procedure, and never has been a procedure, to have a subsequent vote of confidence in someone other than the Government. "Erskine May" has always said that the Government may put down a vote of confidence against itself, but no one else may. How does someone else demonstrate that they have the confidence of the House if they are not already appointed to Government?

Chloe Smith: By the practicalities that follow. A Government that lacked confidence would not be able to pass a Budget, would not be able to pass a Queen's Speech, would not be able to do anything. That makes it, eventually, not the Government.

Q43 **Lloyd Russell-Moyle:** I am genuinely just asking this question: how do they become not the Government in this scenario?

Chloe Smith: By the sheer realities of power.

Q44 **Lloyd Russell-Moyle:** My understanding is that, previously, the outgoing Prime Minister recommended to the monarch who the new Prime Minister was. If we were in a constitutional crisis like we were in 2017 to 2019, where people are tussling for power, they do not actually have good will—the good will is gone. This is all about what happens when the good will is gone, not when good will is there, because if the good will is there, we will muddle through anyway. The good will is gone, so how does that process happen? The incumbent Prime Minister does not wish to appoint the person who everyone else can see might be able to pass a confidence vote in Parliament. What happens, apart from politicising the monarch? How do you do it in a non-politicised way to the monarch?

Chloe Smith: There are a couple of points to make to deal with that scenario as best we can. The first point to make is that, even if you sat down with your pen and paper and tried to design all of what you have just said into a statutory system, I do not think you would succeed. You would still be there after a year writing out every possible scenario that could apply and trying to put it into statute. The question that follows is, "Why is the prerogative system better at handling that than statute?" The answer is multifaceted.

Q45 **Lloyd Russell-Moyle:** The prerogative system is about calling an election. I get that, and I get that you do not want to put that in and that you want it to remain in the prerogative system. But the prerogative system in the Bill that you are bringing forward prefaces that it should only be used if the Prime Minister has confidence. Confidence is not about the prerogative system; it is about how Parliament demonstrates it has confidence. I am asking you not about the prerogative system of how you call an election, but about the mandate to call the election being prefaced on having confidence. How do you properly demonstrate that you have confidence and, if you have lost it, that no one else has it?

Chloe Smith: Because you will have voted on it. You either have confidence or you do not. I am sorry; I am not trying to be facile. You either have it or you do not.



Q46 **Lloyd Russell-Moyle:** So you have voted no confidence. What happens then?

Chloe Smith: If you were a party leader bearing your freshly-minted vote of no confidence, what you would then have to do rapidly is see if you could change things so that you could gain confidence—

Lloyd Russell-Moyle: Reshuffle your people, form a new coalition, or whatever.

Chloe Smith: A range of things like that—too great a range, by the way, to be put into statute.

Lloyd Russell-Moyle: And no one thinks it should be.

Chloe Smith: What is then necessary is that all the political actors in that system recognise where power lies, what is viable and what can be recommended to the monarch. As we have already said in this afternoon's discussion, it is essential to keep the monarch out of those decisions, to prevent her or her successors from having to opine on matters that rightly are demonstrated by what will already have taken place in the arrangements inside Parliament—

Q47 **Lloyd Russell-Moyle:** What has already taken place, if we go back to the 2017-19 Parliament, is that you have lost the vote of confidence but Parliament isn't able to find someone—or might be able to find someone—who has the confidence, but that hasn't yet been tested in Parliament. There is no process to test the new confidence of Parliament, or is there? I am asking: is there a way? Is it via a Humble Address? Is it via an EDM? What mechanisms are there to demonstrate that there might be confidence, so that the Queen doesn't have to make the judgment herself, but instead can be sure that Parliament has spoken?

Chloe Smith: I think at this point we are straying quite far off the territory of what's in the Bill—clearly.

Chair: I am not seeking to rescue the Minister at all from Lloyd's incisive questioning, but I might gently venture that this is perhaps why some might advocate repealing the Fixed-term Parliaments Act and might accept the traditionally understood constitutional function of the monarch. But far be for me to be too controversial in that.

I wonder, Lloyd, if you would like to ask one final question before we move on.

Q48 **Lloyd Russell-Moyle:** Minister, what I am trying to say is that the Bill itself says that the Prime Minister should only request it if they have the confidence of the House to do so. So that is why I am coming back to these kinds of points.

Is there not a better way of asserting parliamentary sovereignty and keeping the courts out of these decisions, bearing in mind that previous Governments, including the Brown Government, have considered allowing



parliamentary votes on this? This is not a Fixed-term Parliaments Act issue; this is a case of previous Governments having already considered this and being about to move on it.

Chloe Smith: I am sorry—I beg your pardon. After all that, I am not sure that I entirely understood your very last question. Previous Governments have tried to do what, precisely?

