

Public Administration and Constitutional Affairs Committee

Oral evidence: Status of resolutions of the House of Commons, HC 1587

Monday 5 November 2018

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Watch the meeting

Members present: Sir Bernard Jenkin (Chair); Ronnie Cowan; Kelvin Hopkins; Dr Rupa Huq; Mr David Jones.

Questions 193 - 228

Witnesses

I: Rt Hon Mark Harper MP, former Government Chief Whip.

Written evidence from witnesses:

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Examination of witness

Rt Hon Mark Harper MP, former Government Chief Whip.

Q193 **Chair:** I welcome our one witness today who is going to talk to us about our inquiry into the status of resolutions of the House of Commons, which is part of our overarching series of inquiries into the role of Parliament in the United Kingdom Constitution.

Could I ask you to identify yourself for the record please?

Mark Harper: Of course you can, Chairman, thank you very much indeed. Mark Harper, I am the Member of Parliament for the Forest of Dean.

The relevant historical baggage that I have for the purposes of this inquiry is that I was the Minister for Political and Constitutional Reform in the early part of the coalition Government, and then most latterly I was the Government Chief Whip.

Q194 **Chair:** I am very grateful to you for attending. I hope you will forgive me for pausing for a moment to reflect on the death of the former Cabinet Secretary, Sir Jeremy Heywood. The Committee was deeply saddened to hear of his death over the weekend. Our thoughts are with his family and friends, his very many former colleagues in the civil service, and the Ministers he served. We always valued his open, constructive and patient manner after becoming Cabinet Secretary, and the way that he engaged with the Committee and with Parliament as a whole, both in public and in private. It immeasurably strengthened our work and our scrutiny of the Government. He took our scrutiny very seriously, even if we sometimes found it difficult to extract what we wanted from him.

Many people have spoken of Jeremy's years of service to successive Prime Ministers and Chancellors of different parties, often at times of crisis, providing informed, impartial and honest advice in the highest traditions of the civil service. The impartiality, professionalism and dedication of our civil servants are some of the United Kingdom's most valuable and often under-appreciated assets. The Committee is confident that despite the many problems and pressures the civil service faced during Jeremy's time as Cabinet Secretary, he did leave the civil service better placed to successfully meet the challenges of the future. I personally will always recall his very intense engagement with our inquiries into the future of the civil service with great fondness. Does anyone want to add anything else to that comment? Thank you.

We proceed with this inquiry. Can I first ask a general question? In what terms would you describe the role of Parliament in our constitution, and how do you think it is changing?

Mark Harper: Chairman, thank you. I agree wholeheartedly with your comments about Sir Jeremy Heywood. I worked with him in all the ministerial roles that I did. I think he himself—if he were looking down



and listening to your tribute—would feel that what you have just said was possibly the finest tribute he could have. He will be very, very much missed. I know over the weekend, listening to what colleagues from both sides of the House said about him, he will be missed by those inside and outside Government. Thank you for what you said.

Chair: Thank you.

Mark Harper: In terms of your specific question about the role of Parliament and how it pertains to the constitution, for me it is relatively simple. It sounds slightly all-encompassing, but for me Parliament is the place that makes and unmakes Governments. I was always very clear when I was a Minister that I was accountable to this place—both Chambers but most specifically the House of Commons. I was also very clear that the Government take decisions and run the country, but it is Parliament that then holds the Government to account. Those are very distinct roles that are not always well understood by the public, who sometimes think Members of Parliament are running the country. Sometimes you have to remind them that Members of Parliament are holding to account those who run the country, and there is a very clear distinction. Parliament is, of course, sovereign and if it does not like the laws or the decisions that are being made it can, of course, vote to change them.

Q195 **Mr David Jones:** Mr Harper, at the time of the enactment of the Fixed-term Parliaments Act 2011 did the Government envisage confidence motions existing outside the parameters of the Act itself?

Mark Harper: You raise a very important issue. When we were having the debate about the Act, that was relevant because in the final version of the Act the motions of no confidence, confidence, and the motion that delivers an early general election are specified, which is rather unusual. That was not in the original draft of the legislation—they were amendments inserted in the other place that we accepted. We had a lot of debate about things that were traditionally called confidence votes; things like the Queen's Speech, and votes on the Budget and finance measures other than a traditional motion of confidence. It was well discussed and well understood, I think, by those participating in the debate that enacting this piece of legislation did fundamentally change the nature of confidence motions.

Many people are still in doubt, but it is very clear from the Act that the only thing that is a confidence motion—a motion that if lost would lead to the fall of the Government and the triggering of a general election—is a motion in the terms laid down in the Act. We have seen some examples since where Governments have lost some quite important votes, which in the past may have been designated as confidence votes. All that has happened is that the vote has been lost and possibly the legislation has been amended, but the Government have gone on. There has been a very significant change in how confidence motions work following the passing of this Act.



