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Joint Committee on the
Fixed-Term Parliaments Act

Report

Session 2019–21

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to the report*

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Joint Committee on the Fixed-Term Parliaments Act

The Joint Committee was appointed to: (a) carry out a review of the operation of the Fixed-term Parliaments Act 2011, pursuant to section 7 of that Act, and if appropriate in consequence of its findings, make recommendations for the repeal or amendment of that Act; and

(b) consider, as part of its work under subparagraph (a), and report on any draft Government Bill on the repeal of the Fixed-term Parliaments Act 2011 presented to both Houses in this session.

Membership

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Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place within the United Kingdom, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publications

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Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

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Summary

This Committee had two tasks: to undertake the review of the operation of the Fixed-term Parliaments Act (FtPA) provided for in the Act itself, and to examine the Government's proposals for the repeal of the Act, contained in its draft bill. Although both the Conservative and Labour Party manifestos committed, in different ways, to replace the FtPA it remained important to fulfil our statutory mandate to review that Act, not least because measures introduced by this Parliament cannot bind subsequent ones. It remains possible that the question of fixed-term legislation will be revisited in future.

Our review was meant to take place after the first full Parliament had run its course under the terms of the Act. There have, of course, been two further elections in that time. Proponents of fixed term parliaments consider that such arrangements have practical and principled advantages. In their view a reasonably foreseeable election timetable allows all concerned to plan; incumbency advantage is reduced; a system in which the vote of the elected House is required for an election reduces executive dominance; and such a system makes it easier to form coalition governments. Nonetheless, the reason for the introduction of the FtPA in 2011 was to enable the formation of the Conservative-Lib Dem coalition with confidence it would continue for the full Parliament. As a first term Bill it had no opportunity for pre-legislative scrutiny. We considered it undesirable that any major constitutional change is brought about without careful consideration.

The Act is flawed in several respects. First, its supermajority requirement risks parliamentary gridlock, and lacks credibility given that, in 2019, it was overridden by bespoke primary legislation. Second, the existence of a statutory no-confidence motion has meant that a Government has felt able to refuse to put motions of no confidence in other terms to the House, even though they had been tabled by the Leader of the Official Opposition. Moreover, Governments have at times found it more difficult to get their business through Parliament and could no longer see an advantage in declaring a vote a matter of "confidence" because a defeat could not lead directly to a general election. Fourthly, the statutory 14 day period after a vote of no confidence was unsatisfactory. While it was clearly the intention and expectation that pre 2011 conventions would be adapted to the 14 day period, speculation on what could legally be done in this period has meant that the situation is unclear. While the current Government accepts that such actions would be inappropriate, there remains a distinct possibility that a future defeated government would seek to wait out the time and force an election, even though an alternative administration could otherwise be formed, adding to political uncertainty. Any review of the Act would have recommended major changes to remedy these flaws, even if it was considered the transfer of power from the Executive to the House of Commons had been desirable.

The Committee then turns to the Government's proposals. While there has been a great deal of argument over how the FtPA had affected previous prerogative powers, the Committee is satisfied that the Government's approach to its repeal and replacement is clear, and properly encapsulates its intentions.

The Committee notes that the intention is to revive the prerogative powers of dissolution and calling of parliaments. We consider that it is important there is some check on

executive power. Under a prerogative system, that safeguard comes from the Monarch: it is understood that dissolutions are “requested” not “advised” by Prime Ministers and may, in exceptional cases, be refused. Any exercise of the Monarch’s veto will be extremely rare, and would come with a very serious risk of constitutional crisis. It is instead intended that the mere existence of the reserve power puts pressure on political actors to exercise greater restraint and to keep the Monarch above party politics. The Government should make it clear that this is its intention in reviving a prerogative system. It should avoid referring to “advice” in this context, given that such language wrongly implies the Monarch is bound to follow it.

The draft Bill contains an ouster clause of unprecedented width. The Committee understands the reasons why this drafting approach was taken. The intention was to make it clear that the decision to grant a dissolution, the request for a dissolution and any related advice given by the Prime Minister to the Monarch should not be justiciable.

Nonetheless there are concerns about this approach. While in suitable cases Parliament should be capable of ousting the jurisdiction of the courts, it should be very reluctant to do so. The extraordinary breadth of the ouster might lead to it being “read down” by the courts, rendering it less effective than a narrower alternative. Some consider that the same effect could have been achieved without such an ouster. Some consider that simply being clear that the decision dissolution was a personal prerogative of the Monarch would mean that the judiciary would not intervene. Others consider the same effect (non-justiciability) could be produced by requiring a vote of the House of Commons for an early dissolution. Nonetheless, the majority are satisfied with the Government’s approach. It is legitimate for Parliament to make clear where it believes constitutional boundaries should lie. An early dissolution puts power in the hands of the electorate so, if an ouster is ever appropriate, it is appropriate in this case. Nonetheless the Committee recommends that the Government considers whether a clearer and more limited approach to drafting the ouster might be as effective.

The Committee considered the minor changes to legislation required by the Bill. Since the Fixed-term Parliaments Act was passed subsequent legislation has increased the statutory period for an election from 17 to 25 working days. The Committee recognises the need to balance the requirement for ensuring that elections are fairly and properly administered with the public interest in doing without Parliament for a short a time as possible. It recommends that the Government should establish a cross-party working party to examine how the General Election campaign period can be shortened from 25 days without compromising voter participation, including through the increased use of technology and increased focus on year round voter registration. The working party should report its recommendations to Government as quickly as possible and in time to ensure any legislative requirements can be put forward in legislation for consideration before the expected date of the next General Election.

The Committee considers that the Government’s Dissolution Principles document is inadequate. It therefore sets out its own views of the constitutional framework around dissolution, confidence and government formation. A Government must command the confidence of the House of Commons. If it does not do so, then either the Prime Minister or the Government must resign to enable another administration to be formed, or a dissolution must be requested. It would be wrong to request a dissolution if a Parliament

had a significant time to run, and it was clear another administration would be likely to command the confidence of the House of Commons. After the election, if there is a hung Parliament the incumbent Prime Minister should remain in place until it is clear who is best placed to form a Government. Throughout this process, all political actors should be careful not to draw the Monarch into party political controversy.

1 The remit of the Committee

Background

1. This Committee has been established to fulfil two functions: to carry out the statutory review of the Fixed-term Parliaments Act 2011 itself, and to review the Government's draft bill repealing that Act.

2. Subsection 7(4) of the Fixed-term Parliaments Act 2011 provides:

The Prime Minister must make arrangements—

(a) for a committee to carry out a review of the operation of this Act and, if appropriate in consequence of its findings, to make recommendations for the repeal or amendment of this Act, and

(b) for the publication of the committee's findings and recommendations (if any).

3. Although the Act does not require the Committee to be a Joint Committee, subsection 7(5) provides that a majority of its membership are to be members of the House of Commons. In putting forward the compromise in place of amendments proposed by the House of Lords, the Parliamentary Secretary to the Cabinet Office, Mark Harper MP indicated the review was to be timed to be reviewed after the first full fixed term.¹ The statutory review was seen as a better alternative to a sunset clause, which would have repealed the Act after a given amount of time and (potentially) left some uncertainty as to what rules there were on dissolution thereafter.

4. Section 7 of the 2011 Act envisaged that after the first complete cycle of the Fixed-term Parliaments Act² the review body would make recommendations about whether, and if so how, the Act should be amended or repealed in light of that experience. It would be for the Government to respond to the review, and bring forward (if desired) legislation either to amend or to repeal and replace the Act which would be subject to normal scrutiny including, if they so wished, scrutiny by the relevant Lords and Commons select committees.

5. This review is taking place in very different circumstances from those envisaged by the Act. Since the Act was passed only one Parliament has reached its full term. At the 2019 General Election the Conservative and the Labour Parties included in their manifestos a commitment to “get rid of” and to “repeal” (respectively) the Fixed-term Parliaments Act. The Rt. Hon. Mark Harper, who was the Minister responsible for the Fixed-term Parliaments Bill, noted in evidence to PACAC's inquiry that, whereas the 2017 Conservative Manifesto proposed a “repeal” of the Act, the commitment in the 2019 Manifesto used “a rather less specific form of words.”³ **Although there are subtle differences in their respective positions, the manifestos of the two major parties provide the democratic context for**

1 HC Deb, 8 September 2011, vol 532, see also Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 21 July 2020, HC 167, [Q146](#)

2 But for the 2017 and 2019 General Elections, an election would have been scheduled to take place on Thursday 7 May 2020 under the 2011 Act.

3 Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 21 July 2020, HC 167, [Q148](#)

this Committee: while mindful of the need to conduct the statutory review, we have focussed more on how the Act should be replaced than how it might be amended. It is also clear that mere repeal of the Act, without any form of replacement, would create legislative uncertainty and a constitutional lacuna, as the only statutory provision regarding the holding of parliaments would then be the remaining elements of the Meeting of Parliament Act 1694. This would clearly be unacceptable.

6. It is a widely expressed criticism of the Fixed-term Parliaments Act 2011 that, as it was a first session Bill, even though a major constitutional change was proposed, a draft Bill was not produced for pre-legislative scrutiny. In its report on the Act, PACAC welcomed the Government's commitment:

not to rush through replacement legislation and to provide adequate time for full scrutiny. We also appreciate the Minister's commitment to forging cross-party support for whatever replaces the Fixed-term Parliaments Act. *The first step, as the Minister recognised, is for the review committee to be set up. It is important that the review committee is given time to carry out its work to its full satisfaction. Following the reporting of the review committee the Government should produce its proposals and allow time for full prelegislative scrutiny.*⁴

7. In response to PACAC the Government rejected the proposal that the review of the Act should take place in advance of the production of a draft bill, citing the manifesto commitment to repeal the FtPA:

to ensure this draft Bill receives adequate parliamentary scrutiny, it is appropriate that this Joint Committee of both Houses is, alongside its consideration of the FtPA, given the opportunity to scrutinise the Government's draft Bill. The FtPA was rushed and what replaces the FtPA must be subject to greater scrutiny so that we do not repeat this mistake with a core part of our constitution.⁵

8. It is welcome that the Government has brought forward draft legislative proposals; it was profoundly unsatisfactory that the timing meant the major constitutional changes brought about by the original Act could not have pre-legislative scrutiny. We have accordingly taken both parts of our remit very seriously. The Committee has consciously sought to carry out its statutory duty to review the 2011 Act in its own right, and has not confined itself to the Government's specific proposals for its repeal and replacement. We have considered a range of ways the 2011 Act could plausibly be replaced in addition to the Government's own proposal, in order to inform the debates on legislation that are expected to follow in the next Parliamentary session.

Timing

9. The 2011 Act required the Government to establish a Committee at some point between 1 June and 30 November 2020. The Committee was set up in late November

4 Public Administration and Constitutional Affairs Committee, Sixth Report of the Session 2019–21, [The Fixed-term Parliaments Act 2011](#), HC167, para 34

5 Public Administration and Constitutional Affairs Committee, Sixth Special Report of the Session 2019–21, [The Fixed-term Parliaments Act 2011: Government's response to the Committee's Sixth report of Session 2019–21](#), HC1082

2020, meeting only for the first time on Thursday 26 November. It was initially given until Friday 26 February 2021 by which to report, though this was later extended to Wednesday 31 March 2021. The next election is not currently scheduled to take place until Thursday 2 May 2024.⁶

10. The Committee notes that both PACAC and the Lords Constitution Committee were able to consider these matters for considerably longer than it has been able to, and that the Government could have set-up this Committee up to six months earlier than it did. Against a tight reporting timescale, which included the Christmas recess, the Committee has been fortunate to be able to draw upon the existing evidence and analysis provided by both of those Committees in their respective reports.

11. The Committee has also been greatly assisted by those who submitted written evidence to this inquiry, and appeared as witnesses. We received 24 written submissions and held 8 oral evidence sessions. We were able to draw on the experience of distinguished academics with both UK and Commonwealth perspectives, former Supreme Court judges, those who had held high office in the Civil Service and in Parliament, expert lawyers and experienced political practitioners. This range of theoretical and practical experience has enriched our Report, indeed, has been essential, and we are very grateful to all those who took time to participate in the inquiry.

12. ***We strongly urge the Government not to repeat the mistakes made in not sufficiently scrutinising the Fixed-term Parliaments Act 2011. This means allowing sufficient time for Parliament (including its Select Committees) to explore the full implications of the legislation when it is introduced. It is important that such constitutional legislation secures as wide a degree of cross-party agreement as possible, so that it can stand a chance of lasting more than a single parliament.***

6 A draft Bill could be introduced as late as early 2023 and receive Royal Assent under the Parliament Acts 1911 and 1949 before May 2024 even if the House of Lords were to withhold its consent for the Bill.

2 Review of the Fixed-term Parliaments Act 2011

13. The Fixed-term Parliaments Act (FtPA) may have been introduced as a response to the coalition, but reform of the prerogative system of dissolution and calling of Parliaments had been considered well in advance of the 2010 General Election. Our operational review of the 2011 Act itself accordingly considers four distinct but related questions:

- a) The arguments made for a semi-fixed term system;
- b) Why the Act was introduced;
- c) Did the Act achieve its aims;
- d) Did the Act have unintended and/or undesirable constitutional or political consequences?

The arguments made for a semi-fixed term system

14. Proposals for fixed term parliaments have been made by various commissions, and set out in private members bill since the 1990s.⁷ Several observers have identified a clear direction of travel to bring prerogative powers under greater democratic control, usually through greater Parliamentary scrutiny or approval, or by giving statutory force to rules that previously relied on prerogative powers, executive discretion and constitutional conventions.⁸ The *Constitutional Reform and Governance Act 2010* is a clear example of establishing greater statutory and parliamentary control over hitherto unregulated prerogatives: giving a statutory underpinning to (a) Parliament's role in treaty ratification and (b) the Civil Service, Diplomatic Service and Special Advisers' Codes.⁹

15. The move to reduce executive dominance in key parts of the UK constitutional arrangements by making powers more accountable to Parliament was accompanied by a desire to clarify and make public the understanding of constitutional conventions. In 2007 the White Paper on the Governance of Britain proposed a range of reforms to the use of prerogative powers.¹⁰ One of the proposals was to establish a new constitutional practice to give the House of Commons a vote on whether Parliament should be dissolved before its maximum term had expired, although this was not implemented.¹¹ During this period the Government also started to draw up a draft of the Cabinet Manual, with the purpose of making publicly clear the laws, conventions and rules on the operation of Government. As part of this process, draft chapters from the manual were shared with the

7 Robert Hazell, [Fixed Term Parliaments](#), Constitution Unit, August 2010; The Electoral Commission also called for more consistency election timetables to aid electoral administrators, See: Electoral Commission, [Election Timetables in the UK](#), June 2003 p 3; Electoral Commission, [Securing the Vote](#), 2005, p 53.

8 Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 2 June 2020, HC 167, [Q73](#); Written evidence to the Public Administration and Constitutional Affairs Committee, HC 167 [FTP0011](#) (Russell and Hazell)

9 See ss. 5–9 and 20–25 *Constitutional Reform and Governance Act 2010*

10 Ministry of Justice, [The Governance of Britain](#), July 2007, CM 7170

11 Ministry of Justice, [The Governance of Britain Review of the Executive Royal Prerogative Powers: Final Report](#), October 2009, para 39

relevant select committees for consultation in advance of the 2010 election. This move to greater formalisation and transparency on conventions was continued when the Coalition Government published the Cabinet Manual.

16. At the 2010 General Election, the Labour, Liberal Democrat, Plaid Cymru and Green Party manifestos all committed to change the law and practice on general election cycle by introducing or supporting fixed-term legislation.¹² The Conservative Party's manifesto at that general election contained no specific commitment to do with the dissolution and calling of Parliaments, but did include a general commitment to "greater democratic control" of the Royal Prerogative "so that Parliament is properly involved in all big national decisions."¹³

17. The need to sustain the coalition explains why the Conservative Party was prepared, in 2010, to commit to introducing semi-fixed term Parliaments despite there being no specific commitment in the Conservative manifesto. However, it does not explain why other parties in that election had manifesto commitments to introduce fixed or semi-fixed term legislation. The "principled" rationale for fixed-terms legislation, as made in 2010 and advocates of it since, can broadly be summarised as follows:¹⁴

- a) that a prerogative or executive power to dissolve Parliament provides an unjustified incumbency advantage, as the precise timing of an election can be chosen to coincide with periods of relatively greater popularity or strength or to pre-empt anticipated negative events;¹⁵
- b) that a prerogative system of dissolution confers disproportionate power and influence on the Executive over the existing Parliament, especially but not exclusively in the context of minority governments;¹⁶
- c) that fixed-term Parliaments make coalition governments and those with confidence and supply arrangements more viable, lessening the risk of unnecessarily frequent or opportunistic elections;¹⁷
- d) that a more fixed election cycle is better for both civil service and electoral administration planning and encourages more long-term thinking in Government;¹⁸
- e) that a more fixed election cycle is also better for political parties and prospective parliamentary candidates, as selection processes and regulated election spending periods are able to operate on a more predictable timeline;¹⁹

12 Liberal Democrat Party, [Liberal Democrat Party Manifesto 2010: Change that works for you building a fairer Britain](#), p88; Labour Party, [Labour Party Manifesto 2010: A Future Fair for All](#), Section 9; Plaid Cymru, [Think Different. Think Plaid](#). p21; Green Party, [Fair is Worth Fighting For: Green Party Manifesto 2010](#), Chapter 3

13 Conservative party, [The Conservative Manifesto 2010: Invitation to Join the Government of Great Britain](#), p 67

14 [Q189](#)

15 [Q122](#), [Q129](#); Professor Petra Schleiter (Professor of Comparative Politics at University of Oxford); Dr Thomas Fleming (Lecturer in Politics at University of York) ([FTP0012](#)); Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 24 April 2020, HC 167, [Q2-3](#) [Lord O'Donnell]; [others]

16 [Q122](#) Professor Petra Schleiter (Professor of Comparative Politics at University of Oxford); Dr Thomas Fleming (Lecturer in Politics at University of York) ([FTP0012](#))

17 [Q122](#)[Letwin]; Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 24 April 2020, HC 167, [Q2-3](#) [Lord O'Donnell]

18 Dr Ben Whisker ([FTP0022](#)), Association of Electoral Administrators ([FTP0021](#)); Electoral Commission ([FTP0023](#))

19 [Q189](#); Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 24 April 2020, HC 167, [Q2-3](#)

- f) that speculation about an early election may unnecessarily unsettle commercial and economic decisions; and
- g) that Parliamentary business, including the work of Select Committees, can be planned and carried through with less risk of interruption.²⁰

18. While witnesses drew attention to each of these potential advantages, the proposal for fixed-term Parliaments gained traction in the UK context as a way of reducing the incumbency advantage and the power of the executive, so we spent some time exploring this in depth.

Incumbency advantage?

19. One of the main arguments against a prerogative system of dissolution and calling of Parliaments was that of perceived incumbency advantage: that a Prime Minister could choose the point in the electoral calendar in which they felt most likely to be able to win the ensuing general election. Although this did not always mean that incumbents would win general elections, the ability to calibrate the election cycle unilaterally was perceived to aid incumbents, even when most of those following politics closely could (roughly) anticipate when an election would most likely take place. As Lord O'Donnell put it in evidence to PACAC:

From a constitutional point of view, people could see that [fixed-terms] created a fairer system: it removed the bias towards incumbents being able to choose [the timing of an election].²¹

20. To give a concrete example of this sort of advantage, we note the new system for establishing constituency boundaries, in which the parliamentary boundaries will be reviewed every eight years (rather than every five at present). The first review will be completed in mid 2023. The Order in Council containing recommendations of the Boundary Commission is sent directly to the Privy Council, without Parliamentary debate, and must be submitted within four months of the complete set of reports being laid before Parliament.²² This will potentially, in some circumstances, give Governments the opportunity to call an election early to avoid boundary changes.

21. There are two distinct questions:

- a) Did the prerogative system provide an unfair incumbency advantage when compared to a fixed or semi-fixed term alternative?
- b) If indeed there is an incumbency advantage associated with the ability to choose the timing of an election, is that constitutionally or democratically justified?

22. Professor Petra Schleiter of St Hilda's College, Oxford and others have examined the existence and extent of incumbency advantage under systems where the Government

20 FtP 0016 (Dr Craig Prescott)

21 Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 24 April 2020, HC 167, [Q3](#), [Q11](#)

22 Parliamentary Constituencies Act 2020, s2

controls the election date.²³ In a study of UK elections since 1945 and a comparative study of 27 European countries it was argued that there is a statistically significant incumbency advantage (whether measured by vote share or by seats) in systems where the Executive, rather than the Legislature, decides when elections are to take place, even when early elections were widely expected.²⁴ PACAC also concluded that the old system enabled “the incumbent party of government to time an election to gain an advantage over its opponents.”²⁵

23. The Government does not accept that the old system provides an inherent advantage to the incumbent party. The Rt Hon Michael Gove, the Chancellor of the Duchy of Lancaster told the Committee:

There are numerous examples that I mentioned in my evidence where a snap election has been called, and the incumbent Government has been unsuccessful at the polls. Of course, the historical record has shown that a Prime Minister who seeks to call an election have taken advantage of favourable poll ratings. It has generally been the case since 1945 that Prime Ministers enjoying a significant lead in the opinion polls have called an election four years into a five-year Parliament. However, there is no evidence that requiring them to wait a further year would have significantly impacted on the subsequent election results.²⁶

24. The Chancellor of the Duchy went on to assert that incumbency advantage, if it existed, was only part of the picture, in effect asserting a democratic justification for early elections:

We do not believe that this has any bearing on the conduct of a free and fair election. All political parties and candidates are subject to the same election rules, including the prevailing limits on spending. It is not undemocratic to hold an (earlier) election: rather, it is an expression of democracy.²⁷

25. We note that this argument could equally be advanced in favour of annual or more frequent general elections although the Government prefers to stick with five year terms. We accept that the right to determine the date of an early election may give the government an incumbency advantage. After all, no government chooses to hold an early election unless it thinks it is going to win. However, this might be outweighed by other factors and no one can predict the course of an election campaign. Professor Bogdanor, Professor of Government, Kings College London, considered “The fundamental purpose behind the

23 Professor Petra Schleiter (Professor of Comparative Politics at University of Oxford); Dr Thomas Fleming (Lecturer in Politics at University of York) ([FTP0012](#)); Schleiter, and Tavits. 2016. “The Electoral Benefits of Opportunistic Election Timing.” *The Journal of Politics*, 78(3): 836–850; Schleiter & Belu, “Electoral incumbency advantages and the introduction of fixed parliamentary terms in the United Kingdom”, *The British Journal of Politics and International Relations* 2018, Vol. 20(2) 303–322

24 According to Professor Schleiter’s research, in Europe, the ability of the Government to choose the time of an election delivered on average a 5% vote share bonus to the incumbent. In UK elections it found that the prerogative system conferred a 3.5% vote share bonus and an 11.3% seat share bonus on the incumbent, which typically translated to a 73 seat advantage.