Q49 **Lloyd Russell-Moyle:** We know that the Brown Government had authored and prepared a report to look at giving Parliament a vote on the calling of general elections, and that was because of a deficiency of the old system that they had identified. I am therefore not sure that this idea that the old system was all great and the new system is all awful is something that would be 100% accurate.

Is there not a better way—maybe one could say a third way—of finding a way that parliamentary sovereignty can be maintained, the courts can be kept out of the decision and the monarch can be not politicised? Otherwise, at moments of political crisis, we'll just politicise the monarch all over again.

Chloe Smith: Got you—and that is a great question, which encompasses all the major bits of what we are talking about.

In answer to the question, “Is there a better way?”, no, I am not persuaded that there is. Clearly, we have looked at that, as has your Committee and the Joint Committee recently, and also—shout out to the Lords Constitution Committee, which has looked at this, too.

The fact is that you can choose something that has worked in the past or you can design afresh. I think that one of the flaws that most people would agree is there in the Fixed-term Parliaments Act is that it was a design-afresh, for a particular purpose at the time, and it was taken through without pre-legislative scrutiny at the time, and from that some argue that it has not had as much scrutiny as it could have had.

I think that that throws a certain light on the idea of designing afresh, as well as the points I have made already about the notion of designing a blueprint at all, because codifying means you have to be able to work through all of the million scenarios, and that is difficult, verging on impossible.

My argument here, fundamentally, is to go back to something that we know has already worked, rather than have it designed afresh.

Lloyd Russell-Moyle: Thank you.

Q50 **Tom Randall:** Minister, I wonder if we could just look at clause 4 of the Bill for a moment, which is about the length of a Parliament. The Bill sets out the terms as five years, which is one of the longest legislative terms in the world.

The average parliamentary term in the UK since the second world war



has been 3.8 years. Is there a reason why the Government decided on five years as the length of the term?

Chloe Smith: Yes: because we wanted to revive the previous arrangements. We are simply returning to the norm of what was there before. I take your point, of course, on the sheer arithmetic of it—that five has not actually always been what it is in practice—but what we are talking about here is the maximum. We are talking about a return to the previous arrangements of the maximum of five.

Q51 **Tom Randall:** Do you think there should be an expectation that a term will run for five years—that it will go to full term?

Chloe Smith: Yes, I do. I thought one of the Committee's previous points in your report from last year was very sensible on that point. You said that the default ought to be a full term, except in special circumstances, for example, the loss of confidence or another emergency.

Q52 **Tom Randall:** On this Bill as drafted, one advantage of the Fixed-term Parliaments Act was surely that it added a degree of certainty during the coalition Government that it would last for five years, so there was certainty in Government during that time. If we revert to the status quo ante, is there a danger that we will lose the kind of certainty that we had when the Fixed-term Parliaments Act worked well?

Chloe Smith: No, I do not think there is, for two reasons. One is an historical view and the other is a comparison with what actually happened under the Fixed-term Parliaments Act. The historical view is that, on the whole, stable Governments went on for, generally, four years if they were working successfully and five years if they were pushing their luck a bit, and anything less than that was a national crisis. That is a rough sum-up of the decades that went before. Others have made that point before me; I think you have heard it in your evidence as well. You can derive from that that there is actually a reasonable amount of certainty, and crucially, that the electorate—voters—know what they can expect when they elect a Government, which is that the Government will want to take that much time to be able to deliver on their promises. The nature of wanting to have the privilege of being in government is to want to complete your programme. You do not want to go short, on the whole; you want to go long.

The second point is about the Fixed-term Parliaments Act itself, which is that it did not even live up to its name because the terms became unfixed pretty rapidly. It did not even allow for five-year terms under its own descriptions, so it is impossible to say that it provided a greater degree of certainty than what it replaced.

Chair: Back to Jackie, please.

Q53 **Jackie Doyle-Price:** Sorry; I have a rather nerdy question that follows on neatly from that. You will be aware that the Joint Committee's recommendation was to tie the maximum term Parliament to Dissolution,



so there would be five years between Dissolutions, but the Bill actually establishes it from the first meeting of Parliament. Is there a particular reason why you rejected the Joint Committee's recommendation on that?

Chloe Smith: We thought the simplest way to preserve a full five-year maximum was to go from start to finish, if you like, as opposed to finish to finish. It was as simple as that. I acknowledge the point that the Joint Committee then made about the potential for what they called drift in the electoral cycle, which is that, in theory, if every Government took the term to precisely the full five years, you could have that drift. I think that is countered by the practicality of convention as it has grown up, which is that the first Thursday in May makes a sensible election date that many people can anticipate and work with. It is perhaps a good combination of a maximum set out in law, for good reasons, and the practical convention of it being slightly less in practice.