Q196 **Mr David Jones:** The Act, if you like, specifies the magic words that have to be used in order to bring about an early general election.

In its response to the report of the Political and Constitutional Reform Committee the Government have said, "The aim of the Bill is not otherwise to interfere with the conventions which govern the position where the Government loses the confidence of the House. The Government considers that such matters are better left to convention." Therefore to what extent does convention play a part in this process?

Mark Harper: There are two mechanisms now for calling a general election out of cycle. The Act is very clear—if the Act is not clear then the explanatory notes are very clear—that Her Majesty the Queen no longer has any residual power whatsoever to dissolve Parliament. It is worth saying that as you still hear one or two Members of Parliament labouring under the misapprehension that that is the case.

If you just take the confidence piece of this, not the early general election piece, there are two things that are specified in the Act. One is that if a Government lose a motion of no confidence then, based on the words in the Act, if in a 14-day period a motion of confidence in the Government is not passed, Parliament will be dissolved. There is nothing in the Act that says what happens in between those two motions. You could probably insert the word "politics" to fill the gap in, which was how it was envisaged. We did not want to specify every detail in the Act because, of course, putting it in legislation means potentially that the courts can get involved. There is a very clear process for dissolving Parliament, but everything that happens in between then would be a matter for politics and the interaction of numbers in the House of Commons and Members of Parliament, rather than being set down in legislation.

Q197 **Mr David Jones:** In terms of convention, what would be the case if a Government were to declare a particular vote a matter of confidence but not invoke the Fixed-term Parliaments Act?

Mark Harper: The Government can, of course, say they will treat any vote on a piece of legislation or motion as a matter of confidence. It is worth saying that in the past, if a Prime Minister said that he or she would treat something as a matter of confidence, and the clear understanding was that if the vote did not go the way the Prime Minister wanted, the Prime Minister would then travel to the Palace and ask Her Majesty the Queen for a dissolution of Parliament and there would be a general election. There is now no prospect that a Prime Minister can do that. If they lose a vote on anything other than a motion of no confidence they simply do not have the ability to seek a dissolution from Her Majesty the Queen. They can say something is a confidence matter, but what happens as a result is simply that the House does not vote for whatever it is, and either the motion falls or the legislation does not happen or is amended. Nothing actually will happen as far as the Government are concerned in terms of a general election happening unless a motion of no confidence is passed in accordance with this Act.



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Q198 **Mr David Jones:** Is it conceivable that in those circumstances, where the Government had declared it to be a matter of confidence, politically the pressure would be such that the Prime Minister would be obliged to resign?

Mark Harper: Prime Ministers could set out they were going to treat something as a confidence motion. How they chose to respond to not having won a vote on that would clearly be a matter for the Prime Minister. However, it is a matter of legal fact that the loss of that vote does not lead to a general election, which is what would have happened in the past. There were a number of occasions in the past where the Prime Minister would have said something was a confidence vote, and that was the basis on which people would have proceeded, knowing that if they voted against the Prime Minister's wish, a general election would ensue. That is no longer a designation or a promise a Prime Minister is able to make.

Q199 **Mr David Jones:** The practicality is that whatever a Government might say, it would always be the case that the procedures specified in the Fixed-term Parliaments Act would have to be invoked.

Mark Harper: That is correct.

Mr David Jones: Thank you.

Q200 **Chair:** Mr Cowan, do you want to come in on this point because it was rather the question you were going to ask?

Ronnie Cowan: It was rather, but it has rather been answered as well.

For my benefit, presumably—correct me if I am wrong—the motivation here was to ensure we had fixed-term Parliaments to stop the constant pressure on the Government of facing a confidence vote. We went for a Fixed-term Parliaments Act and then within how many years did we bring down the Government?

Mark Harper: The Act was put forward because—being straightforward about it—it was a commitment in the coalition agreement between the Conservative party and the Liberal Democrats. Part of that coalition agreement was that we would have an Act that meant it was not open to the Prime Minister to trigger a general election.

When we were having the debates, there was obviously then a question of whether we should have an unalterable fixed term—as, for example, they have in the United States of America with Presidents—where, whatever happens, an election is on a certain date as prescribed, or whether there should be some mechanism whereby, if circumstances allowed, there could be an early election. Clearly in our system—as I said in my opening answer to the Chairman—the Government have to be able to command a majority in Parliament, if they cannot then an early general election is the proper response to that. There therefore had to be a mechanism to allow for votes of confidence, and if you are going to set out a procedure it has to be very clear on what is a vote of confidence



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and what is not. That comes back to the question Mr Jones asked, which is that other things have traditionally been treated as votes of confidence. The Act makes it very clear that only a motion in the terms in the Act can lead to an early general election.