25 Public Administration and Constitutional Affairs Committee, Sixth Report of 2019–21 Session, [The Fixed-term Parliaments Act 2011](#), HC 167, para 17; [Q237](#)

26 Rt Hon Michael Gove MP (Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office at Cabinet Office) ([FTP0024](#))

27 Rt Hon Michael Gove MP (Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office at Cabinet Office) ([FTP0024](#))

Fixed-term Parliaments Act was to take away the alleged advantage held by an incumbent Prime Minister to choose the date of dissolution.” He identified many respectable reasons for an early dissolution: a new prime minister seeking a new mandate, for example, a new mandate for a new policy; an existing Parliament becoming unviable or, although it had not occurred in the UK, the change of coalition partner in a coalition. In his view “Voters are perfectly capable of making up their own minds on whether the reasons given by a government for an early dissolution are satisfactory.”²⁸

Enabling coalition or minority government

26. Hung parliaments have been relatively rare in the UK in the last fifty years, in part because the House of Commons is elected under a First Past the Post electoral system, in which typically 80–95% of the seats have been won by the two largest parties. However, there have been periods, including in relatively recent political history, when hung Parliaments have been returned by the electorate.²⁹ There are also examples of Governments with small majorities or confidence and supply arrangements subsequently losing a working majority, without necessarily and immediately losing the confidence of the House of Commons.³⁰ Moreover on a number of occasions between 1906 and 1945 the UK had a Minority Government, a Coalition or a National Government incorporating several parties. There is no guarantee that the future will not see more frequent minority and coalition governments.

27. The conditions in 2010, although unusual in UK politics, were not unique. Coalitions and confidence and supply arrangements, by their very nature, are agreements between political adversaries to cooperate, in order that a government can be formed or preserved. The electoral incentives of a Prime Minister need not always align with those of other parties involved in that bargain or pact. It is therefore unsurprising that smaller parties would want specific assurances about the rules on dissolution, so that an early election would not disadvantage them in order to favour the larger, but still minority, party. Rt Hon Sir Oliver Letwin, who had been Minister for Government Policy and Chancellor of the Duchy of Lancaster in the Coalition Government, suggested that:

[...] if, as is not at all impossible, a coalition has to be formed after the next election to provide a stable Government, it is very likely—this is one of the central ironies of our history—that a new Fixed-term Parliaments Act will have to be enacted.³¹

28. In contrast, Lord Butler of Brockwell, who had been Cabinet Secretary from 1988 to 1998, considered the Fixed-term Parliaments Act as “a solution that didn’t work to a problem that didn’t exist.” In his view, “There is no doubt that if, in 2010, the Government had decided to ditch the Lib Dems and call a general election, it could have got the necessary majority in Parliament to do that, because Labour would have agreed to calling a general election.”³²

28 Vernon Bogdanor (Professor of Government at Kings College London) ([FTP0001](#))

29 There have been three hung parliaments returned by a general election in the last 50 years: February 1974, 2010 and 2017.

30 There are three such examples of a Government losing its working majority without immediately then losing the confidence of the House of Commons in the last 50 years: James Callaghan’s Government in 1976, John Major’s in 1996 and Boris Johnson’s in 2019.

31 [Q122](#)

32 [Q155](#)

29. It is possible that concerns over incumbency advantage will increase. There are likely to be hung Parliaments or confidence and supply arrangements in future. No Parliament can bind its successor, but an important aim of any constitutional arrangement, and therefore for this legislation, must be that it will be equally suitable for whatever the parliamentary arithmetic provided by the electorate.

Why the Fixed-term Parliaments Act was introduced

30. As Sir Oliver Letwin told the Committee, while the old prerogative system “had always seemed, to many of us, a slightly bizarre arrangement that favours incumbency”, the commitment in the Conservative manifesto was not a reference to fixing the term of Parliaments but “was intended more as a reference to things such as going to war.”³³ The pragmatic rationale for fixed-term legislation in 2010 was to secure the Conservative-Liberal Democrat coalition, and legislation to introduce semi-fixed terms was a core provision of the Coalition Agreement.³⁴

31. In evidence to PACAC’s inquiry, Lord O’Donnell, the Cabinet Secretary in 2010, explained:

Right at the start of the coalition, you have to understand, there probably wasn’t that much trust, if I’m perfectly blunt about it, so [the Liberal Democrats] wanted an absolutely clear commitment that there would be no snap election, and the way to do that was to legislate for a fixed-term Parliaments Act.³⁵

32. Sir Oliver Letwin, who had been part of the Conservative negotiating team in the coalition talks, confirmed that:

The purpose [of the Fixed-term Parliaments Act] was to enable the coalition to be formed. One of the principal demands of the Liberal Democrat side of the coalition, when we came to discuss the whole proposition, was that there should be no ability for the larger of the two parties—the Conservative party—within a coalition Government to spot the moment when it would be convenient to ditch the coalition by seeking a dissolution.³⁶

33. Sir Oliver considered that the coalition “would probably not have worked as well” without the reassurance a fixed-term gave to both of its participant political parties.³⁷

34. The consensus view of those involved at the time seems to be that forming a Conservative-Lib Dem Government in May 2010 would have been much more difficult,

33 [Q127](#)

34 HM Government, [The Coalition: Our Programme for Government](#), May 2010

35 Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 24 April 2020, HC 167, [Q3](#)

36 [Q122](#)

37 [Q122](#)

and perhaps impossible, without some sort of legislative obstacle to a Conservative Prime Minister being able unilaterally to call an election without some significant level of Parliamentary approval.³⁸

Did the FtPA achieve its aims?

35. The FtPA achieved its immediate aim. The 2010–15 Parliament was the first one in modern history to expire by operation of law at the end of its maximum term. Even those which have run close to the limit in the past have still been dissolved “early” by the Monarch, even if only by a few days. **The Fixed-term Parliaments Act very clearly fulfilled its immediate political purpose. Not only did the Parliament last the full term, so did the Coalition Government that was formed at the beginning of it.**

36. It is less clear, however, that it achieved its stated aims thereafter, or that it fulfilled the more general aspirations for a system designed to at least encourage the assumption Parliaments should run their full term. Theresa May replaced David Cameron as Prime Minister on 13 July 2016. A general election was held some 11 months later, on 8 June 2017.

37. Mrs May’s replacement by Mr Johnson on 24 July 2019 was not followed by an election, but on three occasions, 4 September, 9 September and 28 October 2019, the Johnson Government sought Commons approval for an early General Election. On all three occasions, the statutory motion was approved by a simple majority of MPs, but by an insufficient level of support to trigger a General Election under the Act.³⁹

38. On the first two occasions in September, the Government’s proposal appeared, in essence, to be that there should be a General Election immediately before a European Council summit on 17–18 October 2019.⁴⁰ If the Government won the election, it would seek to negotiate and ratify a Brexit deal in the remaining fortnight before the (then) Article 50 deadline of 31 October 2019, or failing that leave the EU without a withdrawal agreement. If it lost the election, it would be for a new Government to decide what to do instead. Labour Party MPs mostly abstained on or voted against the early election motions. Its stated reason at the time for not endorsing the motions was that backbench legislation (the EU (Withdrawal) (No. 6) Bill), should first be given Royal Assent and take effect.⁴¹

39. By the time the third early general election motion was debated on 28 October, the Government had reached agreement in principle with the European Union on a withdrawal agreement, Article 50 had been extended by three months to 31 January 2020, and the European Union (Withdrawal Agreement) Bill had received its Commons second

38 [Q122](#); Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 24 April 2020, HC 167, [Q2–5](#) [Lord O’Donnell & Sir Stephen Laws]; Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 20 July 2020, HC 167, [Q131–33](#) [Mark Harper]; See also David Laws, 22 Days in May, 2010, pp97–98

39 On 4 September, the House of Commons voted 298 Ayes to 56 Noes; on 9 September it voted 293 Ayes to 46 Noes; and on 28 October it voted 299 Ayes to 70 Noes. Figures for all Divisions exclude tellers.

40 In the 4 September debate, the Prime Minister indicated an intention to hold an election on Tuesday 15 October, though legally, the date of the election would only be set by the Monarch on the Prime Minister’s recommendation after an early election had been triggered. See HC Deb, 4 September 2019, [col291](#). In the second debate, no date was indicated in the course of his remarks.

41 This legislation (in essence) required the Prime Minister to seek, and agree to any European Council offer of, a three month extension of Article 50 unless Parliament had approved a withdrawal agreement by 19 October 2019 (immediately following the last European Council summit before what was then the expiry of Article 50 on 31 October 2019).

reading. However, the Government was unable to progress with the Bill: the House of Commons had rejected the Bill's programme motion.⁴² For a third time, a majority of MPs either opposed or abstained on the Government's early election motion. Just three days later, however, Royal Assent was granted for the Early Parliamentary General Election Act 2019. That Act overrode the FtPA, providing for an early election notwithstanding the fact that neither of the Act's "triggers" had been deployed. The 2019 Act passed with the support of 440 MPs (six more than would have been required to meet the two-thirds threshold under an FtPA motion). The only substantive difference between the statutory motion rejected on 28 October and the Bill was that the former did not specify polling day whereas the latter did, removing the Prime Minister's discretion to recommend the date.

40. The Government has argued that the fact early elections in 2017 and 2019 took place means the FtPA has failed in its core objectives; the Act has not made the electoral cycle more predictable. As Rt. Hon. Jacob Rees-Mogg, the Leader of the House of Commons, said to the Procedure Committee on 1 February 2021: "the Fixed-term Parliaments Act turned out to be anything but a Fixed-term Parliaments Act."⁴³

41. Despite its short title, the FtPA was not designed to fix the term of a Parliament regardless of the political context. The long title better explains the intentions of the legislation, namely: "to make provision about the dissolution of Parliament and the determination of polling days for parliamentary general elections; and for connected purposes." It intended only to create, as Sir Stephen Laws, Senior Fellow at Policy Exchange and former First Parliamentary Counsel, put it, a "default expectation" that a Parliament would last its full term, rather than being dissolved four years after the election.⁴⁴

42. The FtPA did not create a fully fixed system as exists for the Norwegian Parliament, or for election to Congress or President in the USA. The Act recognises explicitly, with the early election triggers in section 2, that;

- a) there will sometimes be a broad consensus that an early election is needed (for whatever reason); or
- b) in some cases, an early election must happen because no viable government can retain the confidence of the House of Commons and therefore govern both legitimately and effectively.

43. The 2011 Act's triggers for early elections were a vote of no confidence, expressed in terms prescribed in the Act or a motion for an early general election supported by two-thirds of the membership of the House. (A two-thirds majority was the threshold set out in legislation for triggering early elections to the Scottish Parliament or the then National Assembly for Wales.) The original proposal in the Coalition Agreement, for a 55% threshold for an early general election was slightly less than the combined seat total of the Conservative and Lib Dem Parliamentary parties. The absolute two-thirds majority subsequently contained in the Fixed-term Parliaments Bill could not have been achieved without at least some support from the Official Opposition, given the Commons arithmetic in the Parliament at that time.

42 HC Deb, 22 October 2019, [col 923–926](#). This placed the Bill "in limbo" as it could not begin its Committee Stage and no arrangements were in place for its subsequent stages.

43 Oral Evidence taken before the Procedure Committee on 1 February 2021, HC 300, [Q478](#)

44 Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 24 April 2020, HC 167, [Q5](#)

To what extent did the Act transfer power from the Executive to Parliament?

44. The 2015 Conservative Party manifesto described the FtPA as “an unprecedented transfer of Executive power.”⁴⁵ There was a clear recognition that the changes made in 2011 were significant, in that they located the primary decision-making power with the House of Commons rather than with the Monarch or the Executive. However, in a parliamentary system of government, the difference in practice is less pronounced. The Executive normally commands a majority in the House of Commons, and the circumstances in which an Official Opposition would withhold support for a General Election are relatively rare. As Lord Butler put it:

If the Prime Minister with the agreement of the Opposition decides to shorten Parliament and have a general election, as happened in 2017, that is not difficult to do and, indeed, would normally be the case because the Opposition would not usually pass off the opportunity to get the Government out.⁴⁶

45. It is reasonable to expect that, if a majority Government sought an early election, in the vast majority of cases the House of Commons would grant that request by the requisite statutory supermajority or, failing that, by a simple majority in an override Bill, as happened in 2019.

46. Professor Bogdanor suggested there was a tension in the aims of the Act:

The debate about the Fixed-term Parliaments Act indicates a conflict between two fundamental principles, the principle of parliamentary government and the principle of democratic government. The former principle provides that parliament shall choose the government, which is accountable to it, the second that the people should choose the government, and that government should be accountable to them. Normally, of course, under single-party majority government, [...] the two principles coincide.⁴⁷

The supermajority requirement and the Implications of bespoke legislation in 2019

47. The Government has suggested that the requirement for bespoke legislation to trigger a general election in 2019 proves that the Act failed to provide a coherent system of rules for the holding of elections.⁴⁸ Sir Stephen Laws, who was the First Parliamentary Counsel when the Fixed-term Parliaments Bill was being drafted, has said that the possibility of an override Act was always contemplated.⁴⁹ Lord O'Donnell similarly described the possibility of an override Act as a “safeguard” against gridlock that might otherwise be caused by the supermajority requirement.⁵⁰

45 Conservative Party, [The Conservative Party Manifesto 2015](#), p49

46 Oral Evidence taken before the Constitution Committee on 23 October 2019, HL 121, [Q 18](#)

47 Vernon Bogdanor (Professor of Government at Kings College London) ([FTP0001](#))

48 Oral Evidence taken before the Procedure Committee on 1 February 2021, HC 300, [Q478](#)

49 Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 24 April 2020, HC 167, [Q21](#)

50 Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 24 April 2020, HC 167, [Q21](#)

48. The Early Parliamentary General Election Act 2019 illustrates an important wider point. It is impossible under the UK's current constitutional framework—where Parliament remains legally sovereign—to entrench a supermajority requirement for early UK General Elections. Professor Alison Young, Professor of Public Law at the University of Cambridge, explained such modifications would require changes to the fundamental constitutional principles effectively agreed upon by Parliament and the Courts.⁵¹

49. Unlike a statutory early election motion, the Early Parliamentary General Election Bill 2019 was able to, and did, propose a specific date for the early election. Moreover, it then received the support, at Commons Third Reading, of more than two-thirds of MPs, even though it could have passed with only a simple majority. It was then unanimously approved by the House of Lords with no substantive debate. PACAC suggested that had the FtPA required an early election motion to set polling day, it is doubtful whether a bespoke Act would have been needed at all in 2019, given the eventual levels of support for an early election to be held on Thursday 12 December 2019.⁵² **If there is to be a future replacement for the Fixed-term Parliaments Act consideration should be given to allowing the date of any early election to be stipulated in the motion triggering that election.**

50. **The Early Parliamentary General Election Act 2019 demonstrated the fundamental limits on statutes that seek to regulate the holding of general elections. It is doubtful whether a supermajority requirement can, under our current constitutional arrangements, be enforced unless the House of Lords actively resists an early election Bill. So far as it can be said the Fixed-term Parliaments Act attempted to enforce a supermajority constraint, in practice it did not do so. Moreover, the requirement for an Act of Parliament to override the super majority meant the decision making power no longer rested solely with the elected House. If there is ever a desire to reintroduce fixed-term parliaments the relevant legislation should not contain supermajority provisions.**

Did the FtPA have unintended and/or undesirable constitutional or political consequences?

51. Two distinct but related criticisms have been made about the way the FtPA has operated in practice: especially during the period of minority government after the 2017 General Election. Firstly, the Government and others have argued that:

- a) there was undesirable political gridlock or “paralysis” during that Parliament and especially so in 2019;
- b) the FtPA either caused, or was a contributory factor; and
- c) a prerogative system of dissolution would not have caused or exacerbated gridlock or paralysis in the same way.

51 Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 24 April 2020, HC 167, [Q91](#); [Q188](#)

52 Public Administration and Constitutional Affairs Committee, Sixth Report of 2019–21 Session, [The Fixed-term Parliaments Act 2011](#), HC 167, para 69; Dr Andrew Blick (Reader in Politics and Contemporary History and Head of Department of Political Economy at King's College London) ([FTP0018](#))

Secondly, it has been argued that the FtPA's "no-confidence" mechanism for triggering early elections is flawed in its design and has "muddied the waters" on the operation of conventions to do with confidence and government formation.⁵³

Causes of political gridlock or "paralysis" in the 2017–19 Parliament

52. Under the prerogative system, Prime Ministers would sometimes seek to resolve political gridlock by declaring certain Parliamentary decisions a matter of confidence in the Government rather than by making further political concessions to members of the House of Commons. This was expected to lead to one of three outcomes:

- a) The Government successfully getting its business through Parliament;⁵⁴
- b) The Government being defeated and the Prime Minister requesting a dissolution; or
- c) The Government being defeated and the Prime Minister offering his or her resignation to enable a viable alternative government to be formed.⁵⁵

53. The Government and others have argued that, by removing the second of those three options, the FtPA makes political gridlock more likely. A minority government, or one with only a small notional majority, might struggle to get its business through Parliament, but there could be no viable alternative government. If the House of Commons then also will not sanction an early General Election, what is left is constitutional gridlock. This risk is exacerbated where the House of Commons must approve an election by a supermajority, rather than by a simple majority. PACAC suggested this could leave "the UK without a government that has the legitimate authority to govern."⁵⁶

54. The 2017–19 Parliament was characterised by a combination of highly unusual political conditions, including:

- a) a minority government;
- b) fundamental Brexit policy disagreements
 - i) within the governing Conservative Party
 - ii) between the Conservative Party and its confidence and supply partners, the DUP; and
 - iii) within the Official Opposition, the Labour Party;
- c) backbenchers forming alliances within and across parties to challenge Government policy on the Article 50 process;
- d) a key Brexit deadline being set by EU law (under Article 50) over which neither the Government nor Parliament had direct control.

53 [Q302](#)

54 For example see the vote on the motion "That this House has confidence in the policy of Her Majesty's Government on the adoption of the Protocol on Social Policy", HC Deb, 23 July 1993, col [625](#)

55 For example see Stanley Baldwin's Government's defeat on an amendment to the King's Speech, HC Deb 21 January 1924, col [674](#)

56 Public Administration and Constitutional Affairs Committee, Sixth Report of 2019–21 Session, [The Fixed-term Parliaments Act 2011](#), HC 167, para 81

55. Sir Stephen Laws considered that the FtPA was a major contributor to the instability of the 2019 Parliament:

Giving the House of Commons the opportunity to withdraw confidence from the Government but to keep them in office and not submit itself and the Government to an election produces the situation we had at the end of last year—a Parliament that is unable to operate, that is paralysed.⁵⁷

56. Rt Hon Dame Margaret Beckett MP also considered, even if the FtPA did not itself cause the gridlock of 2019, it was at best of little help in resolving it:

I think the FtPA muddled the waters. It meant people didn't really know quite where they stood. We were in unprecedented circumstances anyway, so it was just another factor that added to the mess.⁵⁸

57. In contrast, Sir Oliver Letwin doubted whether the FtPA was the driver of Parliamentary gridlock in 2019:

I do not believe the present Government's view that [the Act] was the cause of crisis, stasis, inflexibility or whatever. What happened was that there were some very unusual circumstances—much more unusual than coalition. For the first time in modern British history—in fact, the first time in what is effectively parliamentary British history—the Government of the day had a majority and the confidence of the House for everything except for its flagship legislation, or flagship policy. [...] Apart from those circumstances, it worked pretty well. For example, when both Mrs May and Mr Corbyn wanted to have an election in 2017, there was one.⁵⁹

58. Professor Robert Hazell, Professor of Government and the Constitution, University College London, also argued the FtPA contributed little, if anything, to the paralysis:

Even without that Act, we would have had a zombie Government unable to deliver their flagship policy, with a very weak Opposition unable to put the Government out of their misery. [...] it is a travesty to blame its dysfunction on the Fixed-term Parliaments Act.⁶⁰

59. In contrast, Lord Butler suggested that, under a prerogative system, key Brexit votes, such as on the withdrawal agreement and on the EU (Withdrawal Agreement) Bill, would have been designated as matters of confidence. Defeat on those matters, especially by the large margins seen in January and March 2019, he suggested, would have led in short order to a dissolution request, the Monarch granting it, and a General Election being held.⁶¹

60. We acknowledge the political events of 2019 were extreme, and the Fixed-term Parliaments Act was not the sole source of difficulty. There is a risk of gridlock in any system which does not guarantee that a Government can either get its business through or can be sure of securing an election. The extent to which the risk of gridlock is a

57 [Q26](#)

58 [Q302](#)

59 [Q125](#)

60 [Q261](#); See also Dr Andrew Blick (Reader in Politics and Contemporary History and Head of Department of Political Economy at King's College London) ([FTP0018](#))

61 [Qq171–179](#)

price worth paying for the benefits of fixed-term Parliaments is a political judgment Parliament itself must make if a future administration brings forward another piece of legislation to fix parliamentary terms.

