

Public Administration and Constitutional Affairs Committee

Oral evidence: [The Fixed-term Parliaments Act 2011, HC 167](#)

Tuesday 21 July 2020

Ordered by the House of Commons to be published on 21 July 2020.

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Members present: Mr William Wragg (Chair); Ronnie Cowan; Jackie Doyle-Price; Chris Evans; Rachel Hopkins; Mr David Jones; David Mundell; Tom Randall; Lloyd Russell-Moyle; Karin Smyth; John Stevenson.

Questions 130 - 203

Witnesses

I: Rt Hon. Mark Harper MP, former Minister for the Constitution, Cabinet Office

II: Chloe Smith MP Minister of State, Cabinet Office

Examination of witness

Witness: Rt Hon. Mark Harper MP.

Q130 **Chair:** Good morning and welcome to another virtual public meeting of the Public Administration and Constitutional Affairs Committee. I am in Committee Room 6 in the Palace of Westminster with the small number of staff required to facilitate this meeting, suitably socially distanced from one another. The witnesses are appearing in the room today and my colleagues are at their homes and offices across the country. The Committee is very grateful indeed to both our witnesses for making time to appear before us today. Could I ask our first witness to introduce himself for the record, please?

Mr Harper: Certainly. I am Mark Harper. I am Member of Parliament for the Forest of Dean. For anyone watching, I am the former Minister for Political and Constitutional Reform and I was the Minister who took the Fixed-term Parliaments Act through the House of Commons.

Q131 **Chair:** Thank you very much, Mr Harper. Could I ask an open question to begin with? As the Minister in charge of the Bill, what did you understand to be the purposes of the Fixed-term Parliaments Act?



Mr Harper: The Act was part of the Coalition Agreement that had been reached between the Conservative Party and the Liberal Democrats as part of the foundation of the 2010 to 2015 Government. Effectively it was to remove the ability of the Prime Minister of the day to call an election at a time of his own choosing and to put that power into the hands of Parliament. It effectively removed the Queen's ability—the prerogative power that she had—to dissolve Parliament, which she obviously used to exercise on advice from the Prime Minister.

Q132 **Chair:** Do you think it was a matter of political expedience or a more high ideal?

Mr Harper: It was in the Coalition Agreement and obviously people can draw their own conclusions as to why it was there. I was not privy to the negotiations for that Coalition Agreement. There were some very strong arguments I put and we had this debate during the passage. I do think that one of the things that has been an issue in British politics is we have not exactly been criticised for having politics that is too long term. One of the arguments for a Fixed-term Parliaments Act was to have Governments that could think a little bit more long term.

The example that I used was that traditionally the political imperative usually was that once a Government had got to four years, it was then thought to be reasonable for a Prime Minister to think about having an election, which of course in reality means once you are three years into the Parliament you start thinking about it and the political world starts thinking about that election after four. You end up truncating a five-year Parliament into three years of getting stuff done and a year when everybody is focused on the next election.

There was an argument—I think a perfectly reasonable argument—that slightly lengthening that time horizon so that we could think about longer-term projects, implementing things properly over a longer period and scrutinising them properly, was quite important. It was a strong argument for Parliament being able to scrutinise things properly over a time period. There were some strong arguments for having a fixed schedule and I think there still are.

Clearly, of course—and we may get on to this—the events of the last couple of years have obviously highlighted the limitations in the Fixed-term Parliaments Act in our constitutional structure, hence why both of the major political parties think that there needs to be a significant amount of reform to it.

Q133 **Chair:** The impetus for the Act did not come from the smaller partner in the coalition, who perhaps feared that it would be unceremoniously dumped at a time of the larger partner's choosing?

Mr Harper: That is certainly an argument that I have seen advanced. All I know is what was in the Coalition Agreement. There was an agreement to deliver that Fixed-term Parliaments Act. Of course if you take it in its



sensible terms, there were many people at the beginning of the 2010 Parliament who did not think that the coalition Government would last. Of course that Parliament did run its full term, so you could say in the narrow terms of the Act it fulfilled its objective. That Parliament ran from 2010 to 2015. It got us through a very difficult financial period and many big decisions were made, which were obviously contested, but the Government were able to take some very tough, long-term decisions. Obviously in terms of the events subsequently, we have not embedded the concept of five-year fixed-term Parliaments into the political discourse because we have clearly had two elections in relatively quick succession because of the political dynamics around Brexit.

Q134 **John Stevenson:** Mark, overall how do you think the Act has performed over the last 10 years?

Mr Harper: Mr Stevenson, just recounting briefly the answer I gave to the Chairman, I think in the first five years it clearly did fulfil its objectives. The 2010 to 2015 Parliament ran its full term. That Parliament ended by the operation of the Act. When we got to the end of March, the processes kicked in and Parliament was dissolved and the election took place according to the schedule.

Subsequently, you can argue it both ways. The Act did provide for there to be an election out of the five-year cycle if Parliament determined. Now, one could argue that certainly in 2017 the Act operated as intended. The then Prime Minister, Theresa May, wanted to have an early election. She could not deliver it herself, but she came to Parliament, she put a motion in front of Parliament, the governing party and the Opposition both supported that motion, and there was an overwhelming majority in Parliament to have that early election. You could argue that the terms of the Act operated as expected.

Clearly where it ran into difficulty—I think this is the impetus for having to amend or replace it in some way—is obviously what happened last year, which is where the Government attempted to use the early election provisions of the Act to have an early election on a number of occasions, and Parliament refused to do so. The Government were not able to make progress on what was the central political question of the time and you therefore had an impasse. You had paralysis and there was no mechanism to deal with that. The Prime Minister was not able to deal with it himself; Parliament did not deal with it. I think the weakness that we had not really envisaged was that whereas there is a very clear accountability mechanism for a Government facing the electorate, Parliament blocked an election and blocked any progress on the main political issue of the day without any seeming mechanism for it being held accountable. That is clearly one of the things that I think has triggered both of the main parties thinking we needed to reform the Act.

I would say success in the early part of the process, but clearly the events of the last couple of years have highlighted a set of circumstances that can



occur. We can argue about whether they will occur again, but that does highlight a need for reform.

Q135 **John Stevenson:** Do you think therefore overall if you could amend it slightly, the Fixed-term Parliaments Act is worth keeping?

Mr Harper: I certainly think it needs amending. The real question is how you amend it and what system you want to put in place. That needs to achieve a number of things and I think some ability for the logjam to be broken. We have to think about how we do that.

There is a strong argument—I think this was felt very clearly last year, not just by the Prime Minister but by many people—that in a situation where you have paralysis somebody needs to be able to resolve the paralysis. If you are going to accept at some point that the Prime Minister can do that, the Act would need amending and you would need to give the Prime Minister the power and set out the rules where he was able to do that and what the checks and balances would be in the system. I certainly think that is something that needs to be looked at and looked at carefully, but given the difficulties, we need to take some careful steps, think through the consequences and then make those changes.

You could certainly amend the Act rather than just junking it entirely. I do think, by the way, if you just repealed the Act, it is very clear from all the advice I have seen you do not just get back to the status quo ante of the system that was there before. We need to think about what system we want and we need to legislate to put that into effect.

Q136 **John Stevenson:** Final question: going back, ignoring the fact it was part of the Coalition Agreement and ignoring the fact that you were clearly part of collective responsibility, at a personal level do you think the Act was a mistake or do you think it was the right thing to do?

Mr Harper: I would say two things. First, the impetus to having Parliaments that in usual circumstances run their term and therefore moving to, on average, a Parliament sitting for its full five years I think personally is a good thing. I do not think, if you look at all the history of British politics, there has ever been an argument that we think too long term. There is a very strong argument that on many issues we think too short term, driven by the electoral timetable.

On the specifics, we try to envisage the circumstances that would exist, which is why we had the provision for an early election. We clearly had not envisaged a situation where you would have the Government unable to make progress on what was effectively not just an important issue, but the central dominating issue of the day, and have a Parliament that did not effectively try to resolve that issue. Clearly that is the gap that I think we need to think through and think how best to resolve it. I do not think it was a mistake to implement it, but clearly we did not envisage all of the circumstances that could happen and think through mechanisms where they could be dealt with politically.



Chair: Before going to David Jones, a quick supplementary from Ronnie Cowan, please.

Q137 **Ronnie Cowan:** Is this an impossible conundrum? Can we legislate for a fixed-term Parliament with a Government with a majority that can basically do what they want? Are we just trying to do the impossible here?

Mr Harper: To some extent, Mr Cowan, in our system Parliament is sovereign. Clearly, as we saw last year—I think we always envisaged this could be the case—another Act of Parliament can be passed to have an election whenever you like. I do not think you can change that. In my view, it is whether you can sufficiently change the political rules of the game, as it were, so the norm would be that you would have a Parliament that ran its course. There can be circumstances when that does not make sense. We envisaged that in the Act, but clearly we were not able to envisage all of the extraordinary circumstances that have taken place over the last few years.