The first section, which was the section we used last year to have an early election, provided that if two-thirds of Members in the House wanted an election there could be one. It was envisaged that you might have a situation facing the country where it was generally felt an election was appropriate, but it was not appropriate to pretend that somehow the Government had lost a motion of confidence in order to trigger that election. You therefore ought to have a process for it.

The reason for the bar being set very high was so that a single-party Government, even one with quite a considerable majority, was not just able to trigger it on their own Benches. The two-thirds majority was set by looking at historical majorities so that effectively in most cases it would require both the governing party and the major Opposition party to agree that there should be an early election. As we saw last year the Prime Minister proposed to the House of Commons that there be an early election, which was assented to by the Leader of the Opposition, and there was a very considerable majority in favour of that. If that had not been the case—if the Opposition had voted against that motion for an early general election—there would not have been one, notwithstanding the views of the Prime Minister.

Q201 **Chair:** Can I just make an observation and ask you to comment on it? When I first entered the House of Commons, until the Fixed-term Parliaments Act became law, it was unthinkable that anybody in the governing party would seek to amend the motion on the Queen's Speech or interfere with the passage of Budget resolutions. This has now become part of the discourse of Budgets and Queen's Speeches. How much do you think that reflects the change in status of confidence motions—ie the difference between the statutory ones and now the non-statutory ones that apparently have no consequences?

Mark Harper: I obviously do not know the exact thinking that Members will have, but I think it has made an impact. Traditionally you are absolutely right, Chairman: if a Government lost a vote on an amendment to the Queen's Speech or an important Budget matter, that was treated as tantamount to losing the confidence of the House, potentially triggering a general election. I think Members are clear now—we have seen this in practice—that where those votes have taken place and not necessarily gone the way the Government wanted, it has not led to anything other than the specific motion, the specific amendment, or the specific piece of legislation being affected, and it has not affected the overall position of the Government. That is a consequential change that has led on from being much more precise about what a confidence motion is.

Q202 **Chair:** We are now going to move on to what happens if the Government



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lose a statutory vote of no confidence.

Kelvin Hopkins: To an extent you have touched on what I am going to ask in your answer to David Jones, but I will ask my question. During this 14-day period triggered by a no-confidence vote under section 2(3)(a) of the Act, what was envisaged would happen outside the formal processes of the House? You suggested politics, in general terms.

Mark Harper: From recollection, this was seven years ago, we did have some debate about it. I think my answer at the time—speaking from the Dispatch Box as a Minister—was that it would be a political discussion. Between those periods of time, the 14-day period, if the Government are not able to win a motion of confidence then Parliament is dissolved and there is a general election. Clearly what happens between that period—to go from having lost a motion of no confidence to being able to win a motion of confidence—is a political process. It will depend to some extent on the balance of forces in the House, whether it is because the Government do not have enough Members of Parliament or because a number of Members of the governing party have voted in a particular way. They are all political questions and the circumstances will vary.

The important thing for MPs to think about at all times is that one does not wish to drag Her Majesty the Queen into the political discourse. We have seen already Prime Ministers rightly behaving in such a way as to keep Her Majesty out of the political discourse. When our former colleague Gordon Brown was Prime Minister, there was some criticism in 2010 that he was remaining too long as Prime Minister having lost the election. However, I think he was right and I would speak up for his behaviour because what he was doing was staying in post long enough to be able to give Her Majesty a clear recommendation, as is his constitutional duty, about the person she should send for to form a Government. Until David Cameron and Nick Clegg had reached an agreement, it was not clear who that person might be. There is a necessity for Members not to drag the Palace into this.

However, as to what exactly would happen, that would be a political question. It would be somewhat uncertain, and anyone voting against the Government in a motion of no confidence—who actually wished the Government well—ought to be minded to think about how uncertain that process would be. However, I think it would be a political question, not set out in the Act.

Q203 **Kelvin Hopkins:** In a sense that leads on to my second question. If different Administrations could be formed following a vote of no confidence under the Act, who would get precedence and who decides who would get precedence?

Mark Harper: You mean who is it who would get the chance to form that Government?

Q204 **Kelvin Hopkins:** There might be two alternative positions—Opposition parties working with each other or whatever, so who would decide who



gets precedence?