Whether the “confidence” provisions in the Act are fit for purpose

61. A great deal of the working of Parliament and government is governed not by statute but by constitutional conventions. The 2011 Act enables a dissolution to take place following a statutory “no confidence” process. If the House of Commons adopts a resolution that states “That this House has no confidence in Her Majesty’s Government” the default position is that an early election will be triggered fourteen days later. It is only if the House of Commons adopts a resolution “That this House has confidence in Her Majesty’s Government” within that statutory window that an early election is averted. The second resolution might plausibly come about by reason of a change of:

- a) Prime Minister;
- b) party or parties in Government; or
- c) policy or political circumstances

62. The operation of this fourteen-day process was not directly tested at any point as the one statutory confidence motion moved was defeated.⁶²

63. The expectation that the Government must command the confidence of the House of Commons is at the heart of the UK’s constitutional arrangements: it is what makes Governments democratic and legitimate. However, this is not a legal requirement; it operates as a conventional constraint on the Monarch’s absolute power to appoint and dismiss a Government. The way that the House of Commons articulates the presence, or absence, of confidence in the Government, historically, was also governed exclusively by convention. In addition to explicit motions of confidence or no confidence, certain regular items of Parliamentary business were regarded as tests of confidence (such as votes on amendments to a Queen’s Speech and votes on Second and Third Reading of a Finance Bill) and Governments could (as mentioned above) designate key policy votes as matters of confidence. The Fixed-term Parliaments Act represented a partial departure from this approach, because it recognised in statute, and gave certain legal effects to, motions of confidence that took a particular form of words.

64. At the time of passing the Act the then Government clearly stated that:

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.⁶³

62 HC Deb, 16 January 2019, [Col 1171–1275](#)

63 Government response to the report of the Political and Constitutional Reform Committee on the Fixed-term Parliaments Bill, [Cm 795](#), November 2010, para 56

65. As PACAC pointed out in a 2018 report, there is nothing in the Fixed-term Parliaments Act that prevents a Government from designating a policy vote a matter of confidence.⁶⁴ What has changed is that defeat on that policy vote would no longer—directly—lead to a dissolution request that a Prime Minister could be nearly certain would be granted.

66. Professor Phillippe Lagassé, Barton Chair at the Norman Paterson School of International Affairs at Carleton University, Canada, argued that the FtPA altered fundamentally the political dynamics associated with designating or recognising a policy vote as being one of confidence:

When you remove the Government's ability to request a Dissolution on a vote of confidence, that drastically changes the Government's willingness to consider certain matters of convention or matters of confidence. When you then add as well the provision that a change in Government occurs through an explicit motion of no confidence, as the legislation did, that further reinforces the argument that was made, and that currently still exists, that matters of confidence that require a change in Government are only those that fall under section 2 of the existing legislation ...⁶⁵

67. Despite the Government's assurance that the FtPA would not change the conventions around confidence, it appears to have done so. Professor Anne Twomey, Professor of Constitutional Law at the University of Sydney, argued that confidence would have operated differently under a prerogative system at key moments in 2019:

The May Government and the Johnson Government faced votes that in any ordinary circumstances would have been regarded as votes of no confidence—they were defeated on absolutely major policies. In the case of the Johnson Government, they were defeated on every single Division from 3 September to 15 October—if that is not losing control of the House, I don't know what is—but in those circumstances they did not resign. [...] the Fixed-term Parliaments Act was used as some kind of a fig leaf to protect their position.⁶⁶

68. Sir Malcolm Jack and Lord Lisvane, both former Clerks of the House of Commons, told us that it was a convention that, if the Official Opposition seeks to put down a motion testing the confidence of the Government, time is made for the motion.⁶⁷ In December 2018 the Leader of Official Opposition put down a motion of no confidence “in the Prime Minister” for which the Government did not allot any time for debate.⁶⁸ A month later, following the loss of a motion on Government's deal to leave the EU, the Prime Minister Theresa May said in the House that:

64 Public Administration and Constitutional Affairs Committee, Fourteenth Report of the Session 2017–19, [The Role of Parliament in the UK Constitution Interim Report The Status and Effect of Confidence Motions and the Fixed-term Parliaments Act 2011](#), HC 1813

65 [Q190](#)

66 [Q 190](#)

67 [Qq38–40](#), see also Erskine May [para 18.44](#): “From time to time the Opposition has put down a motion on the paper expressing lack of confidence in the Government or otherwise criticising its general conduct. By established convention, the Government always accedes to the demand from the Leader of the Opposition to allot a day for the discussion of a motion tabled by the official Opposition which, in the Government's view, would have the effect of testing the confidence of the House.”

68 [HC Order Paper 19 December 2018](#): “This House has no confidence in the Prime Minister due to her failure to allow the House of Commons to have a meaningful vote straight away on the withdrawal agreement and framework for the future relationship between the UK and the EU.

... if the official Opposition table a confidence motion this evening in the form required by the Fixed-term Parliaments Act 2011, the Government will make time to debate that motion tomorrow. If, as happened before Christmas, the Official Opposition decline to do so, we will on this occasion consider making time tomorrow to debate any motion in the form required from the other Opposition parties should they put one forward.⁶⁹

69. The statement that the Government would give preference to a motion from other opposition parties over the Official Opposition was unprecedented. In its response to PACAC's 2018 report the Government took the view that the Act had "codified how motions of no-confidence operate, thereby changing constitutional practice and previous conventions."⁷⁰ The FtPA, the Government said, provided a clear statutory route to test confidence, and it was its view that this is the route that should be used.⁷¹

70. Sir Malcolm said that the Government's position on allotting time in late 2018 and on prioritising statutory motions in the name of minor party leaders over non-statutory motions in the name of the Leader of the Opposition "certainly breaks" the convention on motions of no confidence tabled by the Official Opposition.⁷² Dame Margaret Beckett said that she thought the Prime Minister's comment about precedence for statutory motions was "one of the most outrageous things I had ever heard."⁷³

71. Nothing in the Fixed-term Parliaments Act prevented the House of Commons from debating and voting on a motion of no confidence otherwise than in the terms provided for by the Act. Such a motion may even be more appropriate if it is the House's intention to change the Government rather than to trigger a General Election. But despite the Government's assertion that the Fixed-term Parliaments Act would not change the conventions on confidence, the events of 2019 show that it clearly did so, since confidence motions in the name of the Leader of the Official Opposition were not given time for debate. This removed the previously understood power wielded by the Official Opposition to bring to the floor of the House a motion of no confidence when it is judged necessary to test the will of the House. In addition, the Government was not able to define votes on any of its key policies as confidence votes.

The fourteen-day period under the FtPA

72. The FtPA does not set out what should happen, politically, if a statutory motion of no-confidence is passed in the Government. It only provides that an early general election should take place if the fourteen-day period expires without a statutory motion of confidence having being passed.

69 HC Deb, 15 January 2019, [Col 1126](#)

70 Public Administration and Constitutional Affairs Committee, Thirteenth Special Report of Session 2017–19, [Government Response to the Committee's Fourteenth report: The Role of Parliament in the UK Constitution Interim Report The Status and Effect of Confidence Motions and the Fixed-term Parliaments Act 2011](#), HC 2065, p 3

71 Public Administration and Constitutional Affairs Committee, Thirteenth Special Report of Session 2017–19, [Government Response to the Committee's Fourteenth report: The Role of Parliament in the UK Constitution Interim Report The Status and Effect of Confidence Motions and the Fixed-term Parliaments Act 2011](#), HC 2065, p3–4

72 [Q38](#)

73 [Q306](#)

73. The intention of the Coalition Government was that this fourteen-day process should be used to establish whether an alternative government could be formed.⁷⁴ Whereas previously the Monarch would consider whether (a) the existing Parliament was vital, viable and capable of doing its job and (b) another Prime Minister could be found to govern for a reasonable period with a working majority in the House of Commons, that responsibility would instead rest with the House of Commons.

74. Several witnesses raised concerns about the implications of the statutory period, and the political uncertainty it might create.⁷⁵ In particular, the novel reference in the Cabinet Manual to the possibility of a Government “regaining” the confidence of the House has, as Dame Margaret Beckett put it, “muddled the waters” on the conventions to do with Government formation.

75. Commentators have noted the provisions about the fourteen day period in the Fixed-term Parliament Act raise the possibility that a Prime Minister could refuse to resign during the 14-day statutory process even where it was clear an alternative government could be formed.⁷⁶

76. Although the confidence provisions of the Fixed-term Parliaments Act were never fully tested, they are clearly deficient. Giving statutory effects to some confidence motions, but not others, had the effect of undermining a shared understanding of the conventions on confidence and what the consequences of a loss of confidence should be.

77. A decision by the House of Commons to withdraw its confidence in the Government is one of major constitutional significance. A system which allows a Government formally to regain the confidence of the House after it has been lost diminishes the significance of that decision and fosters further uncertainty. *The statutory fourteen day period in the FtPA serves no useful purpose and should not form part of any future arrangements for dissolving Parliament and calling elections.*

78. *Parliament should in future avoid putting any confidence motions on a statutory footing, or giving them direct legal effects. Doing so is unnecessary and risks disrupting important conventions on the formation and resignation of governments under our wider constitutional arrangements. Those conventions otherwise benefit from flexibility and being able to respond to unusual or unexpected political circumstances. Nonetheless, we recommend that the Procedure Committee of the House of Commons review whether some conventions on this matter would benefit from being expressed in Standing Orders.*

Alternative approaches for replacement of the Act

79. Although both the Conservative and Labour manifestos in 2019 committed, respectively, to “get rid of” and to “repeal” the FtPA, neither party set out the nature of the system with which they proposed to replace it. It was open to the Government, while

74 [Explanatory Notes to The Fixed-term Parliaments Act 2011](#), para 28

75 See, for example, [Q40](#) (Lord Lisvane), [Q189](#) (Professor Twomey) and [Q258](#) (Professor Hazell)

76 Raphael Hogarth, “[The FtPA is a bad law – but it should not be replaced with something worse](#)”, Institute of Government, 27 November 2019

honouring its manifesto commitment, to replace the FtPA with a statutory scheme for the dissolution and calling of Parliaments. Given our statutory remit, we considered it sensible to explore other approaches.

A Continued role for the House of Commons

Amending the FtPA?

80. If the Committee had simply been asked to conduct the statutory review, without a clear democratic steer that the 2011 Act should be repealed it would have recommended, at the least, significant changes to the Act, including:

- a) replacing the Commons supermajority threshold for triggering an early general election with a simple Commons majority;
- b) requiring any early election motion to stipulate when polling day would take place; and
- c) removing the “no-confidence” mechanism by which a general election could be triggered from the statute.

81. This would have had four advantages:

- a) it would have simplified the dissolution rules while retaining a role for the House of Commons;
- b) there would have been no need in future for bespoke legislation to trigger an early general election, restoring confidence in the statutory scheme;
- c) it would have significantly mitigated the risk of political gridlock or “paralysis”, so far as the FtPA had been shown to contribute to it during the events of 2019; and
- d) it would have enabled questions of confidence and government formation to be governed exclusively by constitutional convention, benefiting from the flexibility that comes with such an approach.

A new statutory dissolution power for the House of Commons

82. An amended Fixed-term Parliaments Act would have retained the current position, namely that an early general election can only be held if the House of Commons votes for it. An alternative approach would have been to repeal and replace the Fixed-term Parliaments Act. This would have the benefit of clarity, and would have made it easier to focus scrutiny on the proposals as a whole. There are several ways in which this might have been approached. The FtPA could have been repealed and replaced with a prerogative power, or statutory proclamation power (see below), exercisable subject to a simple majority House of Commons vote. But the key would be that dissolution would be in the hands of the Commons.

A new convention that the Commons be consulted

83. A final option to retain a formal role for the House of Commons in requests for an early dissolution would be to establish a convention that the Prime Minister would not seek an early dissolution without a resolution supporting a request in the House of Commons. This was the proposal recommended in the Governance of Britain white Paper in 2008.

84. Retaining a role for the House of Commons commanded a great deal of support in evidence to this Committee as well as PACAC and the Constitution Committee. A number of reasons were given for preferring a Commons vote of some form. These include the principled constitutional arguments made for the FtPA in when it was passed such as that it at least reduces the incumbency advantage compared to a system where the Prime Minister can choose the time of an early election (see paras 14–29).⁷⁷ The argument was also made by a number of witnesses that a Commons vote would ensure that a decision to dissolve for an early general election would be non-justiciable. Robert Hazell and Meg Russell considered that “if the power of dissolution were left in the hands of Parliament, there would be no possibility of any intervention by the courts, and no need for any ouster clause.”⁷⁸ In a similar vein Lord Sumption told us:

... section 9 of the Bill of Rights forbids the courts to question proceedings in Parliament ... The courts have advanced in many ways the scope of judicial review, but they have always respected section 9.⁷⁹

Dr Andrew Blick suggested such a vote would also insulate the Monarch from being placed in a position of choosing between refusing an inappropriate dissolution request and refusing the advice of a Prime Minister.⁸⁰

85. Requiring a House of Commons vote for dissolution does, however, raise the possibility that situations could arise under a minority government or coalition government, where a Prime Minister wished to call an election but did not receive the backing of a majority of the House of Commons. Dame Margaret Beckett MP noted a vote on dissolution “will certainly be very embarrassing for a lot of MPs who know that they ought to vote for an election but don’t want to, because they fear the personal consequences.”⁸¹ In her view “it could cause complications. That is probably an argument against having a parliamentary vote on whether to have a Dissolution, and leaving it in the hands of the Prime Minister of the day.”⁸² When asked if she was in favour of a Commons vote, Dame Margaret said, “I am not opposed to the idea of a vote in Parliament, but I doubt whether, in the end, it will make all that much practical difference.”⁸³

86. It would be possible to replace the Fixed-term Parliaments Act with a provision requiring a vote in the Commons before Parliament was dissolved. A minority of the

77 [Q262](#); Professor Petra Schleiter (Professor of Comparative Politics at University of Oxford); Dr Thomas Fleming (Lecturer in Politics at University of York) ([FTP0012](#))

78 Professor Robert Hazell CBE, Professor of Government and the Constitution, and Professor Meg Russell FBA, Director of the Constitution Unit in the School of Public Policy at UCL ([FTP0003](#)), see Paul Evans ([FTP0006](#))

79 [Q90](#); See also [Qq21–22](#); Professor Gavin Phillipson (Professor of Law at University of Bristol Law School) ([FTP0020](#))

80 Dr Andrew Blick (Reader in Politics and Contemporary History and Head of Department of Political Economy at King’s College London) ([FTP0018](#))

81 [Q 312](#)

82 [Q326](#)

83 [Q312](#)

Committee argues this would be the simplest and most obvious way of protecting the Monarch from being dragged into party political debate. The majority considers it a change which would only have a practical effect in a gridlocked Parliament, which could mean denying an election to a Government which was unable to function effectively, and which might therefore be counter to the public interest.

New statutory powers

87. Repeal of the Fixed-term Parliaments Act could involve the creation of new statutory powers exercisable by the Monarch or even directly by the Prime Minister. This approach would have been similar in form to that adopted by other Westminster-derived constitutional systems, notably including Australia, South Africa and Ireland, where the role of the Heads of State in dissolving all, or part of, the legislature is set out in the Constitution, although of course each set of powers must be seen in the context of its wider constitutional settlement.⁸⁴

88. Professor Alison Young suggested that a statutory scheme would be more accessible and readily understandable for non-lawyers than reverting, by historical reference, to the prerogative:

This is an important constitutional piece of legislation. It is important [...] to understand how these provisions work. To set that out very clearly on the legislation would make it very clear to the general public what the powers for the Dissolution of Parliament are and how they operate, which is not as clear when you say, “The powers as they were, exercised under a prerogative power that you may or may not know about in 2010, are to be revived.”⁸⁵

Many of the questions arising from the Government’s approach, which are discussed in detail in Chapters 3 to 5 of this Report, are relevant to these powers, so we simply mention alternative approaches here: to consider each in detail would duplicate our work, and it seems best to focus on the draft Bill. Nonetheless, we wished to record other possible approaches.

A statutory proclamation power

89. A statutory scheme could but need not have, in substance, replicated exactly the legal rules underpinning the prerogative system of dissolution. For example, a statute could have said something as straightforward as:

Her Majesty may, by proclamation, dissolve Parliament before the expiry of its maximum term.

90. It would be possible to provide that the power (a) can only or (b) must be exercised on the recommendation of the Prime Minister, and to place limits on the circumstances in which the Prime Minister might make such a request.

84 Professor Robert Hazell CBE, Professor of Government and the Constitution, and Professor Meg Russell FBA, Director of the Constitution Unit in the School of Public Policy at UCL ([FTP0003](#))

85 [Q5](#)

91. This approach would raise questions about the extent to which the Monarch could legitimately refuse to exercise her power to dissolve Parliament which would be similar to those discussed in more detail below.

Statutory power of the Prime Minister

92. Alternatively, an Act would confer a statutory power on the Prime Minister to dissolve Parliament, whether by a form of written declaration or by way of a statutory instrument. The Monarch would not be involved even formally. Acts of Parliament have specifically empowered the Prime Minister to take a particular course of action before (e.g. the *EU (Notification of Withdrawal) Act 2017*).

93. This would have the advantage of making it clear where power lay, but would rely on convention to ensure that the power was exercised responsibly. It might be felt that there should at least be some judicial oversight of such explicit executive power.

The return to the status quo ante

94. The Government has chosen to legislate to return what it calls the “tried and tested” system that existed before 2011. However, its draft repeal Bill selectively preserves, and in other cases even develops further, arrangements that have been introduced by the 2011 Act or subsequent legislation. These include (for example):

- a) maintaining the 25 working day statutory election period (which replaced the 17 working day election period from 2013);
- b) making more flexible rules for polling day in the event of the demise of the Crown;
- c) removing some legal uncertainty about the timing of when election writs are taken to have been received; and
- d) ousting, via statute, the possibility of relevant prerogative powers being judicially reviewed.

95. Given that the Government has proposed not simply to revert to the status quo ante, but in some respects to develop or refine it, we have also considered whether or not there are other improvements to the law around elections which should be included in the legislation, or considered more widely.

3 The Government's Draft Bill

Publication of the Government's proposals

96. The Government published its proposals for what should replace the Fixed-term Parliaments Act 2011, the Draft Fixed-term Parliaments Act 2011 (Repeal) Bill on 1 December 2020. This took the form of:

- a) a draft Bill with associated draft Explanatory Notes; and
- b) a document entitled "Dissolution Principles".

The draft Bill is dealt with in this chapter and the Dissolution Principles are addressed in chapter 5.

Summary of the draft Bill's proposals

97. In short, the Government's main proposals are:

- a) to repeal the Fixed-term Parliaments Act 2011;
- b) to restore (what were, prior to the FtPA) the Monarch's formal powers to dissolve Parliament, to call a new Parliament, and powers exercised incidentally in connection with them, such as the preparing and issuing of election writs;
- c) to prevent the courts from exercising oversight over decisions to do with both dissolution and the calling of Parliaments by way of an ouster clause;
- d) to return to a maximum Parliamentary term of five years, calculated from the point when that Parliament first met; and
- e) to give the Government the ability to delay polling day by as little as 7 days, or as much as 21 days, following the demise of the Monarch (currently the delay is simply 14 days).

The short title of the draft Bill

98. A common criticism of the *Fixed-term Parliaments Act 2011* was that it was "misleadingly named" because it did not in fact seek to introduce wholly "fixed-terms" for Parliament.⁸⁶ The possibility of an early election was expressly contemplated and even provided for, and the system is more accurately described as one with semi-fixed terms, as events since 2015 have illustrated.

99. Some observers, similarly, have been critical of the proposed short-title for the Government's repeal legislation: the "*Fixed-term Parliaments Act 2011 (Repeal) Act 2021*".⁸⁷ Paul Evans, a former House of Commons Clerk, said of it:

86 Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 2 June 2020, HC 167, [Q70](#)

87 Paul Evans ([FTP0006](#))

It was a mildly amusing treat to be able to tell students before 2011 that the maximum duration of a Parliament of five years was set out in something called the “Septennial Act”. It seems unwise to carry the joke on into the future—especially since it would no longer be funny.⁸⁸

100. Professor Robert Hazell and Lord Hennessy also considered the title undesirable for “what will be a fundamental constitutional statute”, suggesting respectively, a title like the “Dissolution and Duration of Parliament Bill” or “the Confidence Act.”⁸⁹

101. *The Government should adopt a title—and in particular a short title—that more fully encapsulates the subject matter and future function of the legislation. We recommend the Bill should be entitled the Dissolution and Summoning of Parliament Act. The draft legislation would not, after all, simply repeal the Fixed-term Parliaments Act (that is achieved by clause 1 alone), but replace its provisions.*

Clauses 1 and 2: repeal of the FtPA and provision about the prerogative

102. The first two clauses of the Bill work together: Clause 1 simply repeals the Fixed-term Parliaments Act, Clause 2 makes provision as follows:

The powers relating to the dissolution of Parliament and the calling of a new Parliament that were exercisable by virtue of Her Majesty’s prerogative immediately before the commencement of the Fixed-term Parliaments Act 2011 are exercisable again, as if the Fixed-term Parliaments Act 2011 had never been enacted.

(2) For the purposes of subsection (1), the powers relating to the calling of a new Parliament include powers to order the issue of—

(a) writs of summons to attend the House of Lords, and

(b) writs for parliamentary elections (see rule 3 in Schedule 1 to the Representation of the People Act 1983).

The legal debate on reviving prerogatives

103. It is clear that it would be impossible to simply repeal the Fixed-term Parliaments Act, as to do so would cause legal uncertainty. Instead, the Government has instructed the courts to act as if it had never been passed.

104. This is a novel approach. While governments have frequently legislated to supersede prerogative powers in the past, this is the first statute intended to revive prerogative powers. The unique nature of this legislation has prompted a debate about whether it is, in fact, legally possible to legislate for a return to prerogative powers.