Q54 **Jackie Doyle-Price:** Has the Government taken any legal advice on the implications of that in passing this legislation, and on whether that will impact on the ability to use the Parliament Act? We have received some advice that would suggest it might not be possible to use the Parliament Act in these circumstances, because we are effectively moving the five-year term from the date of summoning Parliament to the first meeting. That introduces an element of certainty between the two regimes. If there is an issue in the House of Lords over some of this, which we often find on constitutional issues, are you satisfied that you would be able to use the Parliament Act in the event of a dispute?

Chloe Smith: I am aware of that clash of points. I would be very happy to write to the Committee with what our view is, if you would find it helpful. Perhaps in turn, you could share with me the advice that you have received that gives you that concern. We do not think it is likely to be a concern, and I think we are aware of only two examples, back in the early days of the 20th century, where this may have been relevant, for reasons of their own. But I would be happy to write to the Committee on that, if that is helpful.

Jackie Doyle-Price: It would be. Thank you, Minister. Again, it is worth reiterating that we want to make sure that this is a good law that stands the test of time, and we are entering into these discussions in that spirit. We want to help you make this as robust and as certain as possible, so if we can exchange that advice, that would be very helpful to all of us.

Q55 **Chair:** On a similar theme of recommendations from the Joint Committee, do you accept the recommendation that the period between the last sitting of Parliament and Dissolution, and the period between polling day and the first meeting of Parliament, should, wherever possible, be less than a week?

Chloe Smith: I am aware of this argument, and I think it is in everybody's interests for the new Parliament to sit as promptly as possible—in voters' interests, the Government's interests and Parliament's



interests. But I am not necessarily persuaded that that is something that should go into statute. Here we come back to the question of whether such things ought to be added into the Bill. I would resist it being put in the Bill, because it is in everyone's interests for it to happen in any case.

Q56 Chair: Could you imagine—I know I am asking for a crystal ball again—circumstances of having such long periods without Parliament sitting?

Chloe Smith: No, not very long periods. This is connected to a point I was making earlier. An Executive needs the legislature to work with it to make its work possible. No Government would last very long without supply—in other words, without the money that is voted by Parliament—so no, it just would not work for there to be a very long gap between election and first sitting. As I say, it is just not in a Government's interest to not be able to get into Parliament, engage, demonstrate that it is doing its work, and show that back to voters immediately after an election.

Q57 Chair: I am sorry to sound like I am setting you examination questions, but what is the purpose of having a Prorogation ahead of a Dissolution?

Chloe Smith: A Select Committee appearance is exactly like having a set of exam questions—that is precisely what it feels like to prepare for. I think you are now referring to the Prorogation Act 1867. If I may, I will include that in my note back about the Parliament Act 1911, because the two issues sit together.

Chair: I will let you off on that one.

Chloe Smith: Is that a correct answer? Can I get a gold star?

Chair: We will mark it when we receive the correspondence, but let's go back to Jackie Doyle-Price.

Q58 Jackie Doyle-Price: I want to come back to the Fixed-term Parliaments Act, if I may. I often think that the Fixed-term Parliaments Act is blamed for a lot of things that were not its own fault. What is really at issue here is the inability of our parliamentary system to cope with minority Governments. In fact, that was obviously the genesis of the Fixed-term Parliaments Act. Effectively, what happened was the coalition agreement was baked into our constitution. It's a debatable point whether that was an appropriate way to do it, but that is what happened. In the event of another minority Government, how would it be dealt with under the new system? Would you expect similar constitutional innovations to deal with that?

Chloe Smith: I recognise this is something that the Committee has looked at quite a lot through its work—the idea of fairness to different configurations of Government—and it is a good thing to look at. This Bill relates mainly to the Dissolution of Parliaments rather than the formation of Governments. It has nothing to say about the formation of Governments. In direct answer to your question, it is also the case, obviously, that any Parliament is sovereign and could put in place any



fresh arrangements if it wished to, and I cannot and would not stop it. But what we think we have got in this Bill is a return to arrangements that are suitable for any kind of Government, because, critically, they all hinge on confidence. Again, it is the point that we have discussed a lot this afternoon—the confidence of the House of Commons, where it lies, if you have it, if you don't have it, and how to return to the electorate for review if it is impossible.

- Q59 **Jackie Doyle-Price:** It is easy to anticipate, though, that with a majority under the Fixed-term Parliaments Act, it would have continued, we are still essentially establishing a system that can only cope with majority Governments. Would you acknowledge that that is the case in our parliamentary system generally?