Mark Harper: Ultimately the decision as to who to send for to attempt to form a Government is a decision for the monarch. She makes that decision based on advice from her officials and also from the Prime Minister of the day. As I saw when we had that transition from the Labour Government to the coalition Government, Prime Ministers will try very hard to give the Queen clear advice. However, it would be a difficult political position if there were more than one option in front of the Palace as to which one was chosen. It would be uncertain and would depend on the balance of forces in the House. It would depend on whether a majority of MPs had made it clear they would support someone. You mentioned, Mr Hopkins, about if a number of Opposition parties joined together. If that group of Opposition parties publicly set out a position that they would support a particular individual to be Prime Minister and they together commanded a majority, there would be a very clear choice there, but that may not be the case. Therefore it would be a very uncertain process and would ultimately be a political process. That is not set down in the Fixed-term Parliaments Act at all.

Q205 **Kelvin Hopkins:** You would have to make it very, very clear at all stages that the monarch had no political role in any of this.

Mark Harper: Yes. I think we would all be well advised, as would the Prime Minister of the day, at all stages to keep the Palace and the Queen as far away from political controversy as possible. I think those of us who were here as we went into the 2010 Parliament will remember that—as well as Gordon Brown facing some I think unwarranted criticism—there was a lot of commentary about the role of the Palace. The Chairman just mentioned the role of the Cabinet Secretary. I think the Prime Minister and the Cabinet Secretary, in conjunction with officials in the Palace, would try very, very hard indeed to make sure that the advice given to the Palace was clear and that they were kept out of the political discussion. It would be our role here to decide on a way forward and to present that clear way forward to keep the monarch out of the party-political fray.

Kelvin Hopkins: Thank you.

Q206 **Mr David Jones:** There are two routes to an early general election under the Act. One is prescribed in section 2(1), which is a motion for an early general election. The other is section 2(3), which is a vote of no confidence that is not reversed within 14 days by a vote of confidence.

Who in your view can legitimately table a no-confidence motion under section 2(3)?

Mark Harper: That would be laid before Parliament by the Government that were seeking the confidence of the House. That would not necessarily be the Government that had lost the motion of no confidence 14 days prior.

Q207 **Mr David Jones:** I am sorry, what I meant was the first vote under



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section 2(3), which is the vote of no confidence. Who can legitimately table that particular motion?

Mark Harper: Again, we have this debate. The Government control the timetable but the Opposition indicate they wish to seek a motion of no confidence. The convention is that—it was made very clear at the time that this convention would remain unchanged—in those circumstances the Government would make time available for that motion to be debated and for the House to be given an opportunity to vote on it. It was made clear that that was not changed in any way by the Act. The Act does not specify, obviously, how the parliamentary timetable works and when a motion should be done. It has traditionally been done at the earliest convenience for the House after the Leader of the Opposition seeks such a motion.

Q208 **Mr David Jones:** It would expect to be at the Opposition's behest?

Mark Harper: Yes. That would be what traditionally happened, yes.

Q209 **Mr David Jones:** What would prevent a Government from seeking to circumvent the requirement for a supermajority, which is prescribed in respect of the section 2(1) procedure, by tabling a no-confidence motion in itself?

Mark Harper: We did have this debate at the time. Although it would be legally permissible—in the sense the Government could put down a motion of no confidence and then instruct their own Members of Parliament to vote against it—my own view, which I think I set out in the House, was that the check on that was a political one. I cannot remember the exact words I used, but I think I said at the time that a Government who were trying to call an election were presumably trying to win the election. Going to an election having just persuaded all of your Members of Parliament to say they had no confidence in the Government was not necessarily the most effective and obvious way of going into an election in order to win it. I felt there was a rather large opportunity that the Opposition could make something of the fact that the Government had just voted to have no confidence in themselves. Therefore the check on a Government misusing that procedure is again a political one—a challenge that effectively it would have to go through some rather convoluted procedure that I think the public would not understand and that would not reflect well on the Government.

Q210 **Mr David Jones:** You in fact used the words, “absurdly unconstitutional”. Did you think it was actually unconstitutional or just politically unwise?

Mark Harper: It clearly would be running against the spirit of the legislation and would not be something that would be appropriate. I think I was then challenged, “What would you do to stop it happening?” I said the most effective check on it happening would be the response of the public because the public would not respond well to a Government behaving in that way.



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In our previous system, Prime Ministers were able to call elections at a time of their choosing, which was the accepted convention and the accepted way we did things. Once Parliament passed the Fixed-term Parliaments Act we effectively changed the understood way of doing things. I said I did not feel the public would respond well if the Government tried to get around that. That is effectively the check. There is not a legal check on a Government behaving like that; it would be a political check in terms of the effect of public opinion on that Government's performance at the polls.

Q211 Mr David Jones: Under the section 2(3) procedure there is no requirement upon the Government to table a confidence motion within the 14 days after the passing of a vote of no confidence. Could that be misused by a Government? For example, if a Government decided they wanted to prevent an Opposition from forming an Administration in a hung Parliament, could the Government simply decide not to table the confidence motion under the section 2(3) procedure?