105. A central difficulty is uncertainty over whether the FtPA abolished the prerogative power of dissolution or simply put it into abeyance so that it could be revived. Both the Constitution Committee and PACAC considered this issue in their respective inquiries

88 Paul Evans ([FTP0006](#))

89 [Q258](#)

and set out the arguments in detail in their reports on the Act.⁹⁰ Professor Gavin Phillipson, Professor of Law at Bristol University, argued that a fundamental tenet of the UK Constitution, that Parliament is sovereign, meant that “a sovereign parliament must be able actually to abolish—to ‘unmake’ —prerogative powers, not merely place them into temporary suspension.”⁹¹ Powers which were abolished could not be restored.⁹² We also heard the contrary, that the sovereignty of Parliament requires that Parliament, in fact, be able to revive the prerogative otherwise the House of Commons that passed the FtPA would have effectively bound its successors. Robert Craig, Law Lecturer at Bristol University, told us that: “The fundamental and orthodox principle that a current parliament can completely unmake a previous Act of Parliament is therefore directly at stake.”⁹³

106. Philippe Lagassé argued that the abolition model would mean there would be a legal vacuum if legislation that had replaced the prerogative power was repealed without a substitute law—citing as an example that repeal of the FtPA without further legislation would mean there was no mechanism to dissolve Parliament.⁹⁴

107. In contrast, Professor Twomey noted the likelihood of unintended consequences if the abeyance model was adopted, particularly in terms of returning power to the Executive. If repealing statutory powers meant that long forgotten prerogatives were restored. Governments might be able to claim “‘Look, I suddenly have a prerogative to pressgang people’ or to do any of those sorts of things that we all thought had disappeared a long time ago.”⁹⁵

108. Lady Hale, former President of the Supreme Court, agreed with Professor Young that the language of the FtPA “reads as if it abolishes the [prerogative] power to dissolve Parliament” but noted that there was some ambiguity “on the calling of a new Parliament; it [the FtPA] simply fixes the time for general elections” and therefore did not feel in a position to come to a conclusion on the question.⁹⁶ Lord Sumption, former member of the Supreme Court, however, thought it was “pretty clear that the Fixed-term Parliaments Act abolished the old common law prerogative”⁹⁷ as “if Parliament... put[s] what used to be a common law power on a statutory basis, the effect is that the common law power no longer exists; it is subsumed in the statute. I do not think you can have the two sources running by side.”⁹⁸ Similarly Sir Stephen Laws said that “Section 3(2) says: ‘Parliament cannot otherwise be dissolved’. That comes as close as I can see to abolishing it”.⁹⁹

90 Constitution Committee, 12th Report of Session 2019–21, [A Question of Confidence? The Fixed-term Parliaments Act 2011](#), HL121, paras 32–39 ; Public Administration and Constitutional Affairs Committee, Sixth Report of the Session 2019–21, [The Fixed-term Parliaments Act 2011](#), HC167, paras 36–51

91 Professor Gavin Phillipson (Professor of Law at University of Bristol Law School) ([FTP0020](#))

92 Daniel Greenberg (Counsel for Domestic Legislation, Office of Speaker’s Counsel at House of Commons) ([FTP0010](#))

93 Mr Robert Craig (Lecturer in Law at University of Bristol) ([FTP0019](#))

94 [Q199](#)

95 [Q198](#); see also Dr Alan Greene (Senior Lecturer at Birmingham Law School) ([FTP0009](#))

96 [Q76](#)

97 [Q76](#)

98 [Q78](#)

99 Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 24 April 2020, HC 167, [Q15](#)

Does the abolition/abeyance distinction matter? Can the prerogative be revived regardless?

109. Some of our witnesses were of the view that the unresolved question of what happens to the prerogative when the statute got rid of it is repealed meant it would be unclear whether the powers in the draft Bill were based in statute or in the common law of the prerogative, leading to legal uncertainty. Professor Anne Twomey described the problem as she saw it: “Parliament may, by enacting a statute, abolish the prerogative. If it does so, it cannot create a new prerogative, or revive it as prerogative, because by definition a prerogative is a non-statutory Executive power. But if the source of this power is now statute—if it is statute that does ... the revival—then it is, of its nature a statutory power.”¹⁰⁰ Similarly Daniel Greenberg, Counsel for Domestic Legislation, Office of Speaker’s Counsel, House of Commons, told the Committee;

The reality is that the restored prerogative powers of dissolution of Parliament will now owe their continued life to a statute, namely section 2(1) of the Draft Bill. That Bill if enacted will direct the courts to behave as if the prerogative power were not converted into a statutory one but had never been diminished. But as a matter of incontrovertible historical fact the continued power of dissolution vested in the Crown will now be owed to statute, simply because it was previously diminished, and then restored, by statute.¹⁰¹

110. Professor Young summarised the importance of the source of a law [legal power] as follows:

... even if the content is the same, the courts will deal with statutory powers and prerogative powers in slightly different ways [...] when the courts are dealing with a statutory power, they often have legislation setting out the way in which a particular power is meant to be exercised. By definition, that legislation is not there when you are dealing with a prerogative power, because the prerogative’s source is in the common law. That means that, for example, the principle of legality may apply slightly differently. There is also case law suggesting that judicial review, when looking at fettering of discretion, for example, applies differently, because there is no legislation setting out a discretionary power when we are looking at a prerogative.¹⁰²

Revival of the prerogative: the Government’s approach

111. The Government has clearly accepted that there is the potential for uncertainty in this area because the draft Bill both repeals the FtPA and replaces it, rather than opting for bare repeal.¹⁰³ Its position, therefore, is that it does not, for practical purposes, matter whether the prerogative is capable of revival as any legal uncertainty is resolved because the legislation is clear that revival of the pre-2011 constitutional arrangements is the

100 [Q195](#)

101 Daniel Greenberg (Counsel for Domestic Legislation, Office of Speaker’s Counsel at House of Commons) ([FTP0010](#))

102 [Q2](#)

103 Rt Hon Michael Gove MP (Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office at Cabinet Office) ([FTP0024](#))

statutory intention.¹⁰⁴ This position received strong support from Sir Stephen Laws, who described the revival debate as an “interesting academic question” but fundamentally a “red herring because for practical purposes, it is perfectly plain that the intention of the Act is to restore the situation to what it was before the 2011 Act, and therefore the law will then be indistinguishable from what it was before.”¹⁰⁵

112. Lord Sumption, a former member of the Supreme Court, supported the Government’s position due to the drafting of clause 2:

“clause 2 requires the courts to act as if the Fixed-term Parliaments Act had never been enacted. This is a deeming provision: they are required to pretend that it never happened, and if it had never happened, the prerogative would still be there.”¹⁰⁶

Lord Sumption qualified his support by noting that the question of abolition of the prerogative “might matter if it enabled one to say that the power to dissolve had become a statutory power instead of a prerogative power [...] but I do not think that that is the case because of the way clause 2 is formulated.”¹⁰⁷

113. This Committee, unlike PACAC and the Constitution Committee, has had the benefit of seeing the draft Bill before reaching its conclusions on this issue. This has allowed us to assess, in a less abstract context, whether the Government’s form of repeal *and replacement* has the effect of reviving or otherwise reinstating prerogative powers to do with dissolving and calling Parliaments.

114. Sir Stephen Laws argued that the Government’s approach was the best way of returning to the status quo ante:

I think what the Government is trying to do, as we have discussed, is reproduce the position before the 2011 Act was passed, and the securest way to do that is not to try to do something else that might be neater but would be different. The provision says exactly what it wants: to go back to where we started. Setting out expressly what that is thought to be only creates the room for somebody to argue that what the new Act says is different in some way from what the position was before. I have always thought the best way to draft anything is to say exactly what you mean, and that is what this clause does. It says, “The position is to be the same as it was before,” as if it had never been changed.¹⁰⁸

115. Lord Butler considered the position before the FtPA was clear:

the Prime Minister could ask the Queen to dissolve Parliament either at the end of the five-year term, or at such earlier time as seemed necessary because the Government had lost the support of Parliament or needed a mandate from the electorate for some other reason.¹⁰⁹

104 Rt Hon Michael Gove MP (Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office at Cabinet Office) ([FTP0024](#))

105 [Q1](#)

106 [Q77](#)

107 [Q77](#)

108 [Q5](#)

109 [Q146](#)

116. Dame Margaret Beckett was also comfortable with the Government's approach:

I gather that there are people who say that you can't just go back—you can't restore a convention—but I don't know why not. We have an unwritten constitution. In my view, you can do almost anything if there is the parliamentary support for it. The system seemed to me relatively simple and straightforward. It is not as if it was complicated. Explaining the Fixed-term Parliaments Act is complicated and difficult, but the status quo ante was not complicated and difficult; it was relatively straightforward.¹¹⁰

117. The *legal* powers under the prerogative of dissolution and calling of Parliaments were legally uncomplicated prior to the FtPA.

- a) The Monarch could dissolve Parliament by proclamation at any time before the expiry of its maximum term;
- b) The Monarch had discretion as to when to summon¹¹¹ a new Parliament by proclamation, provided that they did so within three years of the dissolution of the last Parliament; and
- c) Election writs could be and were prepared and issued immediately following a proclamation summoning the new Parliament.

118. **Although the relevant prerogative powers of the Monarch are not expressly stated in the Government's draft Bill, their legal nature and scope are widely accepted and straightforward to explain. As long as there is clarity about what these rules are, and how the exercise of prerogative powers is governed by constitutional conventions to do with dissolution, calling of Parliaments, confidence, and government formation, this statutory approach is likely to be effective. We accept that, if the Government wants to return to the status quo ante, doing so by historical reference may aid certainty as to its legal intentions.**

119. **The evidence we have heard suggests that the drafting of clause 2 of the draft Bill is sufficiently clear to give effect to the Government's intention of returning to the constitutional position, in substance if not necessarily in form, before the passing of the Fixed-term Parliaments Act 2011. The potential legal uncertainty created by passing the Bill as currently drafted, as to the source of the power to dissolve parliament, would only become relevant for practical purposes if the question of dissolution was considered by the courts. We consider this issue at paragraphs 146 to 175 below.**

Implications of returning to a prerogative system- transfer of power from the House of Commons to the Government

120. The Fixed-term Parliaments Act 2011 gave the House of Commons statutory control over early general elections. The draft Bill would remove this. This is a reversal of a recent trend across all the main political parties which has seen varying promises to enhance the control of MPs over the use of the prerogative power to dissolve Parliament. As set out

110 Q292

111 c. 2(1) of the draft Bill refers to the "calling" of parliament while s.3(4) of the FtPA 2011 refers to the "summoning" of Parliament. The terms, for all practical purposes, mean the same thing. Proclamations made by the Monarch have typically referred to "calling" a new parliament, whereas most legislation about elections has referred to "summoning" it.

in Chapter 2, the Fixed-term Parliaments Act, by removing the Monarch's prerogative to dissolve parliament and making the House of Commons the primary decision maker in triggering an early election, transferred a significant amount of power from the Monarch and Government to Parliament. This was recognised in the 2015 Conservative Party manifesto which listed as one the Party's achievements that the Act was "an unprecedented transfer of Executive power".¹¹²

121. Lord Butler was in favour of increasing parliamentary control over the prerogative, but thought the prerogative power to dissolve was the "one exception. In this case, the way that things work with the prerogative, with the politicians having to work this out and with the Queen as a last resort that never has to be invoked, creates a more flexible situation, and I think that works."¹¹³

122. Michael Gove, the Chancellor of the Duchy of Lancaster, accepted that the draft Bill would mean a transfer of power from the House of Commons to the Executive, but described the (potentially) greater frequency of elections as "a transfer of power back to the people."¹¹⁴ Mr Gove went on:

I think that the recent experience of the 2017 to 2019 Parliament shows what can happen when Parliament, for a period, withdraws the ability of the Prime Minister to seek a Dissolution, but at the same time resolves to block the Prime Minister when she is trying to bring forward appropriate legislation. In that sense, for democracy to work, we need to recognise the absolute supremacy of the Crown in Parliament, but we also need to recognise the way in which appropriate checks and balances ultimately depend on the people being the court of final resolution. That is why Governments should be able to request a dissolution when they are not able to get their business [...] ultimately, what I think we are talking about here is the effectiveness and responsiveness of our democratic system overall.¹¹⁵

123. The Government's draft Bill transfers the power to determine whether or not there should be an early election from the House of Commons to the Crown. The Prime Minister will choose the time at which he or she will request a dissolution and the Monarch will decide whether to grant that request. But ultimately elections ensure the electorate—the ultimate authority in a democratic system—has the opportunity to exercise its judgment.

The role of the Monarch

124. By reverting to a prerogative system, the Government proposes to restore, at least formally, legal powers to the Monarch. Any legally binding decision to dissolve Parliament and/or to summon a new one would be taken by the Monarch. She would issue a proclamation to that effect. The decision would not, as such, be taken by the Prime Minister.

125. In practice it would only be in very extreme circumstances that a request would be refused. There are no known examples in the 20th century of a UK Prime Minister's

112 Conservative Party, [The Conservative Party Manifesto 2015](#), p49

113 [Q168](#)

114 [Q351](#)

115 [Q352](#)

dissolution request actually being refused by the Monarch.¹¹⁶ As far as we can tell, since the Second World War, UK Prime Ministers only requested a dissolution once it was very clear the Monarch would grant it.¹¹⁷

126. Even so, Lady Hale told us that “classically, the Monarch has had discretion in the matter” at the very least where the Prime Minister lacks the confidence of the House of Commons and where the Monarch can rely on being able to ask someone else to form a Government.¹¹⁸

The operation of the prerogative

127. One of the reasons, as Professor Anne Twomey pointed out, for the uncertainty about the operation of a prerogative system of dissolution, is that most of the actions and representations made by the Monarch take place in private:

In relation to monarchs and exercising reserve powers, nearly always it happens without ever being formally done. There is no formal rejection of a Dissolution, because it is all done informally by hints, suggestions and queries. “Is that wise, Prime Minister? Would it really be appropriate to do this now?” That is how the reserve powers work in practice. We really cannot say whether that has been exercised during Her Majesty’s reign, so I would not be suggesting at all that the power had in any way disappeared.¹¹⁹

128. Both Professor Alison Young and Sir Malcolm Jack also made similar observations about the inherent lack of transparency underpinning a prerogative system.¹²⁰

When might a dissolution be refused?

129. There was some indication of the circumstances in which the Monarch might refuse a request to dissolve Parliament. The Lascelles Principles used to be taken to be a reliable guide as to the nature of the Monarch’s veto over dissolution from 1950 to at least the 1990s.¹²¹ Sir Alan Lascelles, the then King’s private secretary, posited pseudonymously in *The Times* that a wise Sovereign would only refuse a dissolution request if he or she were satisfied that:

- a) The existing Parliament was “vital, viable and capable of doing its job”;
- b) A general election would be “detrimental to the national economy”; and
- c) He or she could “rely on finding another prime minister who could govern for a reasonable period with a working majority in the House of Commons.”¹²²

116 There are examples of requests being refused in other Commonwealth countries, notably in Canada in 1926, South Africa in 1939 and of a Prime Minister being dismissed for refusing to ask for a double-dissolution in Australia in 1975.

117 [Q150](#)

118 [Q82](#)

119 [Q184](#)

120 [Qq5–6, Q37](#)

121 Peter Hennessey, *Distilling the Frenzy*, 2013, p207

122 [Senex letter] *The Times*, May 2 1950; See account in Peter Hennessey, *The Hidden Wiring*, 1995, p 60–61

130. Lord Hennessy, Attlee Professor of Contemporary British History, Queen Mary University of London,¹²³ has said that, the 1990s onwards it was sufficient to say that a Monarch could refuse a dissolution if the Parliament remained vital, viable and capable and that an alternative government could carry on for a reasonable period of time with a working majority in the Commons.¹²⁴

131. In February 2010 the then Government published the draft Cabinet Manual Chapter for consultation. This said that before granting a dissolution request in a hung Parliament (especially one made early on in a five-year Parliamentary term):

the Monarch would normally wish the parties to ascertain that there was no potential government that could command the confidence of the House of Commons before granting a dissolution.¹²⁵

132. We also explored the circumstances in which such a request for dissolution might be refused by the Monarch's representative in Commonwealth countries. Professor Twomey identified three main situations where a Monarch might credibly refuse a dissolution request, based on the experiences of both the UK and of other Commonwealth countries where the decision to dissolve Parliament formally rests with the Monarch or a vice-regal officer. The first of those was that:

If an election has been held very recently and another Government can be formed, a defeated Prime Minister does not have the right to keep on having new elections until the voters give him or her a win. Parliament has to be allowed to be able to operate, and the vote of the people in the election has to be taken seriously.¹²⁶

133. Lord Hennessy similarly observed that, had Edward Heath sought to carry on governing after the February 1974 election, and had then lost a vote on an amendment to the Queen's Speech, the expectation would have been that he would resign rather than that he would make a further dissolution request.¹²⁷

134. Professor Twomey also considered a dissolution request might be refused if the Government would run out of supply between dissolution and the State Opening of the new Parliament, the Monarch might refuse the request, (or delay agreeing to it until Parliament had provided adequate money cover). Professor Twomey noted:

This is primarily a problem in other countries where you have an upper House that can block supply, so it has been an issue in Australia.¹²⁸

135. Professor Twomey's third example of when a dissolution might be refused was where there has been "a shift of majority" and because of some emergency an election might be damaging for reasons such as a pandemic, war or economic crisis:

123 Lord Hennessy is also a member of the House of Lords Constitution Committee

124 Peter Hennessy, *The Prime Minister*, 2001, p 21

125 The Draft Cabinet Manual "Chapter 6 Elections and Government Formation" can be found: Justice Committee, Fifth Report of Session 2009–10, Constitutional processes following a general election, HC 396, [Ev 23](#)

126 [Q183](#); In British Columbia in 2017 the incumbent Government was defeated on its speech from the throne (the Canadian equivalent of the Queen's Speech) following a general election. Like Stanley Baldwin in 1924, rather than seeking a further dissolution following such a defeat, the incumbent Premier instead resigned. The Leader of the Opposition was then invited to form a Government.

127 [Q226](#)

128 [Q183](#)

The Monarch is far more likely to grant a Dissolution, because it is almost always better to ask the people to choose who the Government is. It would only be in those circumstances where, for one reason or another, holding an election at that time would be damaging. This goes back to the Lascelles principles, whereby it is likely that a shift in a majority would result in a baton change without an actual election.¹²⁹

Drawing the Monarch into political matters

136. Personal prerogative powers present an inherent challenge for constitutional monarchies. For the Monarch to be an effective safeguard against the abuse of prerogative powers by the Executive, the Monarch must actually feel able to exercise, or indeed refuse to exercise, those powers. Even if he or she does not then actually use those powers, the possibility that he or she might, can shape and influence the behaviour of others. The dilemma is that, in exercising or refusing to exercise personal prerogative powers and doing so contrary to the wishes of the Government of the day, a Monarch would inevitably be drawn into matters of party-political controversy.

137. Sir Malcolm Jack was keen to draw a distinction between keeping the Monarch out of all political controversy, and, more narrowly, keeping her out of matters of party-political controversy:

the Monarch is not drawn into party politics, but the Monarch is certainly drawn into politics. These decisions, under the Lascelles principles, are matters of politics, and so the Monarch is drawn into politics but not into party politics.¹³⁰

138. In the case of dissolution, Dame Margaret Beckett reached the view that the Monarch's veto is worth having even if its use appears extremely unlikely:

To be honest, I think it is really hard to envisage circumstances in which the Queen would be wise to refuse a Dissolution. Consequently, that is probably how she would be advised and how she would behave. Now, you could say that means that the personal prerogative is consequently useless, but there could be an extreme circumstance—it would certainly be a political earthquake if the Queen were to refuse such a Dissolution—so I do not think it pointless to have it.¹³¹

Effect of Monarchical powers on political behaviour

139. The perceived value of a Monarch's veto seems less to be in the prospect that it will be exercised, and rather more that it discourages certain behaviour before a contentious decision ever has to be taken. This has sometimes been referred to as the "good chaps" theory of the constitution.¹³² One of the clear arms of the "good chaps" theory is that Prime

129 [Q183](#)

130 [Q49](#)

131 [Q310](#)

132 [Q220](#), Clive Priestley, 'Promoting the efficiency of central government', in Arthur Shenfield et al., *Managing the Bureaucracy* (Adam Smith Institute, London, 1986), p.117; Peter Hennessy, "'Harvesting the Cupboards': Why Britain has Produced no Administrative Theory or Ideology in the Twentieth Century", *Transactions of the Royal Historical Society* 4 (1994), pp.203–219, p.205.

Ministers, Ministers, Governments and Parliamentarians will conduct themselves in such a way as not to expose the Monarch to matters of political controversy, or to perceptions of partial decision-making. By giving the Monarch a formal role, and sometimes even discretionary decision-making power, those subject matters ought then to become ones where politicians behave more cautiously, having regard to constitutional principle. This implies, for example, that a Prime Minister should not make a dissolution request if it is made simply to avoid forthcoming changes in electoral boundaries.

140. Some have expressed doubts about the sustainability of the “good chaps” theory of Government, especially in light of the September 2019 Prorogation dispute.¹³³ In late August 2019, while Parliament was in recess, the Monarch acceded to a draft Order in Council prepared by the Government which purported to prorogue Parliament for five weeks: the longest proposed period of prorogation since the early 1930s. The Order in Council, and the advice underpinning it, were later found to be unlawful by the UK Supreme Court.¹³⁴ Lord Hennessy said to us:

I was horrified by the Prorogation story of August 2019; I really did feel the Queen should not have been put in that position.¹³⁵

141. Dame Margaret Beckett suggested to us that the Palace might be less willing to go along with a controversial prorogation proposal in future, having been through that experience in 2019.¹³⁶

142. The Dissolution Principles document describes both the powers to dissolve and to summon a Parliament as “personal” prerogatives. We understand the Government’s position to be that the Monarch’s power to refuse a dissolution would be a real one. If this is the case we believe that although it is unlikely that a Prime Minister’s request for a dissolution would be refused, the powers of the Prime Minister to fix the time of an election should not be unlimited and there would be some check on Executive power. If the Government wishes to restore the Monarch’s personal prerogative fully, it needs to revise the language in its dissolution principles, so that it is clear the Prime Minister has no power to advise a dissolution, but only to request one. The Government should replace references to “advice” on dissolution with “requests” for dissolution since the Monarch must accept Prime Ministerial advice.