Chloe Smith: Excuse me, my sore throat is coming through. I don't know if I would share that conclusion. Minority Governments or coalition Governments are not common. In many cases, you might argue that that is as much the decision of the electorate as anything else. If there is an overwhelming opinion coming back in people's votes, that's that. But I think it is the case that these arrangements and, more broadly, the rest of our constitutional arrangements can absolutely support Governments of different shapes and sizes. They have their own complexity, which is not so much bound by constitutional arrangements but bound by the nature of power. Can you put together a team that can work together? Can you put together a vision that is compelling to the electorate? Can you put together accountability to show the electorate what you have done? All those questions are not only about the constitution.

- Q60 **Jackie Doyle-Price:** That leads me back to a theme that you have repeated—ultimately, can you command a majority in the House of Commons? To what extent have the Government given consideration as to whether we should look at standing orders in the House of Commons to establish more certainty around commanding confidence, as opposed to dealing with these things in statute? Standing orders of the House of Commons are perhaps more permanent.

Chloe Smith: Although I suppose the same applies: if Parliament is sovereign, it can in a sovereign manner change its own rules as well. The Government are certainly aware of the important role of standing orders and the history contained in Erskine May as well. We are not proposing to change those alongside this Bill. Indeed, it would not be for the Government to do so. But, really, that is for the reasons that we have been working through this afternoon, which is that I don't think change is needed to those. The things that are said on confidence in those other sources are quite clear and easy to work with, and we think that that will serve well in addition to the repeal and revival that we are doing here.

Jackie Doyle-Price: You are right. It is not for Government—it is for the House, in which the Government have a say, but, by virtue of it being the House is why I suggest an alternative. Thank you.



Q61 **Chair:** In the interests of time, I am going to ask my questions quite briefly. Could you reflect, Minister, on the accusation that the flexibility afforded to the Executive in calling an election gives the incumbent an unfair advantage over the Opposition?

Chloe Smith: This is something that I have certainly reflected on, Chair, because it has been brought up by your Committee and elsewhere. I don't think the revived system will do that. On the face of it, the argument says that it will, because it is the Prime Minister of the day who has the ability to request a Dissolution from the sovereign, but the real fact of the matter is that the electorate will have their view on that. If the electorate do not like what the Prime Minister has done and what that then leader of the party goes to them and asks for, they will give their view resoundingly. There have been a couple of examples of that in history to show the point.

There is no magic bullet here for the incumbent Government. Either they have the chance to complete their programme—they may well go the full length of the term that is permitted for in the arrangements we are putting back in place here—or there may be some form of crisis that is causing things to fall short. Outside those categories, there is every chance that the electorate will have a pretty strong opinion.

Chair: That is a fair observation. It cuts both ways, if you think of February '74 and, indeed, in our times, June 2017. We shan't dwell on that one too long, as we move neatly across to John McDonnell.

Q62 **John McDonnell:** I worry for the Minister's throat; maybe she would like to take a drink. I apologise that my camera is flicking on and off. It is not as a result of me nodding off. I found the whole discussion entertaining, to be frank.

The Minister will know that there is an overall feeling in the House of wanting to revert to the old system. It is a bit like the discussion of miracles: you know they work, but you don't know completely how. All the discussion about the legislation is focused on how we can improve it, maybe marginally. The Government published a Dissolution principles document that the Joint Committee described as inadequate, but the Government have not published a revised document setting out what they propose to be understood as the principles, practices and conventions. Why is that? Why hasn't anything been published so far?

Chloe Smith: We published that document, first, to kick off the debate, if you like. We thought it was very important to have robust scrutiny of this move that we are making, even though—I welcome you saying it—it has support across the House. To aid that scrutiny, we of course published the Bill early and asked the Joint Committee to do scrutiny on it as well as the scrutiny that was asked of them in the previous statute. With that, we put the principles document out too.

I don't think it would have been practical or reasonable for the Government to do a running reprint of that after every report that came



back or at every moment. You would want to do that sparingly. The key thing really is that, as we come into the next stages of the Bill, going through the Commons and the Lords, there will be ample time for more discussion of what these principles are and what the relating conventions are. As I was saying earlier, that is what I hope will put us all in the position of a greater understanding and therefore consensus about how the conventions operate, and that they will be operable from here on.

Q63 John McDonnell: Does that mean that you have generally accepted the principles and conventions that the Joint Committee set out?

Chloe Smith: No, it means that this is part of dialogue. As I have said several times, I really welcome the Joint Committee's work, and your Committee's work too. Everything you and they have said about principles helps in this debate. It is a genuine dialogue and debate. I am absolutely sure that there will be more that Parliament will want to say on this. In practical terms, we have also been quite open that we may look at an updating of the Cabinet manual in due course after this legislation, because that might well be a sensible place to have a repository of some of what has been discussed.