Mark Harper: That is an interesting question but I think it comes back to the question Mr Hopkins asked. In a hung Parliament—a Parliament in which no party commanded a majority—if a Government were trying to engineer an early election, which would be the effect of not passing the motion of confidence, the Government that had lost the motion of no confidence could not be certain that they would still be the Government. It would be open for an alternative person to be given the opportunity to form a Government if that motion of no confidence was lost. Therefore I do not think a Government could just sit there for 14 days and allow the clock to tick out. If they themselves did not command a majority, someone else might be given the chance to put together a Government that could, indeed, command a majority.

Mr David Jones: Thank you.

Q212 Chair: Returning to the question of confidence motions outside the terms of the Act; assuming a Government would want to attach such a confidence question to a substantive issue and then lose the vote, what actually are the consequences?

Mark Harper: Do you mean if the Government assert that a vote on a particular motion, an amendment to an Act or an Act is a motion of confidence and then loses that, what would be the effect? In strictly legal terms there is no effect in terms of triggering an early general election. There is no ability in this legislation for an election to take place if Government lose a vote. Even on a tremendously significant motion or piece of legislation, however important it is asserted to be, if the vote is lost on that then the only consequence in legal terms is that that particular motion falls, that particular amendment is passed or not passed, or that particular Act is lost. There is no effect on the Government's longevity.



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What might happen, as has been speculated, is that the Opposition may seek then to have a debate and put down a motion of no confidence in the Government. However, that would be a separate question on which Members would be able to take a decision that was separate to the decision they took on the particular piece of legislation the Government had designated as a confidence matter.

Q213 **Chair:** If a Government said, "This is a matter of confidence" and lost the vote, and then the Opposition—as you suggest they might—put down a formal statutory motion of no confidence that the Government then win, what relevance does the idea of a vote of confidence on a non-statutory motion have left?

Mark Harper: My own view, having been the Minister responsible for this Act of Parliament, is that once this Act of Parliament was passed, the idea that anything other than a motion of no confidence in the terms set out in this Act effectively goes away. Those votes are clearly very important votes—if a Government cannot carry a Budget measure that is clearly very important—and they have political consequences, but it will no longer trigger an early general election if the Government win the subsequent motion of confidence that may be requested by the Opposition. Those become separate questions.

I think it enables Members to vote on things based on the facts in front of them. If you vote on an important measure you are voting on that measure; you are not voting on whether there should then subsequently be a general election. The question about whether there would be a general election is a separate question to be dealt with in a motion of confidence. You have effectively separated those two questions. The Prime Minister is no longer able to mash the two together and say they are the same thing.

Q214 **Chair:** You are saying on the first motion, a substantive motion on an issue designated by the Prime Minister to be a vote of confidence, that Members of Parliament could effectively vote on the merits of the issue in their own minds without fear of any other consequences?

Mark Harper: That is entirely right, yes.

Q215 **Chair:** Although it does not trigger any statutory process there is, of course, an argument that the Prime Minister would have to resign after such a vote. However, you are suggesting that would not necessarily be the case.

Mark Harper: As I think I said in answer to a previous question, what would previously happen was that Prime Ministers would say something was a confidence matter. They were effectively saying to all MPs, "If I lose the vote on this I will get in my car, go down the road, see the Queen and ask her to dissolve Parliament and we will have an election. People can draw their own conclusions as to the effect of that promise." If the Prime Minister was to lose a vote on what they considered to be a confidence matter—they, of course, can make their own judgment about



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what they do as Prime Minister—they cannot seek a dissolution of Parliament from the Queen, because the Queen no longer has the power to dissolve Parliament. The only way you can dissolve Parliament and have an election is if motions are passed as set out in this Act.

Not everyone is clear about that, Chairman. I still hear Members of Parliament and Ministers occasionally talking about the Prime Minister calling an election. As we saw from last year, the Prime Minister had to come to Parliament and ask Parliament to pass a motion in order for there to be an early general election. If Parliament had refused to pass that motion then there would not have been an early general election. I can see I am having faces pulled at me but that is the legal position.

Q216 **Chair:** The Act says nothing about resignation.

Mark Harper: That is correct.

Q217 **Chair:** The convention was either that the Prime Minister would seek a dissolution or tender his or her resignation. You are saying resignation is not inevitable either.

Mark Harper: I am saying there is nothing in the Act that talks about what someone might do if they lost an important vote. It simply sets out the basis on which you can have a general election.

With regard to what you do if you lose a motion of confidence, or if you lose a vote on something that you designate as a motion of confidence but actually is not, I think it is the same answer as I gave to Mr Hopkins. It is a political matter and would require political judgment as opposed to a specific process that led to an early general election.