In essence, your central question is this is ultimately about politics. If there are a set of political circumstances, clearly people are going to respond to those. The question is do you move to a system where a five-year fixed term is the expected outcome and variations from that are out of the ordinary, or where we simply go back to the previous position, where basically a four-year term was the norm and effectively we only ran the full five years when a Government did not think they could win with an election after four? You can make an argument both ways.

My own view, as I said, is I do not think British politics has been bedevilled by Governments thinking too long term. There is a strong argument that they have thought too short term, so trying to move to that slightly longer-term focus was sensible. Is it going to be practical in all circumstances? We have seen over the last few years clearly no, and you need to have some release mechanisms where ultimately you can revert to the people if that is required. We have a parliamentary system, not a presidential one, and ultimately the Government of the day need to have the confidence of Parliament. If they do not, you need to revert to the public to refresh the Parliament.

Q138 **Mr Jones:** Good morning, Mr Harper. When the Bill was being debated in the House, you said that its provisions removed the prerogative. Was it your understanding that the intention was to abolish the prerogative? If so, do you think that it has had that effect?

Mr Harper: Yes, Mr Jones, it was the intention to abolish the prerogative. The two pieces of evidence I would put before the Committee are, first, I think I am right in saying in the explanatory notes to the Act it specifically says in terms that the Act abolishes the prerogative power to dissolve Parliament. Of course parliamentarians will remember that one of the things that had to take place when we debated the Bill was that the then Deputy Prime Minister had to seek the permission of the Queen to put her prerogative power at the disposal of Parliament for Parliament to take a



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decision about. In my view, and I think this is supported by many eminent lawyers, the Bill did abolish that prerogative power and the Queen does not have any residual power to dissolve Parliament. That power can only be exercised by statute.

Q139 Mr Jones: Is it your view that effectively once the prerogative was abolished, it is incapable of being resurrected?

Mr Harper: There is an argument about that. It is a debatable proposition. The first thing that you cannot do is simply repeal the Act and you go back to the status quo ante. That is clear under the Interpretation Act. What is less clear is whether you could pass a piece of legislation that expressly said that you wanted to revert back to the previous position. That is an arguable point.

My own view is I do not think having something of this importance that is left unclear is wise for two reasons: first, because it potentially drags the Crown into quite significant political controversy when it exercises that power; but also something quite significant has changed since this Act was going through Parliament. When we took it through and debated it, there was a general expectation that the key provisions of the Act were not justiciable and that our courts would run a mile from getting involved in these very present political controversies. The events of the last year have demonstrated that that is no longer true, so it would be wiser—I think this is supported by a paper that Sir Stephen Laws, the former First Parliamentary Counsel, has written—to legislate specifically and expressly for what should take place.

If it is decided that it should be the case the Prime Minister once again has the power to advise the dissolution of Parliament, the process for that and the powers should be expressly set out in an Act of Parliament that we should pass. I also think it should be set out in that Act that we should, as far as possible, keep the courts out of it. These are political questions that I think should be dealt with politically.

Q140 Mr Jones: We have had similar evidence from Sir Stephen Laws, but it appears to be the case—I wonder whether you would agree—that if you were to seek to reconstitute the prerogative, what in fact you would be doing would be setting up a creature of statute and it would no longer be the prerogative legally in its previous form.

Mr Harper: Yes, I think that is right. You could effectively recreate practically what happened, but there is a strong legal view that once a prerogative power is abolished it does not come back again. If you want to recreate the effect of the prerogative power, you have to legislate to put that into effect.

It is important that we have a clear system where everyone is clear about it. The advantage of course of taking a piece of legislation through Parliament is that by definition Parliament has then decided that that is the system and the rules of the game. While everyone might not agree they



would like those to be the rules of the game, there is agreement that they are the rules of the game and then everybody operates with that understanding, as we did previously. When we had the previous system, because they were the rules of the game, when they were operated people did not complain about the operation of them because everyone understood those were the rules of the game.

If you are going to change the rules of the game, you need to do it in a way where everyone understands that they are the rules of the game. That is very important, and not just for parliamentarians, because it is also important that the public understand those are the rules of the game so that we do not end up with arguments about the rules as opposed to the substantive questions at hand.

Q141 Ronnie Cowan: When the Fixed-term Parliaments Act was going through Parliament, consideration was given to including prorogation in the Act. The Government rejected this move, saying that the conventions were sufficiently strong and placing prorogation in statute was unwise and unnecessary. In the light of the Supreme Court's decision in the Miller/Cherry case, in which the Supreme Court decided that Parliament was not prorogued as the Prime Minister's advice to the Queen was unlawful, do you think the Government's view of this at the time was wrong and should the power to prorogue Parliament also be set out in statute?

Mr Harper: There are several questions there, Mr Cowan. On the issue of whether we were right to not include prorogation in the Act, I think we were right not to do that. We were trying to achieve a specific outcome, which was to deal with the ways in which Parliament could be dissolved, and we were limiting what we needed to have in the Act to deliver that. I do not think it was necessary to deal with prorogation.

My own view at the time about what happened with the proroguing of Parliament, and I have said this publicly, was that the advice given to Her Majesty the Queen was, based on the understanding of the position at the time, perfectly reasonable. I think you can see that by the fact that the three very senior judges in the lower court agreed with the Government that that was the case, including the Lord Chief Justice. I think the advice that the Attorney gave the Prime Minister and the advice the Prime Minister gave the Queen was very reasonable and reflected our understanding of the position. I know you obviously did not agree—

Q142 Ronnie Cowan: But the decision of the Supreme Court was unanimous, was it not?

Mr Harper: Yes, it was, but what I am saying is if three very eminent judges, including the Lord Chief Justice, ruled differently, it seems to me a perfectly reasonable proposition for the Government to behave in the way they did. I know you are one of those who did not agree with that. You were one of the co-litigants, I believe, in the legal action that was brought before the court. As you correctly say, the Supreme Court ruled differently. My own view is they were entitled to do so and I have no quarrel with that,



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but I think they did make new law in the way our common law system works.

We are now facing a different legal position. As I have said, I think that has also changed the basis on which we should operate as parliamentarians. It is now entirely possible that the court will trespass into areas that had previously been thought to be areas that it would not trespass into, which were things that should be left to politics. I agree with what Sir Stephen said in his Policy Exchange paper. I think it would be better in whatever changes we make to the law in this area that we revert to the previous system where the guardian of the constitution is the Crown and we, as politicians and parliamentarians, act in a way to protect the Crown and we resolve the political disagreements and we work hard to make sure that the advice that is given to the Crown is clear.

The example I would give in this case—I have given this to this Committee in its previous incarnation—was when after the 2010 election Gordon Brown suffered some unwarranted criticism, I think, for remaining as Prime Minister for a period until he was able to give Her Majesty clear advice about who she should ask to form a Government because he felt it was important to keep the Crown out of political controversy. I think that is a better system. It is a more accountable system than one in which people who do not agree with political decisions rush off to the courts to effectively fight political battles in the courtroom in such a way that they are then not accountable for their actions to the public through an election.

As we are thinking through how we change the Fixed-term Parliaments Act, I want a system where decisions about dissolving Parliament and having elections are political decisions and where we as politicians resolve them without running to the courts, where the Crown is the ultimate arbiter, and we do what we have traditionally done, which is we have taken responsibility for resolving these political decisions in a way that keeps the Crown out of party politics. If we can get to a situation where we get to that position, I think that would be the best possible outcome for everybody.

Q143 **Ronnie Cowan:** You are not making the argument for putting prorogation into the Fixed-term Parliaments Act then?

Mr Harper: No, I am not. What we are specifically talking about here is the mechanism for when we dissolve Parliament. The point I am making is I do not think we should have put prorogation into the Act because it was not intended to be a broad Act changing large parts of the constitution. It was narrowly focused on the terms that Parliament could be dissolved and who had that power and we moved that power from the Executive to Parliament. If we are going to change that, I am not sure we want to start creating a broader constitutional reform Bill. I think we should limit our focus to how you dissolve Parliament, who takes that decision and to whom they are accountable. Clearly other people will have different views.



The reason why, at length, I elaborated on the prorogation argument is what has changed—and I think this is a change—is that previously, and I think this is a correct judgment, courts stayed out of issues that were incredibly political and they felt that those issues were best resolved in a political forum in what you might call the high court of Parliament. What changed last year was not just the individual decision in the prorogation case, but I think the Supreme Court, by the way it conducted itself—which I have no quarrel with—has changed the political playing field. It has clearly shown that unless it is expressly kept out of these matters by decisions of this Parliament, it is going to play in this arena.

Personally, I think political questions are best resolved either in Parliament or, if they cannot be resolved in Parliament, by the public. I do not want a system where every time someone does not like the outcome of a political decision they resort to litigation. I do not think that would be a positive move. There is a role to make sure Ministers obey the law, but I do not think it is expanding that territory—and I think that is what the Supreme Court did. In our system they are perfectly entitled to do that, but I do not think it was wise and helpful to expand the territory on which judges play. Those political questions are best left for politicians and ultimately the public to resolve them.