Should the draft Bill seek to capture constitutional conventions on dissolution?

143. It was suggested to us by Professor Alison Young and Lord Hennessy that the Monarch’s role might be clarified by including references to the Lascelles principles, or related constitutional conventions, in statute.¹³⁷ Comparisons were drawn with the Scotland Act and the Government of Wales Act, both of which contain a statutory recognition of the Sewel or legislative consent convention. The statutory recognition emphasises the importance of the conventions in making the constitutional arrangements

133 [Q237](#); See also Andrew Blick and Peter Hennessy, [Good Chaps No More? Safeguarding the Constitution in Stressful Times](#), Constiution Society,

134 *R (Miller) v Prime Minister and Cherry v Advocate General* [2019] [UKSC 41](#)

135 [Q237](#)

136 [Q310](#)

137 [Q17](#), [Q224](#)

work, without going so far as to turn the conventions into enforceable legal rules for the courts to interpret and apply. Both acknowledged there are difficulties in practice articulating conventions in this way.

144. In almost every case, a Prime Minister’s request for a dissolution would be granted. It is after all a request to put the matter in the hands of the electorate. Nevertheless, it is conceivable that there are some extreme circumstances in which such a request would be inappropriate. One such instance might be where a Prime Minister, having lost a majority in the Commons in a general election, sought a further election before an alternative government could be formed. If the Monarch’s role in dissolution is indeed to be more than purely ceremonial, there should be clarity about at least some of the circumstances where exercising a veto would, or at least could, be constitutionally appropriate. Although some uncertainty is inevitable, because of the very nature of a prerogative system and our constitutional monarchy, Parliament and the public should have a clear sense of why a Prime Minister cannot always expect to be granted a dissolution. Any situation in which the Monarch feels it is necessary to refuse a dissolution would place both the person and institution of the Monarch at the centre of an issue of political controversy. This is a serious and central responsibility of the Monarch that should not be lightly used or shied away from.

145. The Government should consider further how best to articulate the role of the Monarch in this process, to build trust in the prerogative system they wish to implement. At the least, any revision of the Cabinet Manual should, unlike the initial Dissolution Principles document, address much more directly how the Monarch’s veto operates in practice.

Clause 3: The ouster clause

146. An ouster clause is a provision in statute that puts any exercise of the powers contained in the legislation beyond the jurisdiction of the courts, regardless of whether it is lawful or unlawful. Ouster clauses have rarely been used by governments and have not previously been successfully upheld in the courts.¹³⁸ The courts recognise, however, the doctrine of non-justiciability, where an issue is inherently political in nature and there are no legal standards against which to judge its legitimacy, but non-justiciability is determined by the courts themselves, not imposed by statute.¹³⁹

147. Clause 3 of the draft Bill sets out the following:

Non-justiciability of revived prerogative powers

A court of law may not question—

- (a) the exercise or purported exercise of the powers referred to in section 2,
- (b) any decision or purported decision relating to those powers, or
- (c) the limits or extent of those powers.

¹³⁸ For example, *Anisimic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 and *R (Privacy International) v Investigatory Powers Tribunal & Ors* [2019] UKSC 22

¹³⁹ See for example, *R (on the application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs* (No. 2) [2008] [HL 61](#)

148. The Explanatory Notes state:

Clause 3: Non-justiciability of revived prerogative powers of law

15 Clause 3 confirms that the exercise (or purported) exercise of powers relating to the dissolution of Parliament, and the calling of a new Parliament, is non-justiciable. The long standing position is that the exercise of the prerogative power to dissolve Parliament is not justiciable (see *Council of Civil Service Unions v Minister of State for Civil Service* [1985] AC 374, per Lord Roskill). This provision is included for the avoidance of any doubt that may arise.

16 Clause 3 also covers the preliminary steps and any decisions (or purported decisions) leading to dissolution of Parliament. This would include advice from the Prime Minister to the Monarch, as well as the exercise of the power itself.

17 Clause 3 further provides that the courts cannot consider the limits or extent of those powers. This is to address the distinction drawn by the Supreme Court in *Miller v The Prime Minister, Cherry and Others v The Advocate General for Scotland* [2019] UKSC 41 as regards the court's role in reviewing the scope of a prerogative power, as opposed to its exercise. It seeks to clarify that neither is justiciable in the context of decisions relating to dissolution.

149. From this it is clear the Government asserts that the Bill states the commonly held legal position, and is merely for avoidance of doubt, and also takes into account recent judgments. In fact, this attempt to ensure that matters relating to the exercise of the prerogative are not justiciable is controversial and it provoked discussion among our witnesses. There were questions raised as to whether such a clause would be proper, whether it was desirable, and whether, if such a clause were desirable, the drafting was appropriate.

150. Some of our witnesses argued that to oust the courts' jurisdiction in this way the Government and Parliament would be seeking to shackle the development of administrative and constitutional law, as Tom Hickman QC put it:

“if [...] the courts do ever need to assert [‘ ...] jurisdiction it could well be in circumstances in which democracy is under great stress, and I reiterate these would be circumstances in which Parliament itself has been dissolved and thus provides no check. The courts would be stepping into protect Parliament.”¹⁴⁰

151. John McGarry, Senior Lecturer in Law, considered

the courts would only be likely to rule on the most egregious cases involving an abuse of the dissolution power and these are surely the very cases from which they should not be excluded;

such clauses put the relationship between the judiciary, the executive and the legislature under unnecessary strain and are contrary to the rule of law.¹⁴¹

152. Lord Butler also had reservations about the ouster clause, since “to have in legislation something that says we are not going to allow the courts under any circumstances to be involved is undesirable. It is something that should not happen. For the reasons I have given, I don’t think it is necessary, because, except in the limited example of Prorogation that we had before the last election, I don’t think the courts are ever likely to get involved.”¹⁴²

153. He also told us:

I am not worried about the ouster clause in the Government’s repeal Bill, because the only circumstances that have been suggested as needing the courts to come in is if the Government used Prorogation repeatedly to try to stop Parliament sitting, but there is a safeguard against that: Governments cannot operate without Parliament, for the simple reason that they run out of money. [...] The Government, if it is going to govern, needs there to be a Parliament, and it is Parliament that will control Government.¹⁴³

154. Sir Stephen Laws, formerly first Parliamentary Counsel, considered the ouster appropriate:

Ultimately, the House of Commons can vote for an absence of confidence in the Government, and the Government must then either resign or submit the issue to the electorate. It is right that Parliament and Government should conduct their relationship as equals and should not put the Supreme Court or any other judicial body above that relationship in order to decide between them. On that basis, this clause is appropriate and does what it intends to do.¹⁴⁴

155. Sir Stephen noted “In this specific context, what does giving the court some jurisdiction over these matters mean? It means giving the Supreme Court the power to stop an election being held.”¹⁴⁵ His view that “in the light of the Prorogation judgment, it is obvious why something needs to be said”¹⁴⁶ was shared by Robert Craig who called the ouster “not only wise, but essential.”¹⁴⁷

Alternatives to the ouster

156. The Law Society of Scotland noted the Government’s stated intention of returning to the status quo ante was belied by the inclusion of the ouster clause and highlighted the Government’s acceptance of this by the acknowledgement in the Explanatory Notes that the ouster clause was a response to the Miller and Cherry cases.¹⁴⁸ Tom Hickman QC

141 Dr John McGarry (Senior Lecturer in Law at Department of Law and Centre for Crime Justice and Security at Staffordshire University) ([FTP0011](#))

142 Q 174

143 [Q146](#)

144 [Q21](#)

145 [Q1](#)

146 [Q21](#)

147 Mr Robert Craig (Lecturer in Law at University of Bristol) ([FTP0019](#)), Junade Ali ([FTP0004](#)), Policy Exchange’s Judicial Power Project ([FTP0007](#)), Steven Spadijer (DPhil Candidate (Law); Lecturer and Tutor Pembroke College, Oxford at Oxford University) ([FTP0008](#))

148 The Law Society of Scotland ([FTP0005](#))

told us that by including the unprecedented ouster clause the Government ran the risk of unintended consequences that would not arise if the Bill simply returned to the status quo ante-2011.¹⁴⁹ It was argued that there were other ways to exclude matters relating to dissolution and the summoning of Parliament from the courts' jurisdiction, which did not involve such radical exclusion of the courts. The first would be to base the request for a dissolution on a vote of the House of Commons. In this case, it was argued, Article 9 of the Bill of Rights would exclude any questioning of that decision.

157. Lord Hennessy told us that a vote in the House of Commons would more effectively exclude the court's jurisdiction from any challenges to a request for dissolution than the ouster clause because:

If ever there is classic territory for article 9 of the Bill of Rights 1689, it is this. I dug out the wording the other day: "freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament." I think that, in this instance, Article 9 would rise and ride across the scene in full armour if the courts tried to get involved. I can't imagine that the Supreme Court would want to touch this.¹⁵⁰

158. Professor Robert Hazell agreed saying "if the decision is made by Parliament then, under the Bill of Rights, it is beyond any kind of challenge in the courts."¹⁵¹ Dr Craig Prescott explained the importance the courts place on Article 9 of the Bill of Rights, and noted that "the very justification for Article IX, and related aspects of parliamentary privilege, is that they buttress representative democracy, by ensuring that the political process remains a matter of politics and not law." This gives Article 9 a democratic legitimacy that less obviously applies to ouster clauses enacted by Parliament. Dr Prescott had serious doubts that the ouster clause would be effective and concluded that a vote in the House of Commons was a "safer" way of ensuring no judicial intervention.¹⁵²

159. The other way proposed to avoid the ouster would be to make it absolutely clear that the decision on whether or not to grant a dissolution was a personal prerogative of the monarch. We note the Miller 2 judgment¹⁵³ was based on assessment of the adequacy of the Prime Minister's reasons for advising prorogation and that in theory the court might examine the grounds for a request for dissolution. Nonetheless, Professor Bogdanor thought:

Because dissolution is a decision by the Queen and not a matter of advice, I doubt if it is justiciable. Therefore the status quo ante offers a better protection for a government anxious to avoid any involvement by the courts than the ouster clause proposed in the bill, since the courts are unwilling to allow any unfettered executive discretion and are perfectly capable of ignoring an ouster clause.¹⁵⁴

149 Professor Tom Hickman QC (Professor of Public Law at University College London (UCL)) ([FTP0014](#))

150 [Q264](#)

151 [Q267](#); Professor Robert Hazell CBE, Professor of Government and the Constitution, and Professor Meg Russell FBA, Director of the Constitution Unit in the School of Public Policy at UCL ([FTP0003](#)); see Paul Evans ([FTP0006](#))

152 Dr Craig Prescott (Lecturer in Law at Bangor University) ([FTP0016](#))

153 [\[2019\] UKSC 41](#)

154 Vernon Bogdanor (Professor of Government at Kings College London) ([FTP0001](#))

Ousting the jurisdiction of the courts

160. The Committee recognises that views differ as to whether the Government's approach on justiciability is the best one. A minority of Members on the Committee, for example, believe that a House of Commons vote on dissolution would be a protection against impeaching and questioning by the courts because of Article 9 of the Bill of Rights 1688. Such a vote would, in their view, give a better guarantee than an ouster clause against unwarranted judicial involvement and would avoid setting a precedent for ouster clauses in future legislation.

161. Some on the Committee have expressed doubts as to whether the “belt-and-braces” or “sledgehammer” approach of an ouster clause is really necessary if the courts will not, in practice, entertain legal challenges to dissolution. Provided it is clear that dissolution and calling of Parliaments are personal prerogatives, and that the Monarch's veto over requests is real (rather than ceremonial) they are satisfied that the courts would never, or almost never, grant an application for judicial review of a decision to dissolve Parliament.

162. The majority of the Committee accepts that the general presumption is that Parliament does not intend to oust the jurisdiction of the courts. The Executive should be accountable to both the courts and Parliament. Nonetheless, in principle, the majority believes Parliament should be able to designate certain matters as ones which are to be resolved in the political rather than the judicial sphere, and Parliament should accordingly be able to restrict, and in rare cases, entirely to exclude, the jurisdiction of the courts. This position is not inherently incompatible with the rule of law, even if ousting the courts' jurisdiction will often be at tension with it so that a complete ouster will rarely be appropriate. In this case, when the power in question is to enable the electorate to determine who should hold power, they consider the ouster is acceptable.

163. Those members of the Committee who accept the ouster acknowledge the concerns that an Executive might attempt to use the prerogative powers inappropriately. There are two safeguards against that. The first is that, as we recommend, the Prime Minister should only have the power to request a dissolution; the Monarch should have the power to decline to grant that request and the confidence to do so if it is manifestly unreasonable. The second is that no Government can continue without supply—the authorisation of the Commons to spend money—or legislative authority to levy taxes. The legislation allowing collection of income and corporation tax is passed on an annual basis. While Charles I could manage without money voted by Parliament for eleven years, a modern administration could manage months at best. A Government which sought to prevent Parliament from meeting through strategic dissolutions would face extreme difficulties when the Commons reconvened. And a Government which tried to dissolve Parliament repeatedly would face difficulties in securing both the supply it needed over an election period and authorisation for the taxation necessary to run a modern Government. In cases like this, it is important that judges should not, as Dame Margaret Beckett said, second guess what Parliament ought to do, as “Parliament is sovereign, not the courts.”¹⁵⁵

164. The majority of the Committee agrees it is unlikely the courts would intervene in cases related to the prerogative of dissolving and summoning Parliament, but it is clear that decisions which would formerly have been considered non-justiciable are now being

questioned in the courts. There has been a change in the constitutional landscape since Lord Roskill made his observations in the GCHQ case.¹⁵⁶ We consider there are many reasons for this, including the changed position of the Lord Chancellor as a source of advice to the Government and the creation of the Supreme Court. But that being so, it is appropriate for Parliament to make clear where it thinks the constitutional boundaries lie.

The way the ouster was drafted

165. Whether or not the ouster was accepted in principle, many witnesses were concerned about the width of the ouster clause, and particularly, the potential misuse of the term “or purported” to enable the Government to do something not within its powers.

166. Baroness Hale explained the particular concern about the word “purported”:

I completely understand his [Lord Sumption’s] view that the use of the words “or purported” rather look as if it is saying, “Well, even if what we did was not within the power that you have been given by the statute, the courts can’t do anything about it.”

If that is the case, the courts would be very worried about that, because it would mean that the Government—the Prime Minister—had done something that was, at least arguably, not within its powers. Can a Parliament be happy about giving the Executive the power to do something that is not within its powers? The courts are not primarily the people who should be worried about this. Parliament, as the representatives of the people and the law, should be worried about it.¹⁵⁷

167. Sir Oliver Letwin was concerned that the ouster would allow an Executive to do things which were not contemplated by the Act, such as continually dissolving Parliament.¹⁵⁸

168. Professor Gavin Phillipson gave a clear history of the judgments which had led draftsman to respond by adopting such a broad ouster, by reading previous ousters as narrowly as possible:

Since the late 1960s, the courts and parliamentary drafters have been engaged in a kind of constitutional arms-race. When Parliament in 1969 legislated that ‘determinations’ by the Foreign Compensation Commissioners ‘shall not be called in question in any court of law’, the then House of Lords [in the ‘Anisminic’ case] found that, by misconstruing the statute that governed their powers, the Commissioners had asked themselves a question they were not authorised to and hence exceeded their jurisdiction. This rendered their decision not a ‘determination’ under the Act at all, but a mere ‘purported determination’, or nullity; hence the ouster clause did not protect it from challenge by way of judicial review.

156 [Q102](#)

157 [Q113](#)

158 [Q137](#)

When Parliament wished to prevent judicial review of decisions of the Investigatory Powers Tribunal (which hears legal challenges to actions of the security and intelligence services) the drafters responded directly to the *Anisminic* decision by providing that:

‘... determinations, awards, orders and other decisions of the Tribunal (including decisions as to whether they have jurisdiction) shall not be subject to appeal or be liable to be questioned in any court’.

The Supreme Court, however struck back, in their decision in *Privacy International*. The majority held that: ‘a decision which is vitiated by error of law, whether “as to jurisdiction” or otherwise, is no decision at all.’¹⁵⁹

169. Sir Stephen Laws explained the drafting approach:

The drafter of this is obviously confronted with the reluctance of the courts to accept ouster clauses. [...] It would be nice to have neatly focused ouster clauses that you could justify in relation to what they actually apply to. But that is not a thing that is possible any more, because if you try and draw some distinction as to where the ouster clause will or will not apply, you will end up with the courts using that distinction in order to circumvent the ouster you are intending to create.¹⁶⁰

Would the ouster work?

170. Others considered that the ouster would be ineffective. First, it would be for the courts to decide precisely what the prerogatives revived by the Bill were, and secondly, it would be for the courts to interpret the ouster itself. As Professor Twomey said:

To determine what the powers that you can’t question are, you have to go back to section 2, because it says that they are the powers referred to in section 2. Then, you have got to decide, in section 2, what those powers are in order to work out what it is that you are ousted from questioning.

If you happen to decide that whatever those powers were in 2011 did not actually include the particular power in the way that it had been exercised here—the extent and the scope of the power—just as they did in relation to Prorogation, where they said, “Well, the extent and scope of the power of Prorogation doesn’t allow you to do something that shuts down Parliament in these circumstances,” you could potentially do the same thing here and say, “The extent and scope of the prerogative power of Dissolution in 2011 did not allow you to do this sort of a Dissolution, therefore what you are doing does not fall within the scope of section 2, and therefore the ouster clause in section 3 doesn’t work.”¹⁶¹

171. Lord Lisvane and Sir Malcolm Jack were in agreement that “the courts will themselves interpret clause 3 of the draft Bill. They will not be stopped doing that.”¹⁶² Gavin Phillipson

159 Professor Gavin Phillipson (Professor of Law at University of Bristol Law School) ([FTP0020](#))

160 [Q21](#)

161 [Q215](#)

162 [Q53](#)

considered “The trouble with this extraordinary ouster is that the way it goes about responding directly to recent judicial decisions makes courts more, not less likely to read it down so as to allow judicial review after all.”¹⁶³ He further explained:

since a literal reading would be a nonsense in a country committed to limited government and the rule of law, it could not be adopted by the courts. And once a literal reading becomes impossible then the courts must find a non-literal one. And that may well be one that neither Parliament nor the Government likes. Hence passing statutes whose literal meaning is an absurdity hands the courts the tools to unpick Parliament’s intent. The very extremity of the wording of the clause invites its judicial undoing.¹⁶⁴

172. Baroness Hale identified two questions for a court considering whether an ouster is effective—has Parliament made its intention clear enough and secondly, assuming it has, is it capable of ousting the jurisdiction of the courts. Her view on the second question was “yes if it expresses its view sufficiently clearly”, although she noted that there were judges who took a different view. Baroness Hale declined to comment on whether the drafting of clause 3 itself effectively ousted the courts’ jurisdiction.¹⁶⁵

173. While there were doubts expressed about the detail of the ouster, no witness was certain it would not work. Many witnesses considered the ouster clause was clear it intended to oust the jurisdiction of the court, and was likely to be respected.

174. The Committee recognises the concerns that have been raised about the breadth and efficacy of the ouster. Some Members are particularly concerned by the attempt not simply to oust jurisdiction over the exercise of the powers relating to the dissolution of Parliament and the calling of a new Parliament, but to the purported exercise of those powers, which opens a potential for abuse and may set a dangerous precedent. Others shared some witnesses’ concern that the very breadth of the drafting of the ouster might make it less, rather than more effective, as it would require judicial interpretation if it were to make sense. Others considered the breadth of the ouster was appropriate, given that future judgments might further change the understanding of constitutional law.

175. When Parliament legislates to restrict or oust the jurisdiction of the courts, it should use clear words, and be as explicit as possible about its intentions and the extent of the jurisdiction which it wishes to oust. In the light of previous judgments on other ouster clauses, we understand the Government’s approach to drafting. It is clear that the Government wishes to ensure the decision to dissolve one Parliament and summon another, any request for such a dissolution and the advice which may have underpinned the requests or the decision are not justiciable. To do this, it has considered it was necessary to take an expansive approach to drafting. We invite it to consider whether a clearer and more limited approach might be as likely—or even more likely—to be effective.

163 Professor Gavin Phillipson (Professor of Law at University of Bristol Law School) ([FTP0020](#))

164 Professor Gavin Phillipson (Professor of Law at University of Bristol Law School) ([FTP0020](#))

165 [Q110](#), [Q113](#)

Clause 4: Automatic Dissolution of Parliament after 5 years

176. Clause 4 is simple:

If it has not been dissolved earlier, a Parliament dissolves at the beginning of the day that is the fifth anniversary of the day on which it first met.

It restores the legal position before the Fixed-term Parliaments Act. Nonetheless, it raises some questions.

Is the five-year maximum term appropriate?

177. Under the Fixed-term Parliaments Act, the maximum length of a Parliament is determined by when the last general election took place. A Parliament expires either in late March or early April in the fifth calendar year following the last General Election, to enable an election to take place on the first Thursday in May.¹⁶⁶ In practice, this meant that *the gap between ordinary elections* would be almost exactly five years. The gap between an *early general election* and *the next ordinary general election* would be slightly less than five years but more than four years. This mechanism meant that ordinary general elections would always take place on the first Thursday in May and never more than five years after the last election.