Q64 John McDonnell: Having published a document, and having had it critiqued by the Joint Committee, wouldn't it be better to at least set out the reasons why you are not adopting them in full, or at least publish some alternative before the Bill is published and debated? Wouldn't that clarify and inform the debate better on the Floor of the House?

Chloe Smith: I am hardly shying away from it: I am here talking with you today about it, and it will be on the record from here and in lots of other appearances. It is not that that all has to be done in an exchange of documents, because as I say, I do not think it would be greatly helpful to be rapidly redrafting documents all the time, but I am very keen to get into this and to have that discussion as the Bill stages progress.

Q65 John McDonnell: Having used a document in the first instance, maybe you could consider that Members would feel it more appropriate, therefore, if the response were in documentary form.

To go on to another question, in late 2018 and early 2019, the Government appear to have unilaterally changed the convention on making time to debate a motion of confidence tabled by the Opposition. Why are the Government going back to convention when there are recent precedents that convention can be ignored if it is politically convenient to do so, as occurred then?

Chloe Smith: I think this might be based on a misunderstanding. The episode I think you are referring to hinges on whether the words in "Erskine May" were "the next day" or "at an early day", and I think the words on the page are "at an early day", which is certainly the spirit that the Government acted in at the time. Obviously, it was you and your colleague, the then Leader of the Opposition, who were intimately involved in whether the motion you put forward was, as it were, correctly worded



under the Fixed-term Parliaments Act. I mean, if you believe in a statutory form at all, you would have to abide by the words that were there in that statute, but I think it is the case that they were not perfectly worded, and therefore everybody actually acted correctly according to the statute and the words.

- Q66 **John McDonnell:** The wording was to bring about a debate about confidence, but not to trigger a general election, which would have been perfectly open for Parliament to do in the normal circumstances and by past convention, but the Prime Minister refused to give us the time early—as you say—to enable that debate to take place. If that has happened in that instance, why should Parliament or the public trust that you will adhere to conventions in the future?

Chloe Smith: I would be enjoyably surprised if you could salvage out of this a defence of the Fixed-term Parliaments Act and the way that it has required motions to be written.

- Q67 **John McDonnell:** The point that was being made is that in the normal conventions of Parliament, to have the ability of Members—on a cross-party basis, as it was at the time—to have a debate about confidence in the Prime Minister in particular and in the Government, not triggering a general election but expressing a view. Under the normal convention, there would be a debate within days, and usually within 24 hours, but that was ignored. It undermines the confidence that by returning to conventions, those conventions will be upheld. How can that be asserted?

Chloe Smith: But, John, I gently suggest that the greater debate that was had was the general election, which was the point that we all needed to get to.

- Q68 **John McDonnell:** But there is a way in which Members will want to express a view about confidence in Government or an individual Prime Minister, as against wanting to go to the country in a general election. All I am saying is that the convention was appropriate in the past, and I hope it is going to be appropriate in the future as we revert to the old system, but it does require an element of trust in a Prime Minister, in particular, being able to adhere to those conventions. Forgive me if I suggest that there might be some doubt about the existing Prime Minister to do that.

Chloe Smith: I think underneath this question is the convention in “Erskine May” specifically, which was clarified at the time: the Prime Minister returned to the Commons and was absolutely clear that that is the convention we would all work to. The phrase is “at an early day”, and in any case I would also add that, eventually, we did get to the resolution of the overall problem, which was needing to be able to trust enough to go back to the people, rather than merely having a debate in the House of Commons.



HOUSE OF COMMONS

To be fair, that is consistent with the point that I made earlier, which is that this is not only about some kind of tussle between the Executive and the legislature, but about the electorate, at the end of the day.

On the point about conventions more widely, certainly in this Bill and in the rest of our work, the Government does respect conventions, is working to do so and, through this Bill, is seeking to revive the prerogative system, which will be accompanied by those conventions.

John McDonnell: We shall see.

Q69 **Chair:** Thank you, John. I will put this question to you, Minister, if I may. The Government have made it clear that, under the system proposed in the Bill, the Prime Minister has the right to request a Dissolution if they command the confidence of the House. I suppose this speaks to some of the themes that John was mentioning. If it is not clear to the monarch that the Prime Minister has the confidence of the House, but there has been no formal vote of no confidence, should the monarch seek to ensure that someone else cannot command the confidence of the House before accepting the request for a Dissolution?

Chloe Smith: As I mentioned earlier in the session, it is not going to be for me to say what the sovereign should or should not do. I am not going to give an answer—

Chair: No, no. I accept that. I tread very carefully in asking the question.