Q144 **Lloyd Russell-Moyle:** You have said that it was a new ruling and that the Supreme Court overturned the lower courts on the dissolution issue. I just wondered if you would recognise that Scots law is materially different on this point, hence why the lower courts in Scotland ruled in favour of the Cherry argument. To say that there was no previous understanding that the court should intervene undermines Scots law, which is different.

Mr Harper: Yes, I do accept that. First, I should say to the Committee I am not an expert on Scots law, but I did spend a fair bit of time reading both the background and the judgments in these cases. Yes, I do accept that there is a difference in Scots law and the reason why that case was brought in the Scottish courts was for that reason, but it is also true—and this potentially illustrates why I do not think running off to courts is the wisest course of action—that the High Court reached the opposite decision and those three judges, including the Lord Chief Justice, reached the opposite conclusion. Obviously the Supreme Court then had to make a ruling for the United Kingdom.

Q145 **Lloyd Russell-Moyle:** Is there then not an argument that when part of the United Kingdom legal base is slightly different to the other part of our United Kingdom legal base, you either need to go to the courts or you need to get Parliament to agree a set of laws that will cover the circumstance, such as a law on dissolution, rather than just hoping on a wing and a prayer that no one will notice the slight difference between the two legal systems?

Mr Harper: Yes. Clearly if we are going to amend in some way the Fixed-term Parliaments Act to provide for the rules about dissolution, that will be in the statute and that will be something that will cover the United Kingdom. The point that I think Mr Cowan was raising, which I think you



have raised as well, Mr Russell-Moyle, is given the Supreme Court's ruling in the case last year, whether as a result of that we need to include in the legislation rules about prorogation. I have not reached a conclusion about that. I think that is something that will be helpful for the Committee to opine on.

As I said, the danger if you start amending everything is that it rapidly turns from a Bill and an Act about the rules about dissolution to a much wider constitutional reform Bill. We might want to go there, but it then becomes a much bigger question and we start pulling a whole load of things into it. Personally I think it probably is better to keep it more narrowly focused. The question is to what extent prorogation is an integral part of the dissolution of Parliament. I think that is something it might be worth the Committee thinking about when it reaches its conclusions in this case.

Q146 David Mundell: Mark, you introduced the requirement in the Act for the establishment of a Review Committee. How did the Government envisage that that Committee would operate?

Mr Harper: We did. We thought it was useful to look at how the Act had worked once it had the chance to do it over a cycle. That was the reason of course for the dates, that the Review Committee would not be set up before June 2020, but would be set up by November. What we had envisaged was the Act going through two full cycles through to 2015 and then you would have had the general election that would have been scheduled for May 2020. That would have enabled the Review Committee to look at two cycles and then to reach some conclusions. Clearly we have accelerated somewhat the number of cycles and processes and we have had an extra general election in there. I think we envisaged a Joint Committee of both Houses of Parliament, but given that this is about elections and therefore about the democratic House, we did stipulate that that Committee should have a majority of Members of the House of Commons. Other than that, we had not specified the makeup of the Committee.

Clearly, it seems to me there are two options. Either the Government put forward to Parliament for its approval a Committee of both Houses—Members not currently involved in this process—or the alternative is they could ask existing Committees to nominate members from those Committees. For example, you could have members of this Committee and members of the Lords Constitution Committee coming together to form that Review Committee. Given we are talking about setting the rules of the game, there would be merit in making sure that Committee had members of certainly both major political parties.

There is an argument for including from the House of Lords some Cross Benchers, particularly those with some experience in this area. Of course the advantage of appointing Members who are experienced in this area of policy—members of this Committee and of the Lords Constitution Committee—is you have lots of expertise there and the Committee could therefore conduct its work fairly swiftly and produce some



recommendations, which I hope the Government would take into account when they were formulating the proposals they bring forward before Parliament to amend the Fixed-term Parliaments Act.

Q147 **David Mundell:** What about non-parliamentarians?

Mr Harper: I think we envisaged at the time it would be a parliamentary Committee, a Joint Committee of Parliament. My own view is that the way you incorporate the important views of non-parliamentarians is you have a Committee and that Committee can take evidence. If you want to bring in the views, as I have already mentioned, of Sir Stephen Laws, First Parliamentary Counsel—people like that who you would want to listen to, who obviously bring a great deal of experience—you would set up the Joint Committee and that Committee would take evidence in public. It could then listen to that evidence and use that evidence as it deliberated its conclusions and its recommendations that it would present to the Government and to Parliament.

Q148 **David Mundell:** Of course if the Act is repealed, the requirement to have that Committee would be repealed with it.

Mr Harper: That is correct, but as I have said, I do not think that you can simply repeal the Act and get back to the status quo ante. You have to be able to put in place the alternative processes.

It was interesting: I noted, for example, in the 2017 manifesto that we had that there was a commitment to repeal the Act, which I think would have been difficult to deliver. The manifesto that you and I both ran on last year said that we should get rid of the Act, which is a rather less specific and more conventional form of words that I think encompasses both repeal, but also what is more realistic: amendment and changing the terms of the Act so that it operates in a different way.

I think there would be merit for the Government in setting up that joint Committee because I know you are obviously doing an inquiry now. The Lords Constitution Committee I believe started an inquiry into the Fixed-term Parliaments Act last year, but it did not have a chance to conclude its work before the election in December. It has not finished that work, but it obviously did kick it off. There is some merit in perhaps drawing on the work that has already been done when that Review Committee is set up.

There is no particular hurry to resolve this. The next scheduled election is not until 2024, so there is some merit in thinking this through, listening to views of both Houses and people from different political parties, and those recommendations, as well as the recommendations from this Committee informing the decisions that the Government take. As I said, I think there is quite a lot of merit in trying to get some agreement on the rules of the game so that the next time we are running up to an election, the argument you want is about who should govern and the policies on which they should govern, not a massive row about the timing of the election, when the election should take place, what the rules should be and potentially some



people wanting to rush off and resolve that disagreement in court. I do not think that would be helpful for our political process. The more agreement we can have at an early stage so that when we bring forward those changes they have broad support would be welcome.

I would just say that both of the main political parties had in their manifestos at the last election a wish to change this Act, so it does appear to me at least possible that we could get some level of consensus about what those changes should be. Obviously in any game that people play—I do not want to use “game” in a light way—it is very helpful if the participants agree on the rules of the game rather than having the rules being contested. It is much better if we have the rules and we then have the game, as it were, taking place on those agreed rules.

Q149 **Chair:** Mr Harper, at the outset of your evidence you made the observation—quite correct in my view—that British politics is not renowned for its long-termism. It is obviously less than 10 years since the Act that we are discussing was introduced and passed and, as you say, both the Government and the Opposition have committed to “getting rid of” the Act. What do you think can be done to ensure that any new arrangements are longer lasting?

Mr Harper: One thing I just alluded to in that answer—part of it is about trying to get some agreement about what the rules of the game are. Clearly when the coalition Government legislated for the Fixed-term Parliaments Act at the time, the then and current Opposition party, the Labour party, did not agree with it and it was heavily contested. There were lots of attempts to amend the length of the term and those were obviously to do with the particular circumstances at the time, I think because there was a feeling that in some way opposing that Act would alter the longevity of the coalition Government.

There is an opportunity now, given that we have a Parliament where we have a Government with a decent majority and the Parliament is clearly going to run its term and both parties think this should change, to try to get to a position where, if you can, it would be ideal if both major political parties broadly agreed on the rules of the game. If both major parties agree on the rules of the game going forward, then that would seem to me the best chance that they stick and that we then argue about the substance of politics and about the policies that we are going to fight an election on and not about the way you have an election and the processes. I think, frankly, the public would breathe a sigh of relief about that.

There is a real injunction on us as politicians to avoid the paralysis that we had last year, where you had a Government that were not able to deliver the central political question of the day, but also were not able to have an election and enable the public to resolve it. We did deal with that in the end; it was resolved and the public made a decision. I do not think anybody who lived through the last year particularly wants to live through it again. I think that goes for parliamentarians, but also for the public.



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If we can, it would be good if we could have some level of consensus in this area. This Committee, which is obviously a cross-party Committee, the Lords Constitution Committee, which is also cross party, and includes Cross Benchers, the extent to which we can use that and the Review Committee process to get at least some level of agreement would, I think, be very welcome.

Chair: Thank you very much indeed for your time and evidence this morning, Mr Harper.

Mr Harper: Thank you very much.

Chair: We are going to have a momentary pause as we change over our witnesses.

Examination of witness

Witness: Chloe Smith MP

Q150 **Chair:** Good morning, Minister, and thank you very much for your time in coming before the Committee this morning. Could I ask you to introduce yourself for the record, please, Minister?

Chloe Smith: I am Chloe Smith, Minister of State for constitution and devolution at the Cabinet Office. Can I also just in brief apologise for being a few minutes late to the Committee? I was stuck on public transport, despite having left my home at a very prompt time to be able to be here with you this morning.