Q218 **Mr David Jones:** You, of course, are a former Chief Whip. I am interested to know what your assessment is of the impact of this legislation upon the powers of the Whips. Is it not rather difficult for a Whip in the governing party to say, "If you go against the Government on this particular motion the Government are going to fall"?

Mark Harper: When I was Chief Whip my approach was to be fairly straightforward. I feel in the modern Parliament—I think I have said this publicly before—you have to win votes by persuading people of the merits of the argument. I will be quite frank: not everyone agrees with absolutely everything the Government do at all times, and sometimes in Opposition parties, not everyone agrees with their Front Bench position either. You either have to persuade people on the merits of the argument or you have to persuade them on the basis that they broadly agree with the Government about most things, and while there may be things on which they disagree, they are willing to support the Government because they support the team. On very, very important things clearly people might want to take a view on the specific matter regardless of their view about the team. However, you have to persuade people on the merits, and I think you get further by persuading people on the merits of the argument rather than by threatening them with consequences. That is



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the approach I took and I found that to be a more effective approach than others.

Q219 Mr David Jones: You, of course, were a very civilised and highly respected Chief Whip. Is the bullying leverage the Whips have—in terms of saying to Members, “If you do not support the Government on this particular motion the Government are going to fall”—taken away by this piece of legislation, because it is not a confidence motion and the Government will not fall on that motion?

Mark Harper: I do not know what may have happened in previous Parliaments—there is a lot of stuff written about what may have happened in previous Parliaments when majorities were tight—but certainly the approach I have set out is the one I adopted as Chief Whip. However, as a matter of fact, what you have just said is exactly right. If there is an important vote on an issue, then the only thing Members are deciding is that particular issue. A general election cannot be triggered as the result of a vote on anything, other than a motion set down in the Fixed-term Parliaments Act. That is the message that not everyone has quite understood from having had a close study of the Act.

Q220 Kelvin Hopkins: Some of our questions will overlap to an extent. Could a Government that lost a confidence motion outside the terms of the Act seek to regain the confidence of the House, or should they only remain as the caretaker until a new Government can be formed that could command the confidence of the House?

Mark Harper: I think you said if a Government lost a confidence motion outside the terms of the Act.

Kelvin Hopkins: Yes.

Mark Harper: My view is that if the motion that is put down does not fulfil the wording in the Act then it is not a confidence motion. There may be a political effect of the Government losing it but there is no legal effect. It is only a confidence motion if it is in the terms set down in the Act.

I think it is just worth saying, Chairman, that it was not originally our intention to be this specific in putting the motions in the Act. We had a big debate about how much you should leave this to Standing Orders of the House, and a big argument about the extent to which the courts might or might not be able to intrude. The specifics about the terms were inserted in the House of Lords, I think by a coalition that included former Speakers of our House. It was decided to specify, for the avoidance of doubt, the terms of those motions. The Government then accepted those amendments when the legislation was brought back to the House of Commons. People might disagree with it, but a motion described as a confidence motion that is not in the terms in this Act is not really a confidence motion. It might be lots of things but it is not a confidence motion.



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Q221 **Kelvin Hopkins:** We seem to be moving into a new era—we have been doing so for some time—where Governments can lose votes, particularly in the Commons, yet carry on in office in a way that perhaps they might not have done in the past. We are moving much more towards a looser, possibly multiparty system, where perhaps votes of this kind are not uncommon. Are we not moving in a different direction? It is fundamentally changing our constitution really.

Mark Harper: I do not think we have. We are purer about the point I made in response to the Chairman's opening question, which is that ultimately Governments have responsibility for the Executive functions of Government. They can only exercise those Executive functions if they have the confidence of Parliament. Ultimately that means asking Parliament the question, "Are you happy for the Prime Minister and the men and women that that Prime Minister appoints to the Administration to continue in office as the Government?" The Government still ultimately have to be able to command a majority in the House on that question or they will cease being the Government.

The thing we dispensed with is the ability of a Government to allay lots of issues—issues of substance and political debate—with the future of a particular Administration. It is much clearer now that the Government have to win an argument on its merits. The question of the continuance or not of that particular group of men and women in office is a separate question, which has to be decided on its merits with regard to the alternative groups of men and women who could govern the country. You have effectively separated those two questions. In the past they have been blended together and I think we have made it a bit clearer.

However, ultimately it is still the case that the Government have to be able to command a majority. If they cannot command a majority, an election will be triggered and the public will get to choose a new Parliament out of which a new Administration will be formed.