178. The draft Bill would do away with this arrangement. Rather than proposing that the maximum gap *between general elections* should be five years, it proposes that *the maximum term of a Parliament* should be five years. Since Parliament does not meet immediately after a general election, this means that the gap between general elections can be greater than five years. So, for example, the 1997 general election took place five years and 22 days after the 1992 general election.

179. The Committee sees no obvious reason why the gap between elections should be greater than five years. *The maximum term of a Parliament should be five years from the date of dissolution of the previous Parliament, rather than from when the current Parliament first met. This would prevent the election cycle from “drifting” if successive Parliaments reached, or very nearly reached, their maximum terms.*

Should an election be called immediately following dissolution?

180. The Meeting of Parliament Act 1694 only requires a Parliament to stand summoned within three years of the dissolution of the last. As a matter of invariable practice (save for one exception in 1713) however the Monarch has issued a proclamation calling a new Parliament at the same time as Parliament is dissolved.¹⁶⁷ If Parliament is dissolved by proclamation, the two proclamations will be combined; if Parliament is dissolved automatically by operation of law (as it has been on all three occasions under the Fixed-term Parliaments Act and as it would be under clause 4 of the draft repeal Bill) the proclamation summoning the new Parliament will be made as soon as practicable after

¹⁶⁶ If the last General Election was an early general election, and took place between 1 January and the first Thursday in May of that year, the Parliament instead expires in the fourth calendar year.

¹⁶⁷ We are aware of only one example of the two proclamations being made on different dates, namely in 1713. Professor Tom Hickman QC (Professor of Public Law at University College London (UCL)) ([FTP0014](#))

that dissolution has occurred. This ensures that, when Parliament is dissolved, the 25 working-day statutory election period (under Schedule 1 of the Representation of the People Act 1983) begins immediately.

181. Under the previous system two distinct legal powers of the Monarch would be exercised at the same time. This convention, and other political realities (such as a Government's need for supply) operated as constraints on the formal legal position, which is that a new Parliament need only stand summoned within 3 years of the dissolution of the last.¹⁶⁸

182. The convention on proclamations guaranteed that the statutory election period would begin the day after dissolution, and that polling day would in fact take place (what was then) 17 working days later. Under the Fixed-term Parliaments Act 2011 the formal "trigger" for the statutory election period was the dissolution of Parliament, rather than the proclamation that summoned the new one as had previously been the case. This provided a legal, rather than just a conventional, guarantee that polling day would happen (what is now) 25 working days later.

183. The reversion of this rule from a statutory one to a conventional one leaves open the possibility that a Government might dissolve Parliament, but delay the statutory election period, perhaps by a few weeks. This was something about which Lord Sumption expressed concerns:

This is one of the problematical aspects of the Bill as drafted. Clause 3—the ouster clause—renders non-justiciable the powers referred to in clause 2, which includes the issue of writs for parliamentary elections. That would not matter a great deal if the time limit for the issue of a writ for parliamentary elections were specified in the Bill, as it was in the Fixed-term Parliaments Act. It seems to me desirable, if you are going to have an ouster clause, that there should be a time limit on the moving of writs for parliamentary elections, precisely to prevent that kind of abuse.¹⁶⁹

184. If it is possible to dissolve Parliament but then to delay the statutory election period, Lord Sumption added, the draft Bill risks creating circumstances in which the courts might feel compelled to intervene so as to protect against the Executive governing without Parliament. Lady Hale agreed, both as to the existence of the risk and how it might best be avoided, since "where the Government attempt to do without Parliament, the courts are much more inclined than they would otherwise be to act in support of Parliament."¹⁷⁰

185. There are ways in which this might be remedied. The first is to re-establish the convention, by ensuring it is prominently recorded in the Cabinet Manual and widely understood. The other is to introduce a statutory link between the dissolution of one Parliament and the summoning of its successor.

186. At the moment Schedule 1 of the Representation of the People Act 1983 provides that election writs for a general election are to be issued "as soon as practicable after the dissolution of Parliament by section 3(1) of the Fixed-term Parliaments Act 2011." The draft Bill could be amended so that Schedule 1 of the Representation of the People Act 1983 says that writs for a general election are to be issued as soon as practicable after "the

168 Meeting of Parliament Act 1694, [Section 2](#)

169 [Q106](#)

170 [Q106](#)

dissolution of Parliament” rather than after the proclamation summoning the new one, but that would remove the connection the draft Bill otherwise restores between the calling of Parliament and the election.

187. Another approach would be to require the Monarch, as a matter of law, to make a proclamation summoning a new Parliament either (a) at the same time as any proclamation dissolving Parliament or (b) immediately after Parliament has been dissolved by reason of expiry of its maximum term. A law of this nature would reflect the modern expectation that Parliament is a regular and permanent feature of our constitutional arrangements, rather than something summoned by the Monarch as and when required. Reform would probably require the repeal and replacement of section 2 of the Meeting of Parliament Act 1694.

188. Under the Government’s proposals, the dissolution of Parliament does not automatically trigger the statutory election period. It would be possible, legally, at least, for Parliament to be dissolved, and for the Government to delay the proclamation summoning a new Parliament. *The Government should legislate to ensure that a proclamation summoning a new Parliament must be made at the same time as, or immediately after, the dissolution of Parliament. This means repealing and replacing section 2 of the Meeting of Parliament Act 1694.*

Miscellaneous matters

Demise of the Crown: proposed new flexibilities

189. If the Monarch dies after the election period has begun, but before polling day, the election timetable, and the first meeting of Parliament, are paused and postponed by a fortnight. This arrangement is contained in the Representation of the People Act 1985 and was the subject of minor modification when the Fixed-term Parliaments Act 2011 was passed.

190. The Government proposes with amendments to the 1985 Act not merely to retain this arrangement, but to grant the incumbent Government the power to vary the length of this pause and postponement. The new Monarch, by proclamation, would be able to bring forward the election by up to seven days, or to pause and postpone it by a further seven days. The Minister of State for the Constitution and Devolution, Chloe Smith MP, explained in a written statement on 1 December 2020 that this was seen as a discretionary power of “the Prime Minister” to move the election in those circumstances.¹⁷¹

191. In evidence, the Chancellor of the Duchy of Lancaster explained:

On the demise, we looked at the dates that would have happened—what would have happened with an election technically and the dates of the 2019 election. The arrangements would have been that the election would have taken place—I am speaking from memory here, but we will supply the Committee with the figures if you don’t have them—on 27 December, two days after Christmas.¹⁷²

171 [HCWS615](#), 1 December 2020

172 [Q 354](#)

192. The draft Bill allows limited discretion to change the date of the polling day in the event of a demise of the Crown, rather than fixing the delay at fourteen days, as is done now. Even with the Fixed-term Parliaments Act, polling day at general elections could fall close to major public holidays. We agree that it is appropriate for there to be a limited degree of extra flexibility in polling dates if the Monarch dies during an election period, and that it should be exercised by Proclamation, on the advice of the Privy Council. *It would be sensible for a Prime Minister to consult the Leader of the Opposition and the leaders of other parties in Parliament before seeking to exercise this flexibility.*

Other consequential amendments

193. Save for the matters addressed above, the draft Bill makes consequential amendments, many of which simply revert older statutes to say what they said before the Fixed-term Parliaments Act amended them. Most other changes, we are satisfied, remove redundant references to the Fixed-term Parliaments Act in other enactments.

Recall of MPs Act

194. The Schedule of the draft Repeal Bill includes modifications to the Recall of MPs Act 2015. That Act allows voters—via a “recall petition”—to unseat an MP in certain circumstances. A recall petition is normally triggered if an MP:

- is convicted of certain offences to do with their expenses;
- is given a short custodial sentence on conviction of a crime; or
- is suspended for at least 10 sitting days or 14 calendar days following a Committee on Standards report into their conduct.

195. The 2015 Act interacts closely with the election timetable. This is because, at the moment, a “recall petition” will not be triggered if polling day for the next general election is less than six months away. A “live” recall petition will also be discontinued if it subsequently emerges that an early general election is to take place within six months of a “recall condition” having being met. The purpose of this “six months” provision is to avoid redundant by-elections towards the end of a Parliament. The policy basis for this is perfectly sound, and the Committee endorses it.

196. We are concerned that the proposed amendments to the Recall of MPs Act 2015, inadvertently, fail to give effect to the Government’s policy intentions. This is because the drafting does not recognise that the dissolution of the current Parliament, and the issuing of a proclamation summoning a new one, are distinct legal events. Although the two things, in practice, almost always happen concurrently, the law enables them to be separated by a period of almost three years, under the Meeting of Parliament Act 1694.

197. If amended as proposed by the draft Bill, the Recall of MPs Act would say in section 5(2)(a):

“[The Speaker of the House of Commons is not required to give notice to a petition officer] if it would require the Speaker to give notice at a time... within the period of 6 months ending with the last possible polling day for the next parliamentary general election”

198. The 2015 Act would then go on to define the “last possible polling day for the next parliamentary general election” as:

“the day on which polling would take place, according to the election timetable in rule 1 of Schedule 1 to the Representation of the People Act 1983, if the Parliament then in existence were dissolved by virtue of section 4 of the Fixed-term Parliaments Act 2011 (Repeal) Act 2021 (automatic dissolution of Parliament after five years).”

199. This new rule would operate essentially as it did before, and as we think the Government intends it, if—under Schedule 1 of the Representation of the People Act 1983—the dissolution of Parliament were to trigger the statutory election period. However, the draft Bill’s amendments to the 1983 Act propose that it should instead be the proclamation summoning the new Parliament that triggers the statutory election period. The “last possible polling day” would therefore technically be almost three years after dissolution on the expiry of a Parliament’s maximum term, rather than just 25 working days after it. MPs would be “protected” against recall in a six-month period that fell about two and a half years after Parliament had been dissolved. Such a provision would be redundant. It is clearly not what the Government can have intended.

200. The Committee has already recommended that the statutory election timetable should be tied to dissolution. If that recommendation is adopted, the drafting problems identified in relation to the amending of the Recall of MPs Act 2015 would no longer arise.

Changes to the timing of statutory reviews etc

201. We draw to the attention of the House of Commons Work and Pensions Select Committee the proposal to amend the Welfare Reform Act 2012. Section 96A of that Act currently requires the Secretary of State for Work and Pensions to review the benefit cap at least once a Parliament and to make recommendations about the level at which it is set. She is only relieved of that duty if there is an early general election under the FtPA. The Government’s new proposal is that the Secretary of State must carry out a review at least once in every five years, and that it is no longer linked at all to the election cycle.

202. Similarly, we draw to the attention of the House of Commons Business, Energy and Industrial Strategy Committee the modifications the Bill would make to the Small Business, Enterprise and Employment Act 2015. A series of reporting requirements under that Act use the beginning and end of a Parliament as reference points, which would be changed to reflect the repeal of the FtPA.

4 Electoral law and the length of time between Parliaments

203. The draft Bill does not simply return to the status quo in one important matter: it retains the current timetable for elections of 25 working days between dissolution and polling date, rather than restoring the seventeen working day timetable which applied at the time the Act was passed. In this chapter we look at this and some other, more minor, issues relating to electoral law.

The statutory election timetable

204. The change in the statutory election period for general elections brought them into line with the period for local elections.¹⁷³ It also had the effect of lengthening the minimum period without a Parliament following dissolution.

205. The table below illustrates the differences in the statutory election timetable in the 2010 and the 2019 General Elections.

Event	When in 2010	When in 2019
Dissolution/Calling of New Parliament	Working Day 0	
Issuing of Writs	Working Day 0	
Writs taken to be received	Working Day 1	
Publication of notice of election	Not later than Working Day 3 (two Working Days after the writs are received)	
Deadline for nomination of candidates	4pm on Working Day 6	
Deadline for registering to vote and applying for a postal vote	Midnight and 5pm respectively on Working Day 6	Midnight and 5pm respectively on Working Day 14
Deadline to appoint a proxy	Working Day 11	Working Day 19
Polling Day	Working Day 17	Working Day 25

206. The Electoral Registration and Administration Act 2013 did not fundamentally alter the election timetable up to and including the deadline for nomination of candidates. Its effect was to extend, by 8 working days, the deadlines for registering:

- to be included on the electoral register;
- to receive a postal ballot; and
- to have someone else vote by proxy on one's behalf.

207. Since those features of the election were extended by 8 working days, so too was polling day itself. It would fall 25 working days after the writs were issued, rather than 17.

208. As the Electoral Commission and the Association of Electoral Administrators have explained in their evidence to the Committee, the extension of these deadlines was done particularly in response to changes made in relation to voter registration and to the availability of postal votes in the context of UK General Elections. Specifically:

173 Association of Electoral Administrators ([FTP0021](#)); Electoral Commission ([FTP0023](#))

- Rolling registration (introduced in 2001) placed greater demands on local election administrators. It meant that people would register to vote all year round, rather than just in the autumn in order to appear on the roll the following spring. The electoral roll therefore would no longer be final, or nearly final, well in advance of a spring or early summer election.
- Postal voting on demand (introduced in 2001) placed greater demands on local election administrators, as they had to process (a) far more applications for postal votes following the announcement of an election and (b) the delivery of far more postal ballots because more people had registered to vote that way.
- Overseas postal voting on demand made the general challenges to do with postal voting more acute for UK General Elections than for other elections (where British citizens living overseas generally cannot vote).
- Individual Voter Registration (IVR) (introduced from 2014) was expected significantly to increase the proportion of voters registering to vote shortly before an election, as compared to household returns done as part of the autumn canvass. This partly explains why the timetable was extended around the same time as the introduction of IVR.¹⁷⁴

209. No postal ballots can be prepared and distributed until after the list of candidates in a constituency has been finalised (working day 6 of either 17 or 25). The old system therefore only afforded allowed 11 working days (just over two weeks) within which time:

- the administrators must prepare, print and post the ballot to the voter;
- the voter must receive the ballot paper;
- the voter must complete and post the ballot back to the administrators; and
- the vote must be received and processed for counting by the administrators.

210. This posed particular problems with overseas voting, where delays were possible both with the sending out of ballots to the voter, and the returning of the ballot once received. A 25 working day election period, by contrast, allows 19 working days, or just under four weeks, for the same process to be undertaken.

211. The AEA told us IVR had indeed drastically increased the proportion of voters registering immediately prior to a general election, rather than during the autumn canvass. It also noted that the number of postal votes issued increased from fewer than one million at the 1997 general election to more than 8.4 million at the 2017 general election:

Postal voting is in many ways the biggest challenge for electoral administrators to deliver. Ballot packs need technically complex and secure printing and must be sent in time for electors around the globe to return. From a standing start, we believe it would be impossible to deliver postal voting in 17-days—it is difficult enough within the 25-day framework.¹⁷⁵

174 Electoral Registration and Administration Act 2013, [Section 14](#)

175 Association of Electoral Administrators ([FTP0021](#))

212. It concluded that “as an absolute minimum the 25-day timetable must be maintained” and that any reduction in the timetable would be “catastrophic for everyone involved”:¹⁷⁶

We feel that a 25-day timetable is achievable but only where additional advance notice is given so that preparations can commence before Writs are issued. We do not believe a 17-day timetable could be achieved unless there was a further notice period longer than has been experienced at the last two unscheduled general elections. We also believe a 17-day timetable would disenfranchise electors, especially those living overseas who the UK Government is currently working hard to assist to vote.¹⁷⁷

213. The Electoral Commission identified several key risks associated with a reduction in the election timetable:

- a) It would leave a much tighter deadline for postal votes to be applied for and returned. This is known especially to be a problem for overseas voters even with the 25 working day deadline.
- b) Shortening the gap between the close of nominations and polling day would increase pressure on key electoral administration tasks, and would make it harder to secure polling stations and count venues and to employ and adequately train polling and counting staff (especially if an election is held at an unscheduled point in the election cycle and at short notice as in 2019).
- c) It would increase complexity for electoral administrators as the rules would differ from other elections, some of which may be combined or take place at a similar time of year, increasing the risk of administrative error.
- d) Shortening the gap between the issuing of writs and the deadline for nominations would make it harder for candidates to collect signatures of subscribers.
- e) Smaller parties and independent candidates would be negatively impacted in terms of organising and funding their campaigns and may find it more difficult in short timeframes to campaign with relevant registered identifiers (such as party name, description and emblem) not being put on the ballot paper.
- f) A shorter election period would mean a reduction in the length of the regulated spending period, which has implications for the existing campaign spending limits (which were originally increased to account for a longer campaign).¹⁷⁸

214. UK General Elections have become more complex because of changes to voter registration and relaxation of the rules to do with postal vote eligibility. Other policy initiatives, such as extending the rights of overseas voters and the introduction of voter ID initiatives seem likely to place additional pressures on electoral administrators. The current legislative framework, set out in the Representation of the People Act 1983, is nearly forty years old. The Committee appreciates the difficulties that electoral administrators might face in reducing the election timetable from its current 25 working days. However, the lengthening of the election period has meant that the time between the dissolution of Parliament and its return is also lengthened. While we

¹⁷⁶ Association of Electoral Administrators ([FTP0021](#))

¹⁷⁷ Electoral Commission ([FTP0023](#))

¹⁷⁸ Electoral Commission ([FTP0023](#))

consider the country should be without Parliament for as short a time as possible, this must be balanced with the need to ensure that as many citizens as possible can register to vote and exercise their democratic right to vote in elections.

215. We would like to see a significant reduction in the election timetable, insofar as this is compatible with ensuring the register is up to date and proxy and postal votes are possible, including for overseas voters. *A cross-party working party should be established by Government to examine how the General Election campaign period can be shortened from 25 days without compromising voter participation, including through the increased use of technology and increased focus on year round voter registration. The working party should report its recommendations to Government as soon as possible and in time to ensure any legislative requirements can be put forward in legislation for consideration before the expected date of the next General Election.*

The finalisation of Parliamentary business before a dissolution

216. Parliament will often sit for a few days—known as the “wash up period”—after the monarch has granted a Prime Minister’s request for an early election. In this period any outstanding business can be completed subject to negotiations between parties and any business to appropriate necessary money to the government and ensure it can function during the dissolution period. Wash up periods have traditionally been short, between two and four sitting days, but on some occasions there have been lengthy prorogations after the wash up and before the election.¹⁷⁹

Timetabling for the first meeting of a new Parliament

217. The length of time between polling day at a general election and the first meeting of the new Parliament is essentially unregulated and would remain so under the Government’s proposals.¹⁸⁰ As a matter of constitutional practice, the first meeting is set by the incumbent Government at the point of dissolution. A proclamation summoning a new Parliament will specify the date on which that new Parliament is to meet for the first time. The first meeting of the Parliament is used for the House of Commons to elect (or re-elect) its Speaker, and to begin the swearing-in of Members returned at the general election. The transaction of any other business, however, only starts after the Address from the Throne, the date for which is determined by the Government. This means that if a general election were to deliver no clear majority, an incumbent government could delay starting and completing debates on the Loyal Address so as to postpone the holding of a potential no-confidence vote. The only legal requirement that Parliament sit following repeal of the FtPA would be the Meeting of Parliament Act 1694.

218. Since 1970, a new Parliament has, with only one exception (1992), met within a fortnight of polling day, and it is the norm that Parliament meets the week following polling day to enable the House of Commons to elect a Speaker and for both Houses to

179 Most notably in 1997 when the House was prorogued from 21 March to 15 April and dissolved on 8 April for an election on 1 May <https://api.parliament.uk/historic-hansard/lords/1997/mar/17/dissolution-of-parliament>

180 In theory the date appointed can be any date within three years of the dissolution of the last Parliament per the Meeting of Parliament Act 1694. In practice, no Government could sustainably set a date much later than a few weeks after polling day, because of the need for Parliamentary approval for public expenditure at regular intervals under the supply and estimates process.

swear in their members. There is then a further gap, usually of about a week, before the State Opening of Parliament and a Queen's Speech takes place, though again this period is not regulated by statute.

219. In 2007 the Modernisation Committee recommended that the typical gap between polling day and the first meeting of Parliament should be extended from the norm (around six days) to twelve days. This would, it said, greatly assist the induction of new members returned at the election.¹⁸¹ Although a gap of almost two weeks was chosen ahead of both the 2010 and 2015 general elections, the gap following the 2017 and 2019 elections was considerably shorter (just five days).

220. In recent years concern has been focussed on the delay to the meeting of Parliament and the reestablishment of its scrutiny mechanisms rather than on the need for a new Parliament to prepare itself. This is particularly acute in the Commons, where committees need to be constituted afresh each Parliament. The Committee considers that it is desirable for the periods in which Parliament is not functioning, or a House is not yet able to scrutinise effectively, should be as short as possible. The election timetable is only one part of this. The Committee believes that both the period between the last sitting of Parliament and dissolution and the period between polling day and the first meeting of Parliament should, wherever possible, be less than a week. While we would be concerned about legislation which dictated Parliamentary procedure, we recommend that the Government consider whether there should be statutory provision setting a shorter limit on the period in which the country can be without a functioning Parliament.

By elections

221. The draft Bill does not deal with what should happen when a general election is called in between the issue of a writ for a by election and that election taking place. Sir David Natzler told us that after the death of Sir Gerald Kaufman, then Father of the House, a by election had been fixed for 4 May. A General Election was called between the issue of the writ for the by election, and the date for the by election, and Parliament was dissolved on 3 May and the General Election was held on 8 June 2017. There was no clear way of cancelling the by election; in the end:

on 19 April the Government tabled a motion ordering the Speaker to convey to the Clerk of the Crown its desire for a writ of supersedeas: the motion was duly agreed on 20 April.¹⁸²

222. Rather than relying on parliamentary action in future, Sir David considered that “statutory provision empowering either the local or central authorities to cancel writs for by-elections once the Prime Minister has publicly indicated the date of a future general election” would be desirable.