Q151 **Chair:** You are here and that is all that matters. Just before we go into the main business this morning, could I ask about the vexed subject of the Cabinet Office list of ministerial responsibilities? You have previously had ministerial responsibility for the Cabinet Office's relationship with Parliament and it has been very difficult for Members to ascertain necessarily which Ministers have been responsible with which responsibilities. Could you provide the Committee with an update, please?

Chloe Smith: Yes, of course I can. I suppose this follows on from what we briefly discussed at oral questions last Thursday, which is to say that it is the case that the list of ministerial responsibilities has taken a little while longer than normal to be published. As you will know, Chairman, it was last updated in October. In part, this delay is due to Ministers having been obliged to focus on responding to the challenges of the Covid pandemic. As I said to the House last week, we certainly intend to be able to bring forward the full list in due course. It is also the case that you now have a reference of my own responsibilities through an answer to a parliamentary question, which you received from me last week, and I would be very happy to discuss further any way I could help you with that information.

Q152 **Chair:** As Mr Russell-Moyle was referenced in one of the responses to one of my WPOs, at this juncture I think he—if he is going to appear on the screen; I am not sure if he is—wanted to ask a brief question at this point.



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I do not know if Mr Russell-Moyle is there. Minister, you got off quite lightly on that question, in which case we will press on with our main business, which is of course the Fixed-term Parliaments Act.

Could I just ask you to outline the Government's concerns with the Fixed-term Parliaments Act and its operation that led to the manifesto commitment—which I stood on as well—to get rid of it?

Chloe Smith: Yes, of course. Can I say at the outset I welcome this inquiry? It is very helpful and very well timed because, as your array of witnesses has shown, it will give a chance for the issues to be well aired.

The Government's concern here is that this piece of legislation led to paralysis in Parliament and in the workings of Parliament at a very important time for the country, arguably at a critical time for the country, where the public needed to see movement. Indeed, eventually the public had their chance to give their view in the general election that followed in December. Up to that point, around a number of turns of the circuit, this Act rather stood in the way of being able to move matters on and I think it showed that there were some particular problems with the measures in that Act.

Q153 **Chair:** Do you think it has had its time in that respect? One of my questions to Mr Harper, the previous witness, was about its formation in the early coalition years, where some might say it was perhaps brought in for political expedience to hold together a fragile coalition. What would be your response to that perhaps?

Chloe Smith: I did not happen to hear Mr Harper's answer to that, but I am sure he was able to admirably cover the politics of the time. Of course I served shortly after Mr Harper in this role for a period during the coalition Government as well, so I am certainly aware of the demands of having governed in coalition.

The other thing that you might say, aside from sheer politics, was that what is in this Act and the issues that we are now looking at around it are very fundamental in the constitution. You need to be able to have the basic principles there for confidence in the Government, confidence in Parliament and the ability to return to the people to make their choice when such a moment comes. To have gone very rapidly about such issues early in that Administration, between 2010 and 2015, perhaps suggested that it would be better to give these issues more thought, which is what we have the opportunity to do now.

Q154 **John Stevenson:** Following on from the questions of the Chair, Minister, what specific plans does the Government have for their commitment to get rid of the Fixed-term Parliaments Act?

Chloe Smith: It would require legislation, so in that we intend to repeal it. That was our clear manifesto commitment and to do so would obviously require legislation. The very specific plan, in answer to your question, is that it would require legislation to be brought to Parliament to do that. You



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will appreciate I cannot give you a precise timetable for that now. We are in the middle of a session of Bills and, as all hon. Members know, it is simply a matter of scheduling as to when legislation can come. But we certainly intend to do that and the specific plan for doing so is to repeal it in legislation.

Q155 John Stevenson: I appreciate you cannot give a specific time for the actual legislation coming before Parliament, but what about announcing the actual plans and what you intend to do? When is that likely to come out?

Chloe Smith: Again, a little difficult to give you the answer to that because it connects to the question of when a Bill would come. I well appreciate that these are of course answers that the Committee would like and I am keen to be able to give you them as soon as I possibly can. We will of course also be including in our plan the review that is part of the existing statute, which I am sure you would like to talk about today because again it came up at oral questions last week from the Chairman. That provides you some indication of timing. The statute says that such a Committee needs to be comprised in the back end of this year. Certainly I would hope that that Committee would proceed in the clear knowledge that our plan is to repeal this legislation and that we will be doing so as soon as we are able to schedule that in Parliament.

Q156 Chair: Before we go to David Jones, Minister, at the more or less outset of this meeting, are we in White Paper phase or Green Paper phase? Are we in listening mode or are we about to broadcast the Government's intention?

Chloe Smith: It would not be fair to say I am about to broadcast it because otherwise I would be here doing so today at this Committee. Certainly I do want to be able to let you know those plans as soon as I can. We are also in part, to use your phrase, in listening mode, so it has been very helpful to hear the range of your witnesses and also for us in the Department to explore the academic and published thinking on this and the obvious ins and outs of some of the legal and constitutional questions that would follow if you seek to repeal this Act. We are working through all of that at the moment and looking to be able to bring forward our plans as soon as we can.

Q157 Mr Jones: We have heard that one of the principal purposes of the Act was to introduce fairness into the arrangements for calling elections. How will the Government ensure that that fairness is perpetuated into whatever legislation replaces the Act?

Chloe Smith: Could I just be clear in answering: do you mean the concept of the Government side not having an advantage of the election at the time of their choosing? Is it that that you are referring to?

Mr Jones: Yes.

Chloe Smith: Yes, I am aware of this as a point that is put forward by, for example, various academics. Personally, I do think that if any Government



was trying to be nefarious in taking over-advantage of the timing and in some way combined with perhaps other behaviour that the public thought badly of, the public would punish them for that. That is the point of an election. I am rather attracted to the idea that the public can take that judgment and take that decision in its own hands in terms of fairness.

Q158 **Mr Jones:** Could I just interrupt you there on that particular point and push back? We have had evidence from Professor Petra Schleiter, who told us that research indicated that when the Government had the power to call an early election, they had on average an advantage of about five percentage points.

Chloe Smith: That sounds to me like a correlation rather than necessarily a causation. I am sure you went into that with Professor Schleiter. It seems to me that of course there are lots of ingredients in what a public uses to make its choice. If they choose to give one party or another a five-point advantage, then that is their decision and it is not only of course governed by the timing.

Q159 **Mr Jones:** Surely it is not the public that is making that choice, it is the Government that are taking advantage of that by calling an early election.

Chloe Smith: To answer your earlier question, are we looking to continue that concept of so-called fairness in our plans, I think it is accurate enough to say that when we say we are looking to repeal the Fixed-term Parliaments Act it will entail repealing the concept of the fixed term, which I think is the main point that you are driving at in this question. I think I can be quite up front about that at the beginning. We do not think that a fixed term per se is in itself an ideal part of the design here. Principally that is driven by the fact that the events of the last few years showed that at times it is necessary to be able to dissolve Parliament in order to move the country on and a fixed term was shown to be undesirable in that context. I think it is a prima facie case that fixed terms are not always desirable. To answer your question very straight, are we looking to retain that, no, we are not.

Q160 **Mr Jones:** How will you ensure fairness in whatever new system is put in place?

Chloe Smith: First of all, the point that I was putting across first, which is that it is then for the election that is called as a result of dissolution to be run in all of the usual ways, which includes of course that people—the voters—are able to make their choice unencumbered. That is an absolute staple of fairness. I can say, given that after all in my responsibilities is the rest of electoral policy, I think we are very good in this country at a system of elections, an apparatus around elections that is fair. Fundamentally we do run fair elections in this country, so that is where you would look to see those safeguards for the British public.

Q161 **Mr Jones:** You would not effectively be putting in any new safeguards, you would be relying on the inherent fairness of the British electoral system? Is that a fair inference from what you have just said?



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Chloe Smith: Yes, because fundamentally people are able to take their choice in a free and fair manner in this country. That is true at whatever timing an election falls.

The other thing that we perhaps ought to include in this strand of discussion of course is the nature of how a dissolution decision is taken. As you all well know, the point of convention here that we would be seeking to maintain is that the monarch takes that decision upon the advice of his or her Ministers. I also would put, in answer to your point about fairness, that there is no imbalance in that. There is no unfairness in that in relation to party politics because the Monarch remains above politics and that is very important.

Q162 **Mr Jones:** One of the criticisms that has been made of the Act is that it was rushed through very quickly after the formation of the coalition Government. I think that it is possibly fair to say that the difficulties we have experienced with the Act since then would tend to bear out that criticism. Can you reassure the Committee that the Government will not rush through the process of reforming or replacing the Act?

Chloe Smith: Yes, I can give that assurance. As I imagine you have gone through with Mark Harper just before me this morning, it is important that these decisions are given the right space and time. As I have mentioned already, it is incredibly welcome that this Select Committee is taking the time to comb through these issues, as indeed we are also doing in the Department, because we strongly agree with what you have just said there, Mr Jones. It is very important that this issue is carefully scrutinised.