Kelvin Hopkins: I do not want to start a hare running but there has been a change recently

Q222 **Dr Rupa Huq:** Apologies if I was pulling faces—I just have a face like that. I think the wind changed or something and I just look like that, so apologies if that seemed to be the case.

What I wanted to ask is: to what extent has the introduction of the Fixed-term Parliaments Act changed the whole relationship between Parliament and Government?

Mark Harper: Forgive me, I was not intending anything by my comment. It was just when I said a few things you looked like you were grimacing slightly.

Dr Rupa Huq: I just permanently do, it is an occupational—

Mark Harper: Sorry, can you set out the question again?



Dr Rupa Huq: I have never known the lofty heights of Government. I am not in a Government party, I think I am the only official-positioned person on this Committee. I therefore wondered how having the Fixed-term Parliaments Act has changed the relationship between Parliament and Government because it cannot be dangled anymore that there may be a confidence motion. The Fixed-term Parliaments Act slightly feels like an Americanisation to me.

Mark Harper: First of all, it does make it more likely that a Government of whichever party will see out its full term. We had a debate about that. Part of the idea—I think I said at the Dispatch Box that this was a good thing—was that one of the criticisms we do not get in Britain is that Governments take too long a view of things. Often you have the argument that because of the electoral cycle Governments take too short-term a view. One of the arguments for having this—I think this was one of the motivations for it being in the coalition agreement—was to try to get Governments to take a proper look and say, “We have been elected and we are going to govern for the full term”. You therefore do not lose the last year or two because you immediately start thinking about the next election. That was one of the thoughts. If we get a bit of longer-term thinking, I think that is welcome.

The second thing—as I said to Mr Jones and Mr Hopkins—is that I think it means that Ministers and Prime Ministers have to focus on winning votes and therefore arguments on the merits of the case. That is rather than being able, as the Chairman said, to designate something that perhaps people are not very happy with as a confidence motion and say, “If you do not support this it will be an end to the Government and an election will be called”. You cannot now say that with any credibility because all that happens if you lose a vote on a matter, even on a very important matter, is that we all wake up the next day, the Government are still there, and there is not going to be an early general election. You therefore have to focus on arguing the principles.

To the extent that Ministers feel under more pressure to come to Parliament with better arguments, better information and a stronger case I think that can only strengthen the way we are governed and all good Ministers ought to welcome that. They might not feel that always at the time they are standing at the Dispatch Box, but I think it improves our Government. Coming back to what the Chairman said before, if Ministers really feel they can only win a vote by making a really good case and answering all the difficult questions from MPs on both sides of their House, including their own colleagues, it improves the way we are governed and means better decisions are made for the people on whose behalf we are elected.

Q223 **Dr Rupa Huq:** Do you think in that sense it has undermined resolutions of the House? The other week people were saying that in previous times if the Budget did not get through—it did get through in the end—it could mean the fall of the Government. Now that we have the Fixed-term



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Parliaments Act and the whole confidence thing has been decoupled, do you think it has changed the status of the resolution?

Mark Harper: In a way you could argue it gives MPs more power to make decisions on the specific merits. If, of course, you are faced with a Budget and are told you have to vote for absolutely everything in it or else the Government will fall, it does not give you much chance to express a view about particular measures. If the Government know something is very unpopular on their own Benches, they cannot get it through so it does mean Ministers have to put a lot more thought into what it is they are bringing before Parliament. To the extent that Ministers have to think more carefully about what they bringing before Parliament and feel more acutely their accountability to Parliament, I think that is welcome.

When I was a Minister I remember having conversations with officials about things that had been put before me, which I was pushing back to officials and suggesting I did not have any intention of taking them before the House. One of the biggest checks and balances in our system on the behaviour of Government and the behaviour of Ministers is knowing that as a Minister you have to stand at the Dispatch Box, or indeed here in front of a Committee, and answer questions about your policy, explain why you are doing it and be accountable for it. The more accountable Ministers feel for things, I think the better and the better we are governed. It is an improvement to our constitutional position and not a weakening.

Q224 **Dr Rupa Huq:** Eight weeks of a general election in the middle of a two-year time-limited negotiation probably is not great.

My last question is about your previous role as Chief Whip. At that time the Government majority was 10, which seems quite princely compared to now. Did you ever consider whipping Members not to vote on Opposition-day motions, which seems to be a new fashion?

Mark Harper: When we were making decisions about how we would advise Government MPs to vote, on Opposition motions specifically, we always used to look at the terms of the motion. For example, I think there were times when the terms of the motion, while not ideal and not what we would necessarily have put down, were not so objectionable that we necessarily voted against them. I think if you went through the record there may have been times when I was Chief Whip when we would have advised colleagues not to oppose an Opposition-day motion. I think I am right in saying we used to look at them on a case-by-case basis. We would then take a view about the acceptability of the wording of the motion with regard to how we would advise Government Members to vote.