Chloe Smith: Of course—exactly—and I tread equally respectfully in saying to the Committee that I am not going to be able to give answers in the format of, “Here is what the monarch ought to do.” But I think it is the case quite clearly that the question of who can command the confidence of the House of Commons is absolutely central, and it is incumbent on the politicians involved to get that sorted out, clarify it, and that may involve various methods, various mechanisms, various votes before pulling the sovereign into the question.

Chair: Okay, thank you. We will go back to Jackie Doyle-Price, please.

Q70 **Jackie Doyle-Price:** I am coming back to the ouster clause, but I am going to ask the question the other way round. Many of the conventions and practices are being resurrected simply by relying on established conventions and without enshrining them in the Bill, so why is that satisfactory for those conventions—for example, being able to establish and rely on confidence in the House—but not reliable for the issue of justiciability of Dissolution? Why have you chosen to be very prescriptive about that aspect of the restoration of what went before, but not other aspects of the conventions in practice at the time?

Chloe Smith: Because—the answer that I was drawing on previously is true here also—it is not possible, actually, to articulate the nth degree of all the conventions. We would be here till Christmas if we tried. However, there are some that are perhaps more obvious, more relevant or more



powerful than others, and I don't think it's at all unreasonable that we should seek to make clear the pre-existing state of non-justiciability, alongside the pre-existing force of the prerogative powers.

I don't have a great deal to add to the answer I did give earlier on this, which is that the reason why we have done it is simply to try to be as clear as possible on those very salient points. But as to your question now, there could be a hundred other, less salient points, if you like, and it is the case that I have not got them all in the Bill. That is correct.

- Q71 **Jackie Doyle-Price:** It comes back to this philosophical point: if you are returning to what went before, and there were established conventions that are simply going to be resurrected by this Bill, which I think we all agree with, tackling the non-justiciability in one area is actually compromising the integrity of that approach. Is it not the case that the events of 2019 are sort of being crowbarred into this Bill and really getting in the way of the philosophical approach that the Bill actually encompasses?

Chloe Smith: I don't think it's the case that these are— I am going to assume that what you are talking about there is the Miller-Cherry case. It is just not the case that that is what you see here in this Bill. It is actually very explicitly not a Bill to do with Prorogation. We are quite clear about that, so I don't think it is the case that these are those events inside this Bill. They are simply not.

- Q72 **Jackie Doyle-Price:** It is not a Bill about Prorogation, but it is a Bill about the engagement between the Prime Minister and the monarch, and in that sense, Miller-Cherry could be seen to be influencing the approach here, which again, I still say is inconsistent with the approach to the rest of the prerogative powers being restored in the Bill.

Chloe Smith: We think what we are doing is consistent. I understand your argument and I acknowledge why you are making it, and indeed the length of time you have looked at these issues through this Committee and the other Committee; you were the key Member on both. However, we are taking it for the reasons that I have set out, which is to seek to be clear about an important aspect.

Jackie Doyle-Price: Okay, thank you.

Chair: The final questions are going to come from Tom Randall and Lloyd Russell-Moyle. Tom, please.

- Q73 **Tom Randall:** Thank you, Chairman. We talked earlier, Minister, about the monarch as a backstop, as we referred to her. I suppose some might think, or take the view, that the Government seeing the monarch as a constitutional backstop is perhaps not something we should see in the 21st century.

Chloe Smith: Some may take that view. They would be entitled to, but it is a view I disagree with. We are a monarchy; we remain a constitutional



monarchy. It works. It thrives, in fact. In this case, what we hope to achieve is that people will have greater certainty about what will be happening stemming from their vote—their choice at an election—and in terms of having populated Parliament. We think that’s an incredibly important thing in our constitution, which actually fundamentally rests on democracy as much as monarchy, arguably.

- Q74 **Tom Randall:** Going back to the events of 2019 and the Prorogation request, it has been suggested that the monarch might not have been in a position to have refused an inappropriate request to Prorogue. Can Parliament and the public have confidence that the monarch is in a position to act as a sufficient constitutional backstop?

Chloe Smith: Yes, because the sovereign is able to reject a request.

- Q75 **Tom Randall:** In what circumstances do you think a monarch might do so?

Chloe Smith: That is, I’m afraid, the list that I am not going to be able to give you, for the reasons we have already gone through.

- Q76 **Tom Randall:** The Joint Committee recommended that the Cabinet manual should more directly set out how the monarch’s veto should operate in practice. As you say, the Government responded that it is “not possible to predict every scenario and challenge that a country might face.” We all understand that, but do you not think it might be possible to produce an indicative or non-exhaustive list of circumstances?

Chloe Smith: No, I don’t think it would be possible to do that, again for the reasons we have already talked about. It is the kind of thing where it simply would not be possible to predict all scenarios, so you might argue it would be damaging even to try, because what would you put in and what would you leave out?