Q163 **Mr Jones:** The other point that Mr Harper made was that it was important that whatever replaces the Act has cross-party support so that we have something more durable in its place. What arrangements would you be seeking to pursue to ensure that that wide level of support is given for whatever replaces the Act?

Chloe Smith: Yes, it is a very good point. As I mentioned in the Commons Chamber last week, I believe that this aim of repeal of the Fixed-term Parliaments Act was in both large parties' manifestos, which indicates that there is a measure of cross-party support. I could not necessarily say that every single one of the other-sized parties have said the same, but I would be looking, certainly in my job as the Bill Minister and as the Minister responsible for the policy, to forge that consensus. Indeed, I hope that might be possible in part at this Committee and in other ways through both the Commons and the Lords.

Q164 **Mr Jones:** Can you assure the Committee that whatever does replace the Act will be consulted on very widely and that proper thought will be given to whether or not it works, which it is fairly clear that the current Act does not?

Chloe Smith: As you say, it is clear that the current Act does not work, and that happened because of real-life events. I suppose you might almost muse that it is quite rare in constitutional terms that you get the chance to



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test a piece of law on real-life events. You might almost argue that is a luxury in the sweep of history. We have had that in this case and I think it is incredibly important to learn from that and to put the situation right, hence our commitment to repeal this Act. Therefore, yes, the answer to your question is we certainly wish to be able to give this proper scrutiny and invite views upon it so that it results in the strongest possible arrangements.

Q165 **Mr Jones:** I have to say that those of us who were involved in the parliamentary events of the autumn of last year would probably be reluctant to describe that as a luxury, but thank you very much for your answers.

Chloe Smith: That is a very good point, but I hope you see the way I meant those words.

Chair: Maybe in a Yorkshire sense it might have been a luxury, but we will leave that sketch there. Tom Randall, please.

Q166 **Tom Randall:** Minister, the Government set out in the Queen's Speech that the Act will be repealed in this Session. Given the current Covid emergency, do you think that is still an achievable aim?

Chloe Smith: It is fair to say, obviously as your question implies, that coronavirus has altered what we have been able to achieve inside this Session. As you would have heard me say earlier on, I am not in a position to give you the precise timing of this Bill, unfortunately, much as I would like to, but I think it is fair to say that in part if there is any delay to the work of the Government in general, the response to the virus plays a very large part in that in the last few months.

Q167 **Jackie Doyle-Price:** As it said in the Conservative manifesto and you have repeated in your evidence this morning, the Fixed-term Parliaments Act led to paralysis in the last Parliament. From my perspective, I am rather more sympathetic to the Act than others because I think a lot of the paralysis was not due to the operation of the Act, but rather due to the behaviour of the Speaker and how he decided to make decisions that were not necessarily common constitutional practice. That aside, clearly the inability of the Government to then trigger a confidence motion enabled that scenario to happen. What are your observations about the ability for the Prime Minister to move a confidence motion and should that be reinstated in the arrangements?

Chloe Smith: This is an important point. It is something that I briefly touched on last week in oral questions and is a crucial part of the design issues here. What this Act does is divorce, if you like, the issues of confidence from the issues of dissolution or the process of confidence and the process of dissolution and we saw the problems that that caused. We absolutely had the practical example of why that was problematic. It certainly is a key point that needs to be considered in the replacement arrangements, that there ought to be a restored link because of confidence in the Government of the day and the triggering of an election. That may



include making it possible once again for the Government to designate certain issues as matters of confidence that, if they were lost, could then trigger dissolution.

Q168 Jackie Doyle-Price: Again, we are looking at this Act through the particular prism of last autumn, where it was very fraught. We had a combination of a Government with a lack of majority, a governing party that was split on the fundamental platform that the Government were operating on and the deadline coming up, all of which made the situation extremely fraught indeed. It has been suggested to the Committee that the reticence of the House of Commons to dissolve Parliament earlier was as much due to the fact that it was concerned as to what date the Prime Minister would fix the general election. Have you given any thought to how that should be dealt with in any future legislation and specifically do you think that the date should be set by the House of Commons?

Chloe Smith: Do you mean, just to clarify—

Jackie Doyle-Price: In the replacement of the Act. Obviously that is how we got around it this time in any case and we moved to have an election on a given date. Given that the House is going to be invited to dissolve Parliament early in terms of getting the fixed term, should that power rest with the House of Commons to set the general election and would that have made a difference last year?

Chloe Smith: Yes, I certainly see the argument that you make there from the perspective of events last year, where that was a part of the mix around the specific politics and the specific nature of there being a date of leaving the EU.

In a more generic case—in other words, in any arrangements that you would make under this Act—there are a couple of other things that need to be considered. One is the amount of time that is allocated for the holding of an election and the administration of an election. These are important issues. They absolutely cannot be overlooked. It simply does take a certain amount of time to run an election and to do so, as I was saying in answer to Mr Jones, fairly and properly and use all of the correct process that we do in British elections. That is very important.

There is the question then of a certain amount of time in an election timetable that is needed. That is slightly different to perhaps what you are principally asking about, which is ought you to give the Commons the power to set that date as opposed to the Prime Minister, even in the business of dissolution. I think that is what you are asking about. On balance, probably it would be detrimental to the nature of the prerogative to say that the Commons ought to set that date, because the entire idea of the prerogative is that it exercised by the Queen on the advice of her Ministers. That does suggest that such a power would stay with the Executive rather than necessarily the legislature. But to return to why you ask that question, I do recognise that that was a specific issue thrown up by the events of last autumn.



Q169 **Jackie Doyle-Price:** Fundamentally the weaknesses that we have within the existing Fixed-term Parliaments Act were entirely driven by the political circumstances of a Government being elected without a majority and the need to sustain a coalition. Are we not in danger of replacing those weaknesses with new issues because we are looking at it through the prism of last autumn, the circumstances of which were quite unique and are unlikely to be repeated?

Chloe Smith: Here is the simplicity of the argument, which is if you think about repealing that legislation, what you would be returning to is the kind of arrangements that have stood the test of time before that. This Act came into being in one Parliament and withstood only a couple of elections before sailing into serious difficulty. Before all of that time the more conventional operation of the prerogative was that the Prime Minister held the power to advise the Queen—or the monarch before this Queen as well—of the need to dissolve Parliament. That stood the test of time. That worked for many decades before these arrangements, so there is a strong argument for saying that the simplicity of that convention is desirable.

Q170 **Jackie Doyle-Price:** Is the simplicity of that convention sustainable following Miller/Cherry? The power of the Prime Minister to advise the monarch to prorogue has stood the test of time until it was seen to be abused. We are in a different world now, but as much about getting back to where we were before last autumn is requiring good faith on all sides. A straightforward repeal means that there is no end to this term of Parliament and the Prime Minister and the Government could govern for as long as their majority would sustain them, so clearly that is not going to be something the House of Commons would wear, I would wish to suggest.

What I am trying to say is that there needs to be some parameters on the ability of a Prime Minister to advise a monarch as to when to call an election. We all understand the circumstances in normal times, but we have just seen an experience of times that were not normal and that, as I said, encouraged bad behaviour on all sides. We need to have a constitution that safeguards all of us and safeguards the body politic from any actor who decides to behave badly.

Chloe Smith: Yes. There are two extremely important points to draw out here—at least two—before we no doubt get on to other issues to do with this as well. One is the nature of judicial review and the other is the nature of not fixed terms, but the end to a term. If I may, I would like to deal with both of those.

In respect of the Miller/Cherry judgment, to state the facts of it, it is very obvious that that was about prorogation rather than dissolution. Those are different things. There is a clear distinction between those things in convention, in academic thinking, in thinking around what might be possible in this space. It is an important objective to be considered in this work that decisions on dissolution ought to be able to be taken by the Executive advising the Monarch and that is separate to the courts. That is a very important point that we want to consider in this.



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Going on to the nature of the end of terms, I should be absolutely clear—and I am very happy to be clear for the Committee—that although I have made arguments against fixed terms this morning, that is not the same as an argument against a maximum term. One of the things we would be seeking to do in repeal is to ensure that there are appropriate arrangements in place for the retention of a maximum term. You would have to legislate to resurrect the Acts that previously controlled that. That provides another point to the question about fairness. It is quite a fundamental part of the nature of the British constitution that any party has its turn in Government for a maximum period before an election, so that would be retained.

Q171 Mr Jones: If we could continue the discussion about prorogation, as you will know, when the Fixed-term Parliaments Act was going through Parliament, consideration was given to including the issue of prorogation but it was decided against, the Government saying that the conventions were sufficiently strong and that it was unwise to place prorogation into statute. Of course since then we have had the intervention of the Supreme Court in the Miller/Cherry case. Are the Government now considering putting prorogation or some other machinery for ending and beginning parliamentary sessions into statute?

Chloe Smith: A range of options are possible here, obviously. As you will appreciate, I am not able to tell you precisely here today what our blueprint is, although I look forward very much to being able to come to do that. This is one of the core issues, of course it is. It takes us back also to the nature of a convention and the nature of how conventions are respected and how consensus is commanded by those things. Cross-party consensus at the start of this legislative journey is very important and I hope that that can be achieved. By definition, a convention is a set of commonly understood rules that are powerful because they are respected. To be able to be respected in this context, they would have to be recognised certainly by political parties, by political actors, but also by the wider society, both by the voters and by the judiciary as well. There would have to be recognition all around those things.

It is my hope that there remains an understanding of the difference between prorogation and dissolution. There is a further argument though that perhaps could be brought in here, which is the qualification of any of these things in statute does risk a loss of flexibility. One of the other advantages of the ability for the Executive to recommend to the monarch that Parliament should be dissolved is that it has flexibility. That is, if you like, the driving argument in relation to the events of last autumn. Flexibility was not possible and we think it ought to be possible. Therefore I would set out the argument of caution that says that putting too much into statute here could risk reducing that desired flexibility.

Q172 Mr Jones: On the other hand, that flexibility was certainly constrained by the Supreme Court in the Miller/Cherry case. I would hope you would agree that it is important that issues such as this should be political decisions and



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should be outside the purview of the courts. Is that something you would seek to achieve?

Chloe Smith: Yes, I do agree with you on that, Mr Jones, and that is my view. This is also absolutely a set of issues that needs to be drawn out as we go through the passage of this work.

Q173 **David Mundell:** Minister, a Review Committee was proposed. What do you see as the function and role of that Committee or do you envisage that that Committee is going to be set up and carry out such functions?

Chloe Smith: The functions of the Committee are set out in the legislation, so I would not make any further interpretation of that. They are clear in the words on the page that the Prime Minister is required, between June and November this year, to make arrangements for a Committee to undertake a review of the operation of the Act. The Act also specifies that the majority of the members should be members of the House of Commons, but beyond that it is silent. As I said to the Chair in oral questions last week, we of course respect the provision of the Act and will therefore make those arrangements and announce in due course.

Q174 **David Mundell:** By “due course”, do you have a timescale?

Chloe Smith: In terms of what is in the Act, as it says, of course between June and November 2020 those arrangements need to be made.

Q175 **David Mundell:** We would anticipate hearing not today, but by the end of November. What role and function beyond anything that is in the Act, which you have read out for us, do you envisage the Committee performing and do you see a role for non-parliamentarians as part of that Committee?

Chloe Smith: The Act is very clear that it is for parliamentarians do that specific review function. Looking at it slightly more broadly, this Select Committee itself is doing a function in a related space, which is giving good scrutiny to the issues at hand and allowing them to be well understood and well interrogated and that is very important. I would certainly welcome that kind of dialogue continuing. Indeed, we are doing similar inside Government, as you would rightly expect. Therefore there is the statutory function of this review, but also the much broader point about how you make good law. You make good law by properly scrutinising the issues, properly understanding them, building consensus on them and that is the work of now and the coming months.

Q176 **Chair:** Mr Mundell, if I could interrupt you there and pose a question of my own to the Minister. You mentioned the necessity of it being done by November, but you would require a length of time for this Committee to sit and make consideration of the issue. If it is the Government’s intention to “get rid of” the Act, what if that Committee found otherwise? Could you expand further what you mean by “get rid of”? “Get rid of” I assume is chosen as a deliberate phrase that is different to “repeal”.

Chloe Smith: I would use the choice of phrase “repeal” myself, as I have done with the Committee this morning. As you said yourself in opening, Mr



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Wragg, that is the manifesto commitment on which I and other members of this Committee stood. I hate to dance on the head of a pin with you, but I would note that the Act requires that the arrangements are made between June and November 2020, so I would not want to mislead the Committee. That is what the Act says. That is the point about the timeline. Of course you are right that that Committee would require a period of time to do its work. I do not think I am able to speculate on the hypothetical of what a future Committee might say or not say and therefore what the Government might do or not do in response, but I certainly look forward to continuing this kind of discussion about the very important issues that need to go into this repeal and doing it in a way that I hope would command consensus and produce the right kind of constitutional framework that we need to return to.

Q177 David Mundell: Perhaps, Minister, you could just summarise for us what the Government's objectives are in repealing and replacing the Fixed-term Parliaments Act. We have heard you specifically say, for example, that you want to set out a maximum term as one of the objectives of the new arrangements. Other than just getting rid of the existing Fixed-term Parliaments Act, what is it that you want to achieve?

Chloe Smith: We want to be able to return to more flexibility to deal with unexpected circumstances and the very nature of politics. That argument comes from the events that we saw last year. We want to be able to restore that link between confidence in the Government of the day and the triggering of an election. We want to be able to ensure that the public can have their say and have their proper role in this. There are circumstances—and they arose last year—where what is needed is to return to the voters to be able to seek their opinion. We think that is an important objective in this as well.

We want to be able to preserve the Sovereign from being drawn into politics and that is a very important point. We have not particularly gone into that detail yet with this Committee, but you will all know, certainly from your work with the academics and others, that that is a core consideration here. We see in that role of the constitutional monarch certain other safeguards. I mentioned that in relation to the question about fairness. The Sovereign is a safeguard in the event of potential hypothetical abuses by a future Prime Minister in the exercise of this power. Those are important considerations as well.

Finally, to round out this set, you need to be able to have the House of Commons operating on the basis of confidence in a Prime Minister. That is how the House of Commons has to function and that is also a core consideration in this work.

Q178 Rachel Hopkins: Minister, you have told the Committee that electoral law reform is not an immediate priority, but the Electoral Commission warned us recently of the risk of error for electoral administrators presiding over an unnecessarily complex legal framework. With the larger number of elections next year due to Covid-19, how confident are you that elections



will be carried out with high standards of accuracy?

Chloe Smith: I am confident of that at all times, in part because of the outstanding quality and hard work of the electoral administrators who do this job in our country. We should give them a huge amount of credit for the work that they do and the standard to which they always work. I should also say, perhaps in answering your question to its fullest, when we talk about accuracy that is often a meaningful term in electoral registration, where we want to be able to see both accurate and complete electoral registers. We might go into that as a separate topic, but in case you wanted to use that term for that purpose, that is important in how we run our elections, from registration all the way through to voting.

The question of electoral law in underpinning all of that is an interesting one. The Committee will know as well as I do that elections law is complex, large, old and has been the subject of extensive review by the Law Commissions, which I am very grateful for. You will also know from correspondence that I have had with the Chair of the Committee that while there is a good argument for the consolidation of electoral law in itself, there are other reforms in the election system that are going to be more powerful. Those include addressing the security of our elections, the resilience of them and helping administrators with some aspects of operations, which in turn come back around to resilience. Therefore the technical question of do you consolidate the law that underpins all of this is a little less important than some of those other more pressing priorities, which administrators talk to me very regularly about.

Q179 **Rachel Hopkins:** Reflecting on the Law Commission report, the Electoral Commission told us that that is a blueprint as to how to modernise and consolidate and that all that is needed is the Government to bring forward some legislation to do that. Why are you not prepared to do that? Why are you not taking that as a priority?

Chloe Smith: Very simply because we also have other priorities that the Government needs to do. We have already covered in this Committee the idea that the coronavirus very unfortunately has meant an amount of delay in some aspects of the Government's work because, quite rightly and understandably, we needed to pause and take care of a major global pandemic. That has had a knock-on effect of course in this area of work, as it has across other things that the Government have had to do. But even aside from that, there is also the question of the other commitments that were in the governing party's manifesto, which I am proud to stand on and proud to be able to deliver in this Parliament, I hope.

In the elections space, that includes the very subject of this Committee today, the Fixed-term Parliaments Act, but also other matters, including improving the accessibility of voting, including improving the security of voting by means of bringing identification to vote, but other things as well. All of those things take time to do. Parliamentary time is a precious resource and we have to use it to deliver the commitments that we have



already made that people have asked us to do by means of having voted us in at an election.

Q180 **Chair:** As a supplementary from me, Minister, I believe you wrote to the Committee on this issue before Covid, if memory serves. Therefore our assumption is that because of Covid it is not possible to proceed in a way that you would have liked to. Is that a fair assessment?

Chloe Smith: I am looking for our letters to be sure of the dates, but I think we last exchanged in June.

Chair: Yes, but I meant for the first time on the subject. We had an exchange before, but I take your word for that, that it is because of Covid that things have not progressed as might have been.

Chloe Smith: I mean that in a slightly more general sense. The other points that I made here in front of the Committee this morning about needing to be able to deliver those manifesto commitments and bid for legislative time to do that, those all still hold. In addition to that, there are then the other pressures of coronavirus as well.

Q181 **Lloyd Russell-Moyle:** On something slightly different, voter ID, the Electoral Commissioners told us recently that there needs to be more work done to make sure that all demographic groups could make use of voter ID effectively. What work is being done with representative organisations to ensure that this happens?