181 Modernisation Committee, First Report of Session 2006–07, [Revitalising the Chamber: the role of the back bench Member](#), HC 337

182 Sir David Natzler KCB, former clerk of the House of Commons (2014–2019) ([FTP0017](#))

5 Confidence, dissolution, calling of parliaments, and government formation: key principles

Why constitutional conventions are important in a prerogative system

223. Prerogative powers are legal powers. Looked at in isolation, these powers are very broad. They allow a Monarch to summon and dissolve Parliament at will, and to appoint and dismiss governments at will. Such a system, stripped from its political context, would appear to be incompatible with the norms of a modern Parliamentary democracy.¹⁸³ This is why constitutional conventions have constrained the discretion of both the Monarch and the Executive in the context of dissolution, elections and government formation.

224. Conventions are, as Sir Malcolm Jack put it, “long-standing practice[s] or rule[s] which [are] accepted, and observed, by those to whom [they are] directed.” They are also, as the Joint Committee on Conventions observed in 2006, quite unlike legal rules, in that they are “changeable” and (by the courts at least) “unenforceable”.¹⁸⁴ The flexibility of conventions is seen as one of their strengths, but it also increases the importance of there being a shared understanding of what they are and how steps can be taken to ensure that they are observed. As the Government of the day said in response to the 2006 Joint Committee report: “for a convention to work properly [...] there must be a shared understanding of what it means. A contested convention is not a convention at all.”¹⁸⁵

225. Certain conventions embody constitutional principles that constrain the behaviour of both the Monarch and the Executive in relation to prerogative powers. For example, some prerogative powers, by convention, are exercised by Ministers, or by the Monarch on the advice of Ministers. The reason Ministers typically take these decisions is three-fold.

- a) Firstly, unlike the Monarch, Ministers can be held to account by Parliament for their prerogative decisions.
- b) Secondly, the Government of the day is presumed to command the confidence of the House of Commons, and therefore (unlike the Monarch) derives democratic legitimacy from it to exercise prerogative powers.
- c) Thirdly, if the Monarch is obliged to act on the advice of Ministers, he or she is not understood to be accountable for the substance of the decisions taken. This is intended to insulate the Monarch from both the reality and the perception of being involved in matters of party-political controversy. It is understood to protect the institutional integrity of a constitutional monarchy in a 21st century democracy.

183 Professor Gavin Phillipson (Professor of Law at University of Bristol Law School) ([FTP0020](#))

184 [Q43](#); Joint Committee on Conventions, First Report of Session 2005–6, [Conventions of the UK Parliament: Volume 1](#), HL Paper 265-I, HC 1212-I, para 281

185 Joint Committee on Conventions, First Report of Session 2005–6, [Conventions of the UK Parliament: Volume 1](#), HL Paper 265-I, HC 1212-I, para 282

226. When prerogative powers concern the existence of Parliament, the holding of elections, and the formation of Governments, however, the associated conventions necessarily operate slightly differently. It can no longer be argued that Ministers are directly accountable to a Parliament if it has been dissolved, or that, if a Government appears to have lost the confidence of the House of Commons, it derives its legitimacy from its support in the lower house. It therefore is less straightforward, and not necessarily justified, to make the Executive the de facto decision-maker in all circumstances. The “personal prerogatives” (i.e. those in respect of which Ministerial advice is not automatically followed) have typically operated under a distinct set of rules that recognise the unique implications of their exercise.

Inadequacy of the Government’s treatment of conventions

227. The UK Government’s draft legislation (in most respects) seeks to restore the legal position that existed prior to 2011: that dissolution and calling of Parliaments would once again be prerogative rather than statutory powers. However, legislation—by definition—does not create or restore conventions: it can only create legal rules or, at most, explicitly recognise the existence of judicially unenforceable conventions.¹⁸⁶ If the old conventions on dissolving and summoning Parliaments are to be restored, or indeed if they are to be replaced by new ones, there needs to be a political process to identify, and to articulate, what those conventions are. It is in that context that the Government published its Dissolution Principles document alongside the Bill.

228. The overwhelming consensus of those who gave evidence to the Committee is that the Dissolution Principles document falls short. The concerns raised by witnesses, including those who supported a return to the prerogative system were broadly three-fold:

- a) that the document does not adequately distinguish between personal prerogatives (which the Prime Minister “requests” the Monarch should exercise and in respect of which a request might be refused) and Ministerial prerogatives (in respect of which the Monarch is bound to follow the advice of her Ministers);
- b) that the document does not adequately articulate the role of the Monarch, in that it fails to articulate the factors that might be taken into account when deciding whether to accept or refuse a dissolution request; and
- c) that the document does not address fully the relationship between the conventions on dissolution and those to do with:
 - i) the calling of a new Parliament;
 - ii) confidence and confidence motions; or
 - iii) the formation of governments, whether following a general election or during the lifetime of a Parliament.

229. The Government appears to have relied on the fact that the Cabinet Manual addresses some of these issues as its justification for confining its principles document to matters directly concerned with dissolution. The problem with this approach is that the different conventions are closely linked. The UK’s limited experience of fixed-term Parliament

186 [Q93](#); [Q17](#); [Q224](#)

legislation shows how changing the rules on dissolution can change how Governments, and parliamentarians, interpret the rules on confidence and government formation. The current Cabinet Manual addresses the other conventions in the context of there being fixed-term Parliaments legislation. If that legislation no longer exists, that account no longer reflects political practice.

230. The Committee's attention was drawn to the draft Cabinet Manual chapter entitled "Elections and Government Formation" which was published by the Cabinet Office in February 2010 under the Brown administration. It provides a comprehensive account of the conventions and practice not just on dissolution, but a range of closely related matters. We are surprised that this document appears not to have formed the starting point for the Government's account of convention and practice under a prerogative system.

231. **The "Dissolution Principles" document is inadequate. It does not reflect the nature of the Monarch's personal prerogatives to do with dissolving Parliament prior to 2011. Further by not considering and setting out the interrelated matters to do with other aspects of the election cycle, confidence of the House of Commons and government formation, it cannot provide a proper guide as to how dissolution should operate under a prerogative. The document cannot form the basis of a "shared understanding" of political practice and conventions which will be needed in future.**

232. *This Report sets out the Committee's views on the conventions on dissolution, Government formation and confidence. We expect the Government to respond to it before any legislation is introduced. In that response the Government must address these conventions in detail, explaining where it agrees with the Committee and where it does not. Most importantly, it must give a full explanation in a statement to Parliament for its position. Consideration should also be given to enshrining some conventions relating to confidence in the House of Commons Standing Orders.*

233. *We recommend that the principles and conventions set out by the Committee are adopted as the basis for creating a new shared understanding of conventions and practices.*

234. The boxed text contains the Committee's understanding of the conventions on elections and government formation under a prerogative system. This should assist the Government and provide the basis from which a new understanding of the shared conventions and practices is understood and how it should be set out in an updated Cabinet Manual.

235. There is one convention which we consider should be enshrined in House of Commons Standing Orders, and there may be others which would benefit from such formalisation.

236. *In the past the requirement that a motion of no confidence in the name of the Leader of the Opposition should be debated as quickly as possible has rested on convention. The time taken to arrange such debates has ranged from one to seven days. We consider that motions of no confidence tabled by the Leader of the Official Opposition, whether directed at the Prime Minister or in the Government as a whole, should be debated as soon as possible and preferably on the next sitting day.*

237. *Given the refusal to find time for a debate on a motion of confidence in the name of the Leader of the Opposition in 2018, it may no longer be sufficient to rely on convention*

to enforce this. We consider there should be a Standing Order requirement that such a motion of confidence tabled by the Leader of the Opposition should be debated no later than the third sitting day (not being a Friday) after the day on which it is tabled.

Box 1: Principles and conventions on Confidence, dissolution, government formation

Paramountcy of confidence in the UK political system

1. The UK is a Parliamentary democracy, and its Government is not directly elected. It is the administration, by convention drawn from Parliament, that can best command the confidence of the elected House of Commons. The ability of a Government to command the confidence of the elected House of Commons is central to its authority to govern.

Principles on confidence

2. Commanding confidence is not the same as having a majority or winning every vote.
3. Where a Government lacks the confidence of the Commons it must either secure a refreshed mandate from the electorate, or it must instead allow a viable alternative Government to take its place.

House of Commons expression of confidence in the Government

4. A lack of confidence in the Government of the day can be expressed by the House of Commons in four distinct ways:
 - a) Defeating the Government on an amendment to the Queen's Speech;
 - b) Defeating the Government on the Second or Third reading of the annual Finance Bill, or in the course of the Supply and Estimates process;
 - c) Defeating the Government on a vote in the House of Commons where that Government has publicly designated it a "matter of confidence"; or
 - d) Defeating the Government on a motion, in terms, that states whether the House has confidence, or does not have confidence, in the Government.
5. Other than the examples above, votes in the House of Commons are generally not regarded, in and of themselves, as being matters of confidence in the Government, whether or not the Government is defeated.

Conventions on ensuring that confidence can be tested

6. If the Leader of the Opposition tables a motion that would test the House of Commons' confidence in the Government of the day the Government should enable it to be debated, in Government time, for at least a day's debate, as soon as possible, and preferably the next sitting day.
7. So that there is no uncertainty as to whether Government time has to be made for a confidence motion, the Leader of the Opposition should ensure that the wording of the motion is clear: that it does indeed intend to test the House's confidence in the Government, rather than simply to censure a policy or member of the Government.

When a Government loses confidence of the House

8. If the Government appears to have lost the confidence of the House of Commons, it is open to the Prime Minister to pursue one of two courses of action:
 - a) to offer the resignation of the Government; or
 - b) to request a dissolution from the Monarch.
9. It is likely to be more appropriate for the Prime Minister to resign, rather than to request a dissolution, if:
 - There has very recently been a general election;
 - The Prime Minister's party commands a majority and another person is elected to lead the party; or
 - It appears that another person might command the confidence of the House.

Dissolution requests

10. The Prime Minister may request dissolution from the Monarch and it would be extremely unusual for the Monarch to decline such a request unless it were improper.
11. The following could be taken into account in considering the propriety of a request:
 - The length of time since the last election;
 - whether it appears that an alternative government, commanding the confidence of the House of Commons, could be formed and could govern with a working majority for a reasonable period of time.
12. In such cases the Monarch may wish to satisfy him or herself that no alternative government can credibly be formed before granting a dissolution request.
13. A Prime Minister is expected to refrain from asking for dissolutions rather than the Monarch be put in the position of having to refuse a request that ought not to have been made.

Principles on government formation

14. There are three distinct circumstances in which there might be a change of Government under the UK's constitutional arrangements:
 - a) the incumbent Government no longer commands the confidence of the House of Commons following a general election;
 - b) the incumbent Government had the confidence of the House of Commons earlier in a Parliamentary term, but has subsequently lost that confidence;

- c) the incumbent Government has retained the confidence of the House of Commons in the course of a Parliament, but the Prime Minister has stepped down as leader of their party and a new leader has been appointed.

Changes of Government following a General Election

15. If the largest party in the incumbent government wins a single party majority at a General Election, it will normally continue in Government. Equally, if another party wins an outright majority at the General Election, the Prime Minister is expected immediately to offer his or her resignation to the Monarch. The expectation will then be that leader of the largest party will be invited to form a Government.

Hung Parliaments and government formation

16. If, following a general election, a range of different administrations could be formed, the incumbent Government is expected to stay in office as a caretaker Government. This arrangement remains in place while discussions take place between political parties to identify the person best placed to form a Government. It is expected that the Monarch would not be involved in such discussions but that the Palace would be kept informed. As soon as it becomes clear who is best placed to form a Government, if that person is not the incumbent Prime Minister, he or she should resign and that alternative person will be invited to form a Government.
17. If a General Election produces a hung Parliament and it is unclear who is best placed to command the confidence of the House of Commons, the incumbent Prime Minister is entitled to seek the confidence of the House by bringing forward a Queen's Speech. However, if the Government is then defeated on that Queen's Speech, or an amendment to it, the Prime Minister is expected immediately to resign.
18. When coalition governments are being formed, smaller parties to that agreement may want reassurances that an early election will not be sought unilaterally by the Prime Minister of the day. If such assurances have been given, a request ought not normally to be made for a dissolution unless and until it is clear that no viable alternative government could be formed.

Changes of Government during a Parliament

19. A Government can lose its working majority without necessarily losing the confidence of the House of Commons. If, however, a Government does not simply lose its majority, but also loses the confidence of the House, it may be expected to resign. This, and the situation in which party leadership changes, are dealt with in paragraphs 8 to 10 above.

The role of the Monarch

20. Any system in which key matters of elections and government formation are formally decided by the Monarch raises sensitivities about the nature of his or her role. Great care should be taken, both by the Prime Minister and other political actors, to ensure that this does not draw the Monarch into party-politics or matters of political controversy. Those disputes should—so far as possible—be resolved by the political process, rather than by any formal decision of the Monarch.

Conclusions and recommendations

Review of the Fixed-term Parliaments Act 2011

1. Although there are subtle differences in their respective positions, the manifestos of the two major parties provide the democratic context for this Committee: while mindful of the need to conduct the statutory review, we have focussed more on how the Act should be replaced than how it might be amended. It is also clear that mere repeal of the Act, without any form of replacement, would create legislative uncertainty and a constitutional lacuna, as the only statutory provision regarding the holding of parliaments would then be the remaining elements of the Meeting of Parliament Act 1694. This would clearly be unacceptable. (Paragraph 5)

Consideration of the Government's repeal proposals

2. It is welcome that the Government has brought forward draft legislative proposals; it was profoundly unsatisfactory that the timing meant the major constitutional changes brought about by the original Act could not have pre-legislative scrutiny. We have accordingly taken both parts of our remit very seriously. The Committee has consciously sought to carry out its statutory duty to review the 2011 Act in its own right, and has not confined itself to the Government's specific proposals for its repeal and replacement. We have considered a range of ways the 2011 Act could plausibly be replaced in addition to the Government's own proposal, in order to inform the debates on legislation that are expected to follow in the next Parliamentary session. (Paragraph 8)
3. We strongly urge the Government not to repeat the mistakes made in not sufficiently scrutinising the Fixed-term Parliaments Act 2011. This means allowing sufficient time for Parliament (including its Select Committees) to explore the full implications of the legislation when it is introduced. It is important that such constitutional legislation secures as wide a degree of cross-party agreement as possible, so that it can stand a chance of lasting more than a single Parliament. (Paragraph 12)

Whether the 2011 Act met its aims

4. It is possible that concerns over incumbency advantage will increase. There are likely to be hung Parliaments or confidence and supply arrangements in future. No Parliament can bind its successor, but an important aim of any constitutional arrangement, and therefore for this legislation, must be that it will be equally suitable for whatever the parliamentary arithmetic provided by the electorate. (Paragraph 29)
5. The Fixed-term Parliaments Act very clearly fulfilled its immediate political purpose. Not only did the Parliament last the full term, so did the Coalition Government that was formed at the beginning of it. (Paragraph 35)
6. If there is to be a future replacement for the Fixed-term Parliaments Act consideration should be given to allowing the date of any early election to be stipulated in the motion triggering that election. (Paragraph 49)

7. The Early Parliamentary General Election Act 2019 demonstrated the fundamental limits on statutes that seek to regulate the holding of general elections. It is doubtful whether a supermajority requirement can, under our current constitutional arrangements, be enforced unless the House of Lords actively resists an early election Bill. So far as it can be said the Fixed-term Parliaments Act attempted to enforce a supermajority constraint, in practice it did not do so. Moreover, the requirement for an Act of Parliament to override the super majority meant the decision making power no longer rested solely with the elected House. If there is ever a desire to replace the legislation, it should not contain super majority provisions. (Paragraph 50)
8. We acknowledge the political events of 2019 were extreme, and the Fixed-term Parliaments Act was not the sole source of difficulty. There is a risk of gridlock in any system which does not guarantee that a Government can either get its business through or can be sure of securing an election. The extent to which the risk of gridlock is a price worth paying for the benefits of fixed-term Parliaments is a matter of political judgment Parliament itself must make if a future administration brings forward another piece of legislation to fix parliamentary terms. (Paragraph 60)

Impact of the 2011 Act on confidence conventions

9. Nothing in the Fixed-term Parliaments Act prevented the House of Commons from debating and voting on a motion of no confidence otherwise than in the terms provided for by the Act. Such a motion may even be more appropriate if it is the House's intention to change the Government rather than to trigger a General Election. But despite the Government's assertion that the Fixed-term Parliaments Act would not change the conventions on confidence, the events of 2019 show that it clearly did so, since confidence motions in the name of the Leader of the Official Opposition were not given time for debate. This removed the previously understood power wielded by the Official Opposition to bring to the floor of the House a motion of no confidence when it is judged one necessary to test the will of the House. In addition, the Government was not able to define votes on any of its key policies as confidence votes. (Paragraph 71)
10. Although the confidence provisions of the Fixed-term Parliaments Act were never fully tested, they are clearly deficient. Giving statutory effects to some confidence motions, but not others, had the effect of undermining a shared understanding of the conventions on confidence and what the consequences of a loss of confidence should be. (Paragraph 76)
11. A decision by the House of Commons to withdraw its confidence in the Government is one of major constitutional significance. A system which allows a Government formally to regain the confidence of the House after it has been lost diminishes the significance of that decision and fosters further uncertainty. The statutory fourteen day period in the FtPA serves no useful purpose and should not form part of any future arrangements for dissolving Parliament and calling elections. (Paragraph 77)
12. Parliament should in future avoid putting any confidence motions on a statutory footing, or giving them direct legal effects. Doing so is unnecessary and risks disrupting important conventions on the formation and resignation of governments under our wider constitutional arrangements. Those conventions otherwise benefit

from flexibility and being able to respond to unusual or unexpected political circumstances. Nonetheless, we recommend that the Procedure Committee of the House of Commons review whether some conventions on this matter would benefit from being expressed in Standing Orders. (Paragraph 78)

Whether the House of Commons should retain a say over dissolution

13. It would be possible to replace the Fixed-term Parliaments Act with a provision requiring a vote in the Commons before Parliament was dissolved. A minority of the Committee argues this would be the simplest and most obvious way of protecting the Monarch from being dragged into party political debate. The majority considers it a change which would only have a practical effect in a gridlocked Parliament, which could mean denying an election to a Government which was unable to function effectively, and which might therefore be counter to the public interest. (Paragraph 86)

The Government's draft legislation

14. The Government should adopt a title—and in particular a short title—that more fully encapsulates the subject matter and future function of the legislation. We recommend the Bill should be entitled the Dissolution and Summoning of Parliament Act. The draft legislation would not, after all, simply repeal the Fixed-term Parliaments Act (that is achieved by clause 1 alone), but replace its provisions. (Paragraph 101)
15. Although the relevant prerogative powers of the Monarch are not expressly stated in the Government's draft Bill, their legal nature and scope are widely accepted and straightforward to explain. As long as there is clarity about what these rules are, and how the exercise of prerogative powers is governed by constitutional conventions to do with dissolution, calling of Parliaments, confidence, and government formation, this statutory approach is likely to be effective. We accept that, if the Government wants to return to the status quo ante, doing so by historical reference may aid certainty as to its legal intentions. (Paragraph 118)
16. The evidence we have heard suggests that the drafting of clause 2 of the draft Bill is sufficiently clear to give effect to the Government's intention of returning to the constitutional position, in substance if not necessarily in form, before the passing of the Fixed-term Parliaments Act 2011. The potential legal uncertainty created by passing the Bill as currently drafted, as to the source of the power to dissolve parliament, would only become relevant for practical purposes if the question of dissolution was considered by the courts. (Paragraph 119)
17. The Government's draft Bill transfers the power to determine whether or not there should be an early election from the House of Commons to the Crown. The Prime Minister will choose the time at which he or she will request a dissolution and the Monarch will decide whether to grant that request. But ultimately elections ensure the electorate—the ultimate authority in a democratic system—has the opportunity to exercise its judgment. (Paragraph 123)

The role of the Monarch under a revived prerogative system

18. The Dissolution Principles document describes both the powers to dissolve and to summon a Parliament as “personal” prerogatives. We understand the Government’s position to be that the Monarch’s power to refuse a dissolution would be a real one. If this is the case we believe that although it is unlikely that a Prime Minister’s request for a dissolution would be refused, the powers of the Prime Minister to fix the time of an election should not be unlimited and there would be some check on Executive power. If the Government wishes to restore the Monarch’s personal prerogative fully, it needs to revise the language in its dissolution principles, so that it is clear the Prime Minister has no power to advise a dissolution, but only to request one. The Government should replace references to “advice” on dissolution with “requests” for dissolution since the Monarch must accept Prime Ministerial advice. (Paragraph 142)
19. In almost every case, a Prime Minister’s request for a dissolution would be granted. It is after all a request to put the matter in the hands of the electorate. Nevertheless, it is conceivable that there are some extreme circumstances in which such a request would be inappropriate. One such instance might be where a Prime Minister, having lost a majority in the Commons in a general election, sought a further election before an alternative government could be formed. If the Monarch’s role in dissolution is indeed to be more than purely ceremonial, there should be clarity about at least some of the circumstances where exercising a veto would, or at least could, be constitutionally appropriate. Although some uncertainty is inevitable, because of the very nature of a prerogative system and our constitutional monarchy, Parliament and the public should have a clear sense of why a Prime Minister cannot always expect to be granted a dissolution. Any situation in which the Monarch feels it is necessary to refuse a dissolution would place both the person and institution of the Monarch at the centre of an issue of political controversy. This is a serious and central responsibility of the Monarch that should not be lightly used or shied away from. (Paragraph 144)
20. The Government should consider further how best to articulate the role of the Monarch in this process, to build trust in the prerogative system they wish to implement. At the least, any revision of the Cabinet Manual should, unlike the initial Dissolution Principles document, address much more directly how the Monarch’s veto operates in practice. (Paragraph 145)