The better point, I think, is to keep focused on this nature of confidence in the House of Commons. We have gone over it plenty of times this afternoon. That and the processes for finding it and for maintaining it, and the processes for doing all that in the hands of politicians with reference to the electorate as the next stop, are the ways to insulate the monarch from politics while making use of them as the backstop that allows you to get onwards to the electorate.

- Q77 **Tom Randall:** Do you think, in practice, that the monarch could refuse dissolution without some sort of support from an extraneous public document or something to support the appropriate use of that power?

Chloe Smith: In short, yes, I do, because that will be the nature of a prerogative power. It is possible for that power to be wielded without reference to a document, absolutely. I also think it is legitimate, and widely seen as legitimate, for them to do so, because it allows for things that are in their very nature constitutional and impossible to codify to play out.



Q78 **Tom Randall:** These theoretical circumstances in which Dissolution might be refused are likely to be an extremely contested political environment. When courts have been involved in this matter, they have been subject to a lot of criticism and critique. Do you think we put the monarch at risk if we set them up to be involved in political controversy if the role of backstop becomes involved, in the way that we have seen with the courts?

Chloe Smith: No, I don't think there is a danger in the step that we are taking here in this Bill. The step that we are taking is to return to previous arrangements. That danger has not materialised through the decades in which the prerogative power has been used, certainly in recent memory and comparable history, and I do not see a particular reason why it should materialise now.

I do not think there has been a fundamental change—for example, in public appetite about the monarchy or anything else that you might care to discuss—that would mean that there has been any change in the rightness of where you put that power. What you are dealing with here is a way to enable there to be a functioning Government in the House of Commons, which is in everyone's interests, and then a pressure valve of being able to consult the electorate about their opinions. The system that has that as its outcome will, again, stand the test of time and be well respected by people, who know that they are going to get their voice.

Tom Randall: Thank you.

Chair: Finally, Lloyd Russell-Moyle.

Q79 **Lloyd Russell-Moyle:** Thank you. On something different now, I asked you just under a year ago about the costs of the pilots for voter ID. They were published for the 2018 pilots. You have not been able to publish them in the same level of detail for the 2019 pilots, although you have sent us some extrapolation. Given that you published a raft of statements about the elections Bill, is there a moment when we will be able to see all the detailed costings moving forward?

Chloe Smith: Yes, there is; it will be the impact assessment that comes with the Bill. I am actually really pleased that you ask this, and I was waiting for it—I had to wait until the end of the session for it. It gives a chance to pull together a couple of threads of what we had spoken about before. If I may, I will set out what those threads are, because it adds up to the sensible position that you will be looking for.

You are absolutely correct to say that we have had a previous discussion at this Committee, and with the previous chief executive officer of the civil service, about how this all adds up. There were pilots in both 2018 and 2019. Costs were, in fact, published in detail after the 2019 pilots, and that was done in the normal run...

Costs were, in fact, published in detail after the 2019 pilots, and that was done in the normal run of our transparency publications. There is always a



short delay, actually, after elections, for any such costs to be published, because they come to us as claims—receipts—which we have to process and can only publish a short while afterwards, as you can see. So we did that and that is all available, and that is certainly what I have made sure we have provided to the Committee this week, in case there had been any confusion on that point.

Q80 **Lloyd Russell-Moyle:** Those are the costs of the actual pilots, not necessarily what they would then cost in theory if implemented nationally in an integrated system.

Chloe Smith: Now, indeed. That is the next point to make. Is it going to be valuable to do an extrapolation directly from pilot costs? Not necessarily, because, quite understandably, pilots are only a selected number of places. Indeed, they were self-selected, as you will remember from the design of those pilots. They could never be said to be the perfect picture in themselves, and we were quite clear at the time that they would have to be followed by fuller modelling to be able to get from pilot detail to the appropriate level of detail for national roll-out. That is what we have since been doing and since been working on, and that is what will be in the impact assessment that you will see very shortly, as soon as the elections Bill comes before the House of Commons.

The only other thing I would just add here, to explain why it is taking a little bit of time to do this, is two things. First, we were always quite open about the fact that we would be taking that time to go from the design of pilots through to the design of what would be a robust national programme. You will appreciate that takes proper time and proper work with the electoral sector and you certainly would not want us to have skimmed on that. Secondly, the general election in 2019 also got in the way of this, because we had intended to be able to do some of that work through 2019 and, of course, report back to the Committee and onwards from there. Quite understandably, the election changed the timeframe that we were doing that to, and the expectation we could have of when we might be legislating and the expectations that we could have of when we might be implementing.

I hope that explanation is helpful to the Committee.

Q81 **Lloyd Russell-Moyle:** So, the impact report will be published—

Chloe Smith: Alongside the elections Bill, yes.