Chloe Smith: Quite a lot is the short answer, plenty of work, and indeed that is a continuation of work that I have done with a very wide range of stakeholders across both sets of pilots that have now taken place on voter ID. The Electoral Commission—which is a prominent advocate of voter ID and has been for some years—is also absolutely right and very much in line with our thinking that we have to be able to make sure that this move in our electoral system works for everybody. It is as simple as that. It is an underpinning objective that our elections are fair, open, accessible and ought to remain so. We achieve that by making sure that the ID that we will be asking people to bring to elections will be easy to do. We think this is quite reasonable and proportionate to achieve because it is done in other countries. Indeed, it is already done inside this country in Northern Ireland and it is the kind of thing that people already do in many other walks of life.

We are making sure that the ID that will be required is broad enough to be able to be inclusive. For example, just to kill off an often-quoted myth, it will not be only driving licences and passports. I am sure you, Mr Russell-Moyle, would put the obvious argument that not everybody has driving licences and passports. I will absolutely pre-empt that point here today by saying that is not what we are doing, because we agree. We want to make sure that the ID is accessible.

Q182 **Lloyd Russell-Moyle:** We have discussed before, Minister, what ID would be acceptable. One of the things that I put to you was the ability to ensure



councils could issue IDs not at request but pre-emptively, so when people apply for a new library card, that all new library cards for over-18s, for example, would come with a picture. It is very easy to do. Anyone accessing benefits would have ID, so that you do it pre-emptively. You were a bit cold on that. I do not mean to be rude: you were not as enthusiastic as I might have hoped you would be when I suggested those things when we discussed this privately. You said that you will make sure it is this wide as possible thing, but how will you make sure that it does not require people to apply? In most other European countries they have voter ID as an automated system, not as something they have to apply for if they wish to vote.

Chloe Smith: Yes, I see. I am sorry if you found me unenthusiastic on the last time we spoke about this in a corridor, Mr Russell-Moyle. We obviously need to get to know each other better so you can see my natural enthusiasm and passion bubbling through. I can ensure you that I think your idea has quite some merit. In fact, following that very last conversation we had, I went straight back to my officials and said, "Could this be something that we do?" What I can say to the Committee here this morning is that what the team at the Cabinet Office is doing now, following the pilots that we ran in 2018-19, is working with local authorities, among others, to see what forms of existing ID and existing processes could be sensibly used for this. It seems very obvious to me that there already are various kinds of ID that various types of councils issue, not all of them the same. This is one of the details that needs to be worked out. For example, a large metropolitan council does different things to a small district council. We will be looking at all of that and bringing forward something that, as I say, has to be accessible but also is secure, which is the key point of the policy.

Q183 **Lloyd Russell-Moyle:** You mentioned a few times the pilots. They were done on low turnout local elections, where usually the people who are voting are usual voters. We know that that is how these things tend to work. A general election, particularly when you have a lot of people who are maybe convinced to vote at the last minute, do we have any data about how that would work? The trial seemed to be only for local elections.

Chloe Smith: The data that you would look at there is from the extensive records of this in other countries, Canada, the Netherlands. Countries around the world do this and do it successfully at many different levels of elections.

Q184 **Lloyd Russell-Moyle:** The Netherlands has a compulsory ID scheme, Minister. To some extent the last Labour Government did suggest bringing in a compulsory ID scheme. I was against it, but that is what came in. The Liberal Democrat coalition, Conservative Government, abolished the compulsory ID, so we are in a very different situation from the Netherlands or almost every other European country that has an ID scheme already. Is there an example of a country without an ID scheme?



Chloe Smith: Yes, Northern Ireland. It happens in our country already successfully and has done for years. I am sure many of the Northern Ireland colleagues here in this very House would confirm to you that it works without issue. Indeed, I can also throw in the argument that I think is very important, that it has had no effect on turnout. That is academically reviewed as well.

Q185 **Lloyd Russell-Moyle:** Thank you, I take that point. Why has the data, in terms of cost from the 2019 pilot, not yet been published?

Chloe Smith: Sorry, the data, did you say? I could not hear you.

Lloyd Russell-Moyle: The cost data from 2019. In your letter on 8 June you said that the evaluation of the 2018 pilots, including cost data, would be included. However, the evaluation report specifically sets out the expected cost per general election of each pilot, but that has not yet come forward from the 2019 pilots.

Chloe Smith: Yes, this is the case. I am just turning to my letter to be able to be as precise as possible for you. The overarching point here is that what I want to be able to do is to come back into the public domain with costs that will then make sense in terms of the policy that we are choosing to take forward, because I think that will be most useful to this Committee and to the House and obviously to the public as well. That is because, fairly obviously, we have used the pilots to be able to test different ways of doing it and it would make most sense to be able to give costs that relate to feasible policy decisions rather than a spray-around of data, if you like. Therefore, in addition to what I said in the letter I can absolutely confirm that I hope to do that as soon as I can and will return to the Committee with data.

Q186 **Lloyd Russell-Moyle:** You will return to the Committee with estimates of what you think a rollout cost would be. Will you return to the Committee with the actual costs of what the 2019 pilots were? I get your point that they do not necessarily reflect an extrapolation that you can then do nationally, but it is clearly important for scrutiny for us to not only look at the estimates, but to be able to look at the actuals in terms of cost data from the 2019 pilot.

Chloe Smith: The thing I want to prioritise is coming to the Committee with the practical, relevant costs going forward. That is where the real meat of scrutiny has to sit. That is my principal commitment to the Committee.

Q187 **Lloyd Russell-Moyle:** Yes, but if I am able to hold you to account—and I believe that those estimates will probably be well drawn up by your Department—I have to be able to base it on something and see those bases from the actuals, even if we say those actuals are much higher because of X, Y and Z because they are one-offs and so on. If you just give me a figure, I am not able to scrutinise it unless the costs are published. Will you commit to at least publishing, with all the caveats that this cannot be extrapolated up, the 2019 data so that we can then see with our own eyes and academics can scrutinise it and others can scrutinise it, not just us?



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Chloe Smith: Yes, I understand the argument very much and I will certainly give you the commitment that I will consider how best to do that and to do that in a way that then allows sensible scrutiny to take place of the policy going forward.

Q188 **David Mundell:** Minister, I would never want to accuse you of prevarication, but I asked you a question earlier in the year about when the Dunlop report would be published. The Chairman raised the issue in the Commons last week and indeed this Committee wrote to the Chancellor of the Duchy of Lancaster asking when the report would be published. None of us in these various questions has received a substantive reply on whether or not the Government will publish the report. It would be very helpful if this morning you were able to tell us whether or not, yes or no, the Government intend to publish the Dunlop report.

Chloe Smith: We are not in a position to give you more detail than I have already in the exchange of letters with the Chairman. I absolutely acknowledge your question and your desire to see the report. Indeed, I am very grateful to Lord Dunlop for having done all of that work and having contributed in that way. At this stage, to answer your question very honestly, I am not able to give you a more updated answer than I have already given to the Chair.

Q189 **David Mundell:** Does that mean that the Government do not have a position on whether or not they intend to publish the report?

Chloe Smith: No, it does not mean that at all. It simply means I am not in a position today to be able to give you more detail.

Q190 **David Mundell:** That sounds to me as if the Government have not decided whether or not they intend to publish the report or they have decided not to publish the report, but today you are not able to tell us that for definite.

Chloe Smith: Your logic stream, Mr Mundell, left one option open, which is that the Government do intend to publish the report. I am afraid I am going to be at risk of repeating myself here. I am very keen to be able to come back to the Committee and show you those next steps as soon as I possibly can, or indeed other colleagues in Government may do it, given that what you have seen in recent months is a greater focus on all of our work to do with strengthening the union.

You will have seen the beginning of a new Cabinet Sub-Committee on the union, chaired by Michael Gove, the Chancellor of the Duchy of Lancaster, and with additional focus being given to all of these matters, including in my own role as the Minister for constitution and devolution. There is a lot of work going on inside Government to be able to deliver on our commitment to strengthen the union and I am very much looking forward to being to come and talk to the Committee about that in much greater detail, including about the contents of the Dunlop report and a very wide range of positive things we are doing.

Q191 **Chair:** Mr Mundell, I wonder if I might come in briefly again with a



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supplementary and interrupt your flow of questioning with a purely hypothetical question for the Minister. Would a Government publish a report commissioned by a previous Government that was perhaps contrary to the current Government's policy?

Chloe Smith: A hypothetical question could only get a hypothetical answer, Mr Wragg. I do not think this is a sinister matter of anything that might be disagreed on between Administrations, because as my letter to you underlined and emphasised, the commitments that were made to your predecessor Committee were fulfilled by the predecessor Administration, both by the previous Chancellor of the Duchy of Lancaster and of course the previous Prime Minister. We continue in exactly the same vein to passionately believe that these are very important issues that we want to get right and that we are commencing a very wide programme of work to do. As I say, I am very much looking forward to bringing that to this Committee for further discussion.

Q192 **Chair:** So the impetus for the commissioning of Lord Dunlop's report from the previous Government is the same impetus that motivates the current Government?