The ouster clause (clause 3) and the role of the courts

21. The Committee recognises that views differ as to whether the Government’s approach on justiciability is the best one. A minority of Members on the Committee, for example, believe that a House of Commons vote on dissolution would be a protection against impeaching and questioning by the courts because of Article 9 of the Bill of Rights 1688. Such a vote would, in their view, give a better guarantee than an ouster clause against unwarranted judicial involvement and would avoid setting a precedent for ouster clauses in future legislation. (Paragraph 160)
22. Some on the Committee have expressed doubts as to whether the “belt-and-braces” or “sledgehammer” approach of an ouster clause is really necessary if the courts

will not, in practice, entertain legal challenges to dissolution. Provided it is clear that dissolution and calling of Parliaments are personal prerogatives, and that the Monarch's veto over requests is real (rather than ceremonial) they are satisfied that the courts would never, or almost never, grant an application for judicial review of a decision to dissolve Parliament. (Paragraph 161)

23. The majority of the Committee accepts that the general presumption is that Parliament does not intend to oust the jurisdiction of the courts. The Executive should be accountable to both the courts and Parliament. Nonetheless, in principle, the majority believes Parliament should be able to designate certain matters as ones which are to be resolved in the political rather than the judicial sphere, and Parliament should accordingly be able to restrict, and in rare cases, entirely to exclude, the jurisdiction of the courts. This position is not inherently incompatible with the rule of law, even if ousting the courts' jurisdiction will often be at tension with it so that a complete ouster will rarely be appropriate. In this case, when the power in question is to enable the electorate to determine who should hold power, they consider the ouster is acceptable. (Paragraph 162)
24. When Parliament legislates to restrict or oust the jurisdiction of the courts, it should use clear words, and be as explicit as possible about its intentions and the extent of the jurisdiction which it wishes to oust. In the light of previous judgments on other ouster clauses, we understand the Government's approach to drafting. It is clear that the Government wishes to ensure the decision to dissolve one Parliament and summon another, any request for such a dissolution and the advice which may have underpinned the requests or the decision are not justiciable. To do this, it has considered it was necessary to take an expansive approach to drafting. We invite it to consider whether a clearer and more limited approach might be as likely—or even more likely—to be effective. (Paragraph 175)

Maximum term of a Parliament

25. The Committee sees no obvious reason why the gap between elections should be greater than five years. The maximum term of a Parliament should be five years from the date of dissolution of the previous Parliament, rather than from when the current Parliament first met. This would prevent the election cycle from “drifting” if successive Parliaments reached, or very nearly reached, their maximum terms. (Paragraph 179)

Ensuring an election period starts immediately following dissolution

26. Under the Government's proposals, the dissolution of Parliament does not automatically trigger the statutory election period. It would be possible, legally, at least, for Parliament to be dissolved, and for the Government to delay the proclamation summoning a new Parliament. The Government should legislate to ensure that a proclamation summoning a new Parliament must be made at the same time as, or immediately after, the dissolution of Parliament. This means repealing and replacing section 2 of the Meeting of Parliament Act 1694. (Paragraph 188)

Polling day flexibility in the event of the demise of the Crown

27. The draft Bill allows limited discretion to change the date of the polling day in the event of a demise of the Crown, rather than fixing the delay at fourteen days, as is done now. Even with the Fixed-term Parliaments Act, polling day at general elections could fall close to major public holidays. We agree that it is appropriate for there to be a limited degree of extra flexibility in polling dates if the Monarch dies during an election period, and that it should be exercised by Proclamation, on the advice of the Privy Council. It would be sensible for a Prime Minister to consult the Leader of the Opposition and the leaders of other parties in Parliament before seeking to exercise this flexibility. (Paragraph 192)

Seeking to reduce the 25 working day statutory election period

28. UK General Elections have become more complex because of changes to voter registration and relaxation of the rules to do with postal vote eligibility. Other policy initiatives, such as extending the rights of overseas voters and the introduction of voter ID initiatives seem likely to place additional pressures on electoral administrators. The current legislative framework, set out in the Representation of the People Act 1983, is nearly forty years old. The Committee appreciates the difficulties that electoral administrators might face in reducing the election timetable from its current 25 working days. However, the lengthening of the election period has meant that the time between the dissolution of Parliament and its return is also lengthened. While we consider the country should be without Parliament for as short a time as possible, this must be balanced with the need to ensure that as many citizens as possible can register to vote and exercise their democratic right to vote in elections. (Paragraph 214)
29. We would like to see a significant reduction in the election timetable, insofar as this is compatible with ensuring the register is up to date and proxy and postal votes are possible, including for overseas voters. A cross party working party should be established by Government to examine how the General Election campaign period can be shortened from 25 days without compromising voter participation, including through the increased use of technology and increased focus on year round voter registration. The working party should report its recommendations to Government as soon as possible and in time to ensure any legislative requirements can be put forward in legislation for consideration before the expected date of the next General Election. (Paragraph 215)

Minimising the periods before dissolution and after polling day

30. In recent years concern has been focussed on the delay to the meeting of Parliament and the reestablishment of its scrutiny mechanisms rather than on the need for a new Parliament to prepare itself. This is particularly acute in the Commons, where committees need to be constituted afresh each Parliament. The Committee considers that it is desirable for the periods in which Parliament is not functioning, or a House is not yet able to scrutinise effectively, should be as short as possible. The election timetable is only one part of this. The Committee believes that both the period between the last sitting of Parliament and dissolution and the period

between polling day and the first meeting of Parliament should, wherever possible, be less than a week. While we would be concerned about legislation which dictated Parliamentary procedure, we recommend that the Government consider whether there should be statutory provision setting a shorter limit on the period in which the country can be without a functioning Parliament. (Paragraph 220)

The Dissolution Principles document and the operation of conventions

31. The “Dissolution Principles” document is inadequate. It does not reflect the nature of Monarch’s personal prerogatives to do with dissolving Parliament prior to 2011. Further by not considering and setting out the interrelated matters to do with other aspects of the election cycle, confidence of the House of Commons and government formation, it cannot provide a proper guide as to how dissolution should operate under a prerogative. The document cannot form the basis of a “shared understanding” of political practice and conventions which will be needed in future. (Paragraph 231)
32. This Report sets out the Committee’s views on the conventions on dissolution, Government formation and confidence. We expect the Government to respond to it before any legislation is introduced. In that response the Government must address these conventions in detail, explaining where it agrees with the Committee and where it does not. Most importantly, it must give a full explanation in a statement to Parliament for its position. Consideration should also be given to enshrining some conventions relating to confidence in the House of Commons Standing Orders. (Paragraph 232)
33. We recommend that the principles and conventions set out by the Committee are adopted as the basis for creating a new shared understanding of conventions and practices. (Paragraph 233)

Ensuring confidence in a Government can be tested

34. In the past the requirement that a motion of no confidence in the name of the Leader of the Opposition should be debated as quickly as possible has rested on convention. The time taken to arrange such debates has ranged from one to seven days. We consider that motions of no confidence tabled by the Leader of the Official Opposition, whether directed at the Prime Minister or in the Government as a whole, should be debated as soon as possible and preferably on the next sitting day. (Paragraph 236)
35. Given the refusal to find time for a debate on a motion of confidence in the name of the Leader of the Opposition in 2019, it may no longer be sufficient to rely on convention to enforce this. We consider there should be a Standing Order requirement that such a motion of confidence tabled by the Leader of the Opposition should be debated no later than the third sitting day (not being a Friday) after the day on which it is tabled. (Paragraph 237)

Formal minutes

Thursday 26 November 2020

Members present:

John Spellar, in the Chair

Lord Beith	Aaron Bell
Lord Grocott	Jackie Doyle-Price
Lord Jay	Ms Angela Eagle
Baroness Lawrence	Maria Eagle
Lord Mancroft	Peter Gibson
Lord McLoughlin	Mr Robert Goodwill
	David Linden
	Alan Mak
	Mrs Maria Miller
	Alexander Stafford
	Mr Shailesh Vara
	Craig Whittaker

1. Declarations of interest

Members' Interests as recorded in the Commons Register of Members' Interests and the Lords Register of Interests were declared. Other declarations were made (see Appendix).

Mr Goodwill noted that all Commons members had an interest in that the bill deal with the timing of and conditions for elections.

Maria Miller declared that she had recently been appointed as a director of the Westminster Foundation for Democracy.

2. Election of Chair

Lord McLoughlin was called to the Chair.

3. Committee working methods

Resolved, That the witnesses who submit written evidence to the Committee are authorised to publish it on their own account in accordance with Standing Order No. 135, subject always to the discretion of the Chair or where the Committee orders otherwise.

4. **The Committee's programme of work**

The Committee considered this matter.

5. **Draft Fixed-term Parliaments Act (Repeal) Bill: Call for Written Evidence**

The Committee agreed to issue a Call for Evidence with a deadline for written submissions of 4 January 2021.

[Adjourned till Thursday 3 December at 11.00 am]

Thursday 3 December 2020

Members present:

Lord McLoughlin, in the Chair

Lord Beith	Aaron Bell
Lord Grocott	Chris Bryant
Lord Jay	Jackie Doyle-Price
Baroness Lawrence	Ms Angela Eagle
Lord Mancroft	Maria Eagle
	Peter Gibson
	Mr Robert Goodwill
	David Linden
	Alan Mak
	Mrs Maria Miller
	John Spellar
	Alexander Stafford
	Mr Shailesh Vara
	Craig Whittaker

1. **The Committee's programme of work**

The Committee considered this matter.

[Adjourned till Tuesday 8 December at 10.30 am]

Tuesday 8 December 2020

Members present:

Lord McLoughlin, in the Chair

Lord Beith	Aaron Bell
Lord Grocott	Jackie Doyle-Price
Lord Jay	Ms Angela Eagle
Baroness Lawrence	Maria Eagle
	Mr Robert Goodwill
	Mrs Maria Miller
	Mr Shailesh Vara
	Craig Whittaker

1. The Committee's programme of work

The Committee considered this matter.

[Adjourned till Thursday 10 December at 10.45 am]

Thursday 10 December 2020

Members present:

Lord McLoughlin, in the Chair

Lord Beith	Aaron Bell
Lord Grocott	Chris Bryant
Lord Jay	Jackie Doyle-Price
Baroness Lawrence	Ms Angela Eagle
Lord Mancroft	Maria Eagle
	Peter Gibson
	Mr Robert Goodwill
	Mrs Maria Miller
	John Spellar
	Mr Shailesh Vara
	Craig Whittaker

1. Draft Fixed-term Parliaments Act (Repeal) Bill

Professor Alison Young, Sir David Williams Professor of Public Law, University of Cambridge; and Sir Stephen Laws, First Parliamentary Counsel 2006–12, Senior Fellow, Policy Exchange 2018-present, gave oral evidence.

[Adjourned till Thursday 17 December at 10.45 am]

Thursday 17 December 2020

Members present:

Lord McLoughlin, in the Chair

Lord Beith	Aaron Bell
Lord Grocott	Chris Bryant
Lord Jay	Jackie Doyle-Price
Baroness Lawrence	Ms Angela Eagle
Lord Mancroft	Maria Eagle
	Peter Gibson
	Mr Robert Goodwill
	David Linden
	Alan Mak
	Mrs Maria Miller
	John Spellar
	Alexander Stafford
	Mr Shailesh Vara
	Craig Whittaker

1. Written evidence

Ordered, That the following written evidence be reported to the House of Commons for publication:

- Vernon Bogdanor, Professor of Government at Kings College London (FTP0001)

Mr David H Smith (FTP0002)

2. Draft Fixed-term Parliaments Act (Repeal) Bill

The Lord Lisvane and Sir Malcolm Jack KCB gave oral evidence.

[Adjourned till Thursday 7 January at 10.45 am]

Thursday 7 January 2021

Members present:

Lord McLoughlin, in the Chair

Lord Beith	Aaron Bell
Lord Grocott	Chris Bryant
Lord Jay	Jackie Doyle-Price
Baroness Lawrence	Ms Angela Eagle
Lord Mancroft	Maria Eagle
	Peter Gibson
	Mr Robert Goodwill
	David Linden
	Alan Mak
	Mrs Maria Miller
	John Spellar
	Alexander Stafford
	Mr Shailesh Vara
	Craig Whittaker

1. Written evidence

Ordered, That the following written evidence be reported to the House of Commons for publication:

- Professor Robert Hazell CBE, Professor of Government and the Constitution, and Professor Meg Russell FBA, Director of the Constitution Unit in the School of Public Policy at UCL (FTP0003)
- Junade Ali (FTP0004)
- Law Society of Scotland (FTP0005)
- Paul Evans (FTP0006)

2. Draft Fixed-term Parliaments Act (Repeal) Bill

The Baroness Hale of Richmond, President of the Supreme Court 2017–2020 and Rt Hon The Lord Sumption, Justice of the Supreme Court 2011–2018, gave oral evidence.

[Adjourned till Thursday 14 January at 10.45 am]

Thursday 14 January 2021

Members present:

Lord McLoughlin, in the Chair

Lord Beith	Aaron Bell
Lord Grocott	Jackie Doyle-Price
Lord Jay	Dame Angela Eagle
Baroness Lawrence	Maria Eagle
Lord Mancroft	Peter Gibson
	Mr Robert Goodwill
	David Linden
	Alan Mak
	Mrs Maria Miller
	John Spellar
	Alexander Stafford
	Mr Shailesh Vara
	Craig Whittaker

1. Written evidence

Ordered, That the following written evidence be reported to the House of Commons for publication:

- Professor Richard Ekins, Head of Policy Exchange's Judicial Power Project and Professor of Law and Constitutional Government, University of Oxford (FTP0007)
- Steven Spadijer, DPhil Candidate (Law); Lecturer and Tutor Pembroke College, Oxford at Oxford University (FTP0008)
- Dr Alan Greene, Senior Lecturer, Birmingham Law School (FTP0009)

2. Draft Fixed-term Parliaments Act (Repeal) Bill

Rt Hon. Sir Oliver Letwin; and the Lord Butler of Brockwell gave oral evidence.

[Adjourned till Wednesday 20 January at 10.00 am]

Wednesday 20 January 2021

Members present:

Lord McLoughlin, in the Chair

Lord Beith

Lord Jay

Baroness Lawrence

Lord Mancroft

Aaron Bell

Chris Bryant

Jackie Doyle-Price

Dame Angela Eagle

Maria Eagle

Peter Gibson

Mr Robert Goodwill

Alan Mak

Mrs Maria Miller

John Spellar

Alexander Stafford

Mr Shailesh Vara

Craig Whittaker

1. Draft Fixed-term Parliaments Act (Repeal) Bill

The Committee considered this matter.

[Adjourned till Thursday 21 January at 10.45 am]

Thursday 21 January 2021

Members present:

Lord McLoughlin, in the Chair

Lord Beith	Aaron Bell
Lord Grocott	Jackie Doyle-Price
Lord Jay	Dame Angela Eagle
Baroness Lawrence	Maria Eagle
Lord Mancroft	Peter Gibson
	Mr Robert Goodwill
	Alan Mak
	Mrs Maria Miller
	Alexander Stafford
	Mr Shailesh Vara
	Craig Whittaker

1. Written evidence

Ordered, That the following written evidence be reported to the House of Commons for publication:

- Daniel Greenberg (Counsel for Domestic Legislation, Office of Speaker's Counsel at House of Commons) (FTP0010)
- Dr John McGarry (Senior Lecturer in Law at Department of Law and Centre for Crime Justice and Security at Staffordshire University) (FTP0011)
- Professor Petra Schleiter (Professor of Comparative Politics at University of Oxford); Dr Thomas Fleming (Lecturer in Politics at University of York) (FTP0012)
- Supplementary submission from Professor Robert Hazell, Professor of Government and the Constitution, UCL (FTP0013)

2. Draft Fixed-term Parliaments Act (Repeal) Bill

Professor Anne Twomey, University of Sydney, Australia; and Professor Philippe Lagasse, Carleton University, Canada gave oral evidence.

[Adjourned till Thursday 28 January at 10.45 am]

Thursday 28 January 2021

Members present:

Lord McLoughlin, in the Chair

Lord Beith	Aaron Bell
Lord Grocott	Chris Bryant
Lord Jay	Jackie Doyle-Price
Baroness Lawrence	Dame Angela Eagle
Lord Mancroft	Maria Eagle
	Mr Robert Goodwill
	Alan Mak
	Mrs Maria Miller
	John Spellar
	Alexander Stafford
	Mr Shailesh Vara
	Craig Whittaker

1. Written evidence

Ordered, That the following written evidence be reported to the House of Commons for publication:

- Professor Tom Hickman QC (Professor of Public Law at University College London (UCL)) (FTP0014)
- Mr Matthew Smalley (FTP0015)
- Dr Craig Prescott (Lecturer in Law at Bangor University) (FTP0016)
- Sir David Natzler KCB, former Clerk of the House of Commons (2014–2019) (FTP0017)

2. Draft Fixed-term Parliaments Act (Repeal) Bill

The Lord Hennessy of Nympsfield; and Professor Robert Hazell, Professor of Government and the Constitution, UCL gave oral evidence.

[Adjourned till Thursday 4 February at 10.45 am]

Thursday 4 February 2021

Members present:

Lord McLoughlin, in the Chair

Lord Beith	Lord Jay
Aaron Bell	Baroness Lawrence
Jackie Doyle-Price	Lord Mancroft
Dame Angela Eagle	Mrs Maria Miller
Maria Eagle	John Spellar
Peter Gibson	Alexander Stafford
Mr Robert Goodwill	Mr Shailesh Vara
Lord Grocott	Craig Whittaker

1. Written evidence

Ordered, That the following written evidence be reported to the House of Commons for publication:

- Dr Andrew Blick (Reader in Politics and Contemporary History and Head of Department of Political Economy at King's College London) (FTP0018)
- Mr Robert Craig (Lecturer in Law at University of Bristol) (FTP0019)
- Professor Gavin Phillipson (Professor of Law at University of Bristol Law School) (FTP0020)

2. Draft Fixed-term Parliaments Act (Repeal) Bill

Rt Hon Dame Margaret Beckett DBE PC MP gave oral evidence.

[Adjourned till Wednesday 10 February at 4.30 pm]

Wednesday 10 February 2021

Members present:

Lord McLoughlin, in the Chair

Lord Beith

Lord Grocott

Lord Jay

Baroness Lawrence

Lord Mancroft

Aaron Bell

Chris Bryant

Jackie Doyle-Price

Maria Eagle

Mr Robert Goodwill

Alan Mak

Mrs Maria Miller

John Spellar

Alexander Stafford

Mr Shailesh Vara

Craig Whittaker

1. Draft Fixed-term Parliaments Act (Repeal) Bill

The Committee considered this matter.

[Adjourned till Thursday 11 February at 11.00 am]

Thursday 11 February 2021

Members present:

Lord McLoughlin, in the Chair

Lord Beith	Aaron Bell
Lord Grocott	Jackie Doyle-Price
Lord Jay	Dame Angela Eagle
Baroness Lawrence	Maria Eagle
Lord Mancroft	Peter Gibson
	Mr Robert Goodwill
	Alan Mak
	Mrs Maria Miller
	John Spellar
	Alexander Stafford
	Mr Shailesh Vara
	Craig Whittaker

1. Written evidence

Ordered, That the following written evidence be reported to the House of Commons for publication:

- Association of Electoral Administrators (FTP0021)
- Dr Ben Whisker (FTP0022)
- Electoral Commission (FTP0023)

2. Draft Fixed-term Parliaments Act (Repeal) Bil

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

[Adjourned till Monday 22 February at 2.00 pm]

Monday 22 February 2021

Members present:

Lord McLoughlin, in the Chair

Lord Beith

Lord Grocott

Lord Jay

Baroness Lawrence

Lord Mancroft

Aaron Bell

Chris Bryant

Jackie Doyle-Price

Maria Eagle

Peter Gibson

Mr Robert Goodwill

Alan Mak

Mrs Maria Miller

John Spellar

Alexander Stafford

Mr Shailesh Vara

Craig Whittaker

1. **Draft Fixed-term Parliaments Act (Repeal) Bill: Heads of Report**

The Committee considered this matter.

[Adjourned till Thursday 11 March at 10.45 am]

Thursday 11 March 2021

Members present:

Lord McLoughlin, in the Chair

Lord Beith	Aaron Bell
Lord Grocott	Chris Bryant
Lord Jay	Jackie Doyle-Price
Baroness Lawrence	Dame Angela Eagle
Lord Mancroft	Maria Eagle
	Peter Gibson
	Mr Robert Goodwill
	Alan Mak
	Mrs Maria Miller
	John Spellar
	Alexander Stafford
	Mr Shailesh Vara
	Craig Whittaker

1. Written evidence

Ordered, That the following written evidence be reported to the House of Commons for publication:

- Letter received from Rt Hon. Michael Gove MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office (FTP0024).

2. Draft Fixed-term Parliaments Act (Repeal) Bill

The Committee informally considered the Chair's draft Report.

[Adjourned till Tuesday 16 March at 4.00 pm]

Tuesday 16 March 2021

Members present:

Lord McLoughlin, in the Chair

Lord Beith

Lord Grocott

Lord Jay

Baroness Lawrence

Lord Mancroft

Aaron Bell

Chris Bryant

Jackie Doyle-Price

Dame Angela Eagle

Maria Eagle

Peter Gibson

Mr Robert Goodwill

Alan Mak

Mrs Maria Miller

John Spellar

Alexander Stafford

Mr Shailesh Vara

Craig Whittaker

1. Chair's draft Report

The Committee considered this matter.

[Adjourned till Thursday 18 March at 10.30 am]

Thursday 18 March 2021

Members present:

Lord McLoughlin, in the Chair

Lord Beith	Aaron Bell
Lord Grocott	Chris Bryant
Lord Jay	Jackie Doyle-Price
Baroness Lawrence	Dame Angela Eagle
Lord Mancroft	Maria Eagle
	Peter Gibson
	Mr Robert Goodwill
	Alan Mak
	Mrs Maria Miller
	John Spellar
	Mr Shailesh Vara
	Craig Whittaker

1. Chair's draft Report

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 237 read and agreed to.

Box 1 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Report of the Committee to both Houses.

Ordered, That the