Q82 **Lloyd Russell-Moyle:** So we will get it then. That is useful. Your previous data showed that the photographic ID was cheaper than the polling card model, so we need to actually be able to see where those calculations come from. That would be great.

You wrote to us two weeks ago, on 16 June, about the changes you intend in the elections Bill for the Electoral Commission measures, particularly the process by which a Secretary of State would make a statement to define the role periodically of the Electoral Commission and



its activities. You say in your letter that the Secretary of State will be required to consult with the EC, the Speaker's Committee on the Electoral Commission and the Public Administration and Constitutional Affairs Committee. I welcome the fact we are included in that.

There are two things. I don't know if I missed it, but in the model text, I could not see our Committee—in the Bill text. Secondly, how do you foresee that consultation taking place? Is it an exchange of letters or do you see joint hearings between the two Committees taking place? How do you envisage that happening, before we get to the stage of a statement being given by the Secretary of State in respect of the Electoral Commission?

Chloe Smith: First of all, on whether there is any discrepancy in the wording, let me check that. Obviously, we will seek to put that right if there is a discrepancy. It certainly is our intention to consult PACAC and the others that you have mentioned. As to the format of that consultation, I am open to discussion on that point, certainly, and the Chairman knows that those are discussions that are ongoing. I think there could be a number of ways of achieving that goal.

What we are looking for overall, with the set of measures we have announced to do with the Electoral Commission, is greater parliamentary scrutiny and oversight, and greater accountability for the commission to Parliament. As I say, in that context I would be open to ways of achieving that aim in terms of how a consultation would be done with this Committee and the others.

Q83 Lloyd Russell-Moyle: I have actually found the wording, and you are right that the Committee is mentioned there. It is your wording, so thank you for that. We received evidence previously, particularly about the Speaker's Committee, of concerns about the governing party now having the majority on that Committee, which is not something that has happened before. Is that a concern in any of your considerations about giving Parliament greater oversight, when the Speaker's Committee itself has a majority for the governing party?

Chloe Smith: I suppose in a way this relates back to the bulk of the other things we have been talking about this afternoon, which is that the nature of the Commons at any one time is that there will be parties of different sizes. That is a reality that I could not change.

We think having that increased parliamentary insight would be in addition to what is in the role of the Speaker's Committee. Of course, you will also have observed that we are looking to augment the powers of the Speaker's Committee to be broader than they are at the moment. Together, those things will give a broad basis to that oversight—certainly broader than it is at present.

As to whether the Speaker's Committee ought to have a Government majority or not, naturally that is something that is changeable, according to the composition of Parliament. The Speaker has the ability to appoint



five members, and we intend that the composition of the Committee would otherwise be arranged in the normal way that Committees are arranged across Parliament. It is fairly well in line with what else we see in Committees across Parliament, while also having the particular powers and characteristics that go with it being the Speaker's Committee.

Q84 **Lloyd Russell-Moyle:** Do you think that giving politicians more say over how they are regulated is something the public will feel provides more probity in politics or less?

Chloe Smith: As you will have seen from the statement and from my words just now, what we think is needed here is greater accountability. The public has an appetite for elections to be well regulated by a trusted regulator that can command trust from every part of the political spectrum.

Q85 **Lloyd Russell-Moyle:** Do you think the public trusts politicians and MPs to do that more than other bodies?

Chloe Smith: I think the public do have trust and can have trust in those who they vote for. Let's not forget, going back to the key point we have been making in this Committee all afternoon, politicians are those that the public have chosen to come to this place and to work for them. So, they have already passed a quality mark, if you like, of being chosen by the public. Let's never forget that.

Yes, I think that Parliament as a whole can do the job of giving greater scrutiny to the Electoral Commission. If we don't trust Parliament to do things, then we shouldn't trust it to do a whole range of things. Here we are this afternoon talking about the very important role of Parliament. I trust Parliament; I hope you do too. I think it can take on a greater oversight role here.

A greater oversight role is needed. To not have one would be problematic, at a time when the regulator has not enjoyed trust across the whole of the spectrum.

Lloyd Russell-Moyle: Thank you very much. I am not going to go into more detail on this. The Committee is doing an inquiry at the moment on the Electoral Commission more broadly and I am sure the Committee will want to address this. I am pleased that you think that the public has trust in Parliament. Maybe that will mean that other functions are restored to Parliament away from some of the privatisation and quangos we have seen created in the last few years. Thank you very much, Minister.

Chair: Thank you, Lloyd, and thank you, Minister, for coming before us this afternoon. We look forward to receiving the correspondence. In the meantime, we wish you all the best.

Chloe Smith: Thank you very much, everybody.