Chloe Smith: I should think so, without being able to mind-read everything that is ever desired. But yes, very much so, both that Government and this. I have served in both of course in this role, which includes responsibility in the Cabinet Office for how we handle both the devolution settlements and the strengthening of the union. Yes, both Administrations have been passionately committed to the strengthening of the union and we intend to carry on that way.

Chair: Thank you. Mr Mundell, do you have a further question on the Dunlop review?

Q193 **David Mundell:** I do, Chair, because obviously what we have also seen is that there has been briefing on this issue, which I think is highly unsatisfactory. We can read in some sections of the Scottish media about the Government's approach to this report, but we do not have the opportunity to be able to discuss it with the Minister and we do not have the opportunity to see the report. Minister, you have set out the various things that you say are being done, but we do not know whether those are things that were recommended by Lord Dunlop or not. I know you have chosen your words very carefully and I understand that position, but surely you must accept that this is a very unsatisfactory way of dealing with what is a very important issue.

This Committee's own work on the handling of the coronavirus situation has demonstrated how live the issues are that Lord Dunlop was asked to look at in terms of intergovernmental relations, for example. Would it not be better than have this dancing around on the head of a pin, as you said earlier, to have a proper debate and discussion about the issues as soon as practicable?



Chloe Smith: Yes, indeed, Mr Mundell. I was invited here today to talk about the Fixed-term Parliaments Act, to be fair. That was the subject of this particular meeting, so therefore it is not entirely reasonable to say, "You are not here talking today about the Dunlop report." I do not think that is quite fair.

Q194 **David Mundell:** You have just said you are not here to be able to do that, because we are not clear how we are going to be able to talk about it.

Chloe Smith: What I am going to point to is that you have a very clear record of a huge range of other work that is going on. Intergovernmental relations, as you mention, is extremely important and is continuing. The Chair has a full set of other information that relates to that, for example, a very comprehensive exchange recently about common frameworks and the way that that needs to be taken forward and how those will be open for scrutiny by this Committee and others.

It will not have escaped your notice that we also have proposals published only last week that relate to the UK internal market, another very important area where we want to be able to support devolution settlements and make sure we have the best outcomes for citizens and businesses across the United Kingdom. All of these things are relevant of course to the kinds of things that Lord Dunlop was asked to look at. I have also given you examples of how we are better organising within Whitehall, within Government, around the work of strengthening the union. I gave you the example of the Union Policy Committee.

Indeed, it is also the case that the Government are looking to make sure that we can have our own work taken outside of Whitehall and across our nation, in that we should have civil servants able to work across our country. That is also the kind of thing that Lord Dunlop was asked to look at. I hope that what I am doing here is giving you a very comprehensive set of examples of the kinds of things that we would both agree are very important, the kinds of things that Lord Dunlop was asked to look at, the kinds of things where the Government are already acting. On top of all of that, I will be very keen to come back and speak about it more with the Committee as soon as I can.

Q195 **Ronnie Cowan:** I have a real concern here that what has happened is that the report has been suppressed until the Government can shift the deckchairs around sufficiently to then say, "That was then, this is now. We have moved on from there, it was a previous Government and is no longer relevant", which undermines the report in the first place. The only way you can prove me wrong is by publishing the report. What is the logjam that is stopping this report being published now?

Chloe Smith: I think, Mr Cowan, you might be seeing a ghost where none exists. That is not the characterisation of what is happening.

Ronnie Cowan: The only way you can prove me wrong is by publishing the report. That is what I am saying, so why will you not just publish the



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report?

Chloe Smith: I have also given you a very extensive set of examples this morning that shows why we are doing the right work. I appreciate the premise of your question is probably that you do not appreciate any of that work.

Q196 **Ronnie Cowan:** The work that you are doing, in my opinion, is moving the deckchairs to undermine this report. Why do you not publish the report and then do the work you are doing? This morning we have seen the Russia report published after nine months' delay. That report is damning of the actions taken by the UK Government, but it is nine months out of date. Are we looking at the same thing here with the Dunlop report?

Chloe Smith: No, we are not looking at the same thing here. I have explained very clearly that we are keen to be able to move forward with the important work in the Dunlop review. I would welcome if the Committee also wants to talk about how we protect our elections more broadly. That is extremely important. No, there is no sinister delay on the Dunlop report, nor was there on the Russia report, for reasons that are well exercised.

Ronnie Cowan: Then publish it.

Chair: We have a slight disagreement there that we are probably not going to resolve by continuing this exchange, which I say—gently as ever—to all members of the Committee. Could we go back to David Mundell for a further question but not on this topic?

Q197 **David Mundell:** I do fully understand that you are here to talk about the Fixed-term Parliaments Act, but could we also just touch on common frameworks, since you wrote to the Committee recently? Are you able to give us a very brief summary with where we are with the 52 powers currently resting in Brussels that are going to require a common framework?

Chloe Smith: Yes, indeed. I am glad that Committee members have been able to read that letter and see the work ahead there in terms of scrutiny, which I am sure you will get your teeth into hugely. As I think the Committee will know, to recap on the numbers here, there are a total of 160 policy areas that intersect with dissolve competence. It is those that we see flowing straight back to the Administrations in the UK. That is very important, which we are helping to manage through the common frameworks programme. The numbers then break down very slightly further beneath that in ways that are in published documents.

I could point the Committee to the revised frameworks analysis of April last year and also the periodic publications that are released that explain how progress is being made on those frameworks as well. One most recently was published covering the period up to March last year. That is driven by the requirements in the EU Withdrawal Act to be published quarterly. That work is all happening. This work is very important and I am very grateful to all involved for the collaborative working across the Administrations on



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reducing divergence that could impact negatively on citizens and businesses in these policy areas.

Q198 David Mundell: Within that answer you did not update us on how many frameworks had been agreed and were able to go into the scrutiny process that you set out.

Chloe Smith: I am so sorry, I misheard your question. I thought the number you were asking me for was the total number of powers. I apologise. I did not mean to give you a different answer than you were looking for. I am not able to give you that precise number here today, in part because here is another area where there has been a little impact from coronavirus, which is to say that across all the Administrations that have been working on frameworks there has been obviously the need to use resources to do other things in the last few months, quite understandably.

In a recent note that I provided to, for example, Lord McFall, a colleague in the House of Lords who chairs Committees that are relevant to this, I did explain that that little delay had happened. Therefore I am not able to give you precisely the number that you have asked for, but I can reconfirm that there will be a publication coming shortly that covers the last quarter that will give you more detail.

Q199 David Mundell: Notwithstanding the content of the frameworks, you understand our concern about the ability to deliver the scrutiny process that you set out if that involves giving Committees advance notice of them, 21 sitting days to review and scrutinise them, that all that scrutiny is going to be capable of being done ahead of the end of 2020?

Chloe Smith: Yes, indeed, there is a lot of work ahead on this. I quite understand that and acknowledged this in a letter to Lord McFall, the Chair of the Liaison Committee in the Lords, which I am very happy to copy to this Committee in case it has not already been seen. I can give the names from some frameworks that we expect to have fully developed, agreed and implemented by the end of the year, if that would be helpful.

Chair: By all means do forward the letter to us.

Chloe Smith: Yes, I would be happy to.

Q200 David Mundell: Does that letter address the one final question as to what will happen in relation to those areas where frameworks have not been agreed by the end of 2020?

Chloe Smith: Yes. In short, the answer to that is that we expect to make use of provisional frameworks and essentially non-legislative ways of managing the potential diversions. It is important to say at the outset that frameworks, as a general heading, include both legislative techniques and non-legislative ways of managing that. That is true even in those that are, if you like, ready sooner. Not all of those are legislative, so that point cuts across the category.

Q201 David Mundell: Yes. There is a difference between the oven-ready



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framework and the frameworks that are still in discussion.

Chloe Smith: Yes, but it is not the same difference as whether they are all legislative or non-legislative. There are two types of differences.

Q202 **Chair:** Finally, Minister, obviously Covid is the great issue of our times and I appreciate that entirely, but the Government committed to launching a Constitution, Democracy and Rights Commission in its first year with quite a sweeping remit, if what is read is to be believed. When might we expect to see proposals on how this is to be set up and the scope of such a Commission?

Chloe Smith: I am at risk of incurring the wrath of the Committee on perhaps the last round of questions. I am afraid it is also one that I am not able to give you the full answer on today. The breadth of some of the issues we dealt with early on in our discussion about the Fixed-term Parliaments Act reminds us of the profound nature of some of the issues that are at stake here. Again, we are not going to be rushing that piece of work. We want to be able to get it right, therefore I will come back to you with those details.

Q203 **Chair:** If it was the case that the national emergency that we face had been responsible for the delay, we would sooner know that as a Committee than keep asking the same repetitive questions to you.

Chloe Smith: I appreciate that and I appreciate that understanding from the Committee. That is one of several areas that I am sure I might be invited back to talk about in the future, if you will have me.

Chair: We certainly will indeed have you and we look forward to your next appearance as well. In the meantime, can I thank you for your time this morning? I thank all the members of the Committee and the team here at Westminster.