Q225 **Dr Rupa Huq:** There was an Andy Burnham one about EU nationals, "people are not pawns". Was that when you were Chief Whip? That was the first time I noticed there was a mass abstention.



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Mark Harper: I honestly cannot remember.

Dr Rupa Huq: It was 2016, I think.

Mark Harper: I suspect that would have been a motion that arose following the referendum. I was not Chief Whip for very long after the referendum. I was David Cameron's Chief Whip, when the Prime Minister became Prime Minister she chose another person to become Chief Whip.

Dr Rupa Huq: So that is not your fault.

Mark Harper: I do not think, from memory, it was a decision I took.

Dr Rupa Huq: That is when I started noticing it. Now it feels like if they cannot win a vote they will not play ball.

I wanted to ask what effect you think that has—the mass abstention of Government MPs from Divisions—on the status of the House and on Parliament itself.

Mark Harper: I have been a Back-Bench MP for the last two years so I do not know what the thinking has been behind those decisions. All I can say is that when I was Chief Whip—and indeed when I was a policy Minister and had areas of policy that became the subject of Opposition-day motions—we used to think very carefully about the actual terms of the motion. In fact, I sometimes get criticised now when we have Opposition days and I speak on them to focus on the terms of the wording on the Order Paper. That is what we used to focus on and we used to make decisions accordingly. I do not know what the thinking is now; I am not privy to it. Those are questions you would need to direct to others.

Q226 **Dr Rupa Huq:** Do you think it is a worrying trend? We had Margaret Beckett here last week and she said that it is bad for Parliament if one side just says they are not playing.

Mark Harper: There were a number of debates on this, Chairman, in the House. I think what I said at the time was that the right approach is that you make a decision on a case-by-case basis. I do not think there should be a blanket rule. You have to look at the terms of the wording, and you then take a view about how you are going to vote, and the Government will take a view about how they are going to advise its own Members. It is a case-by-case decision that you take based on the wording of the motion. I do not think there should be a blanket rule either way.

Q227 **Dr Rupa Huq:** What would you say the potential consequences for future Governments will be on disregarding resolutions of the House?

Mark Harper: The processes of the House evolve over time. One of the things I have observed since the practice you have alluded to is that Oppositions have found increasingly creative ways of coming up with wording of motions that have the desired effect. I have to confess that until the last couple of years, Chairman—even though I consider myself somewhat to have studied these political matters—I had not really come



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across humble Addresses very often. The Oppositions have found that device for getting Governments to disclose documents.

Coming back to the opening question, Parliament has a way of holding Governments to account. Even if Governments do not always like being held to account, Members of Parliament, funnily enough, have a very good way of doing so.

Dr Rupa Huq: Thank you.

Q228 **Chair:** You might want to contribute to a later inquiry in this series when we are looking at war powers. It occurred to me that a resolution that the Cameron Administration did not ignore was losing the vote on the Syria question in, I think, 2012. Why do you think the Government felt unable to ignore that vote and yet now ignore other votes?

Mark Harper: On your opening point, I would be very pleased to do so. When I was the Minister for Political and Constitutional Reform I had some correspondence with—I am not sure how to describe it—not your predecessor Committee but the Committee part of whose remit was folded into this one on constitutional matters, about the commitment the coalition Government had made originally to legislate for war powers, and the fact they subsequently did not do so.

I think, again, you have to take a view of these matters on a case-by-case basis because it does differ depending on whether you are committing ground troops, the scale and urgency of the action, and whether you are acting with your allies. It does depend.

When the Prime Minister made the decision to act recently, having listened to the debate I think I said I felt at that time she would have won a vote in Parliament. I think the Government's position would have been stronger if they had put down a motion to seek the support of Parliament and won it handsomely, but that was not something the Government chose to do.

It comes back to the Government having to be able to command the confidence of Parliament. When on David Cameron's first attempt to ask Parliament for its permission to act in Syria he was told no, he made it very clear in straightforward language that he understood the decision and he felt that not having been able to persuade MPs on that matter he was not able to proceed and indicated, in a way, perhaps the change that has taken place. That was an incredibly important matter, asking for the commitment of troops. The Prime Minister lost the vote and he therefore chose not to proceed but continued to be the Prime Minister. However, he listened to Parliament's specific decision about a specific case. We can argue about whether we thought Parliament got that right or did not get that right and what the consequences were. It was asked for its view on a specific matter, it gave its view and that had a very significant consequence.

Chair: Thank you very much for being with us.



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Mark Harper: Thank you very much for the invitation.

Chair: You answered all our questions very fully.

Mark Harper: Thank you very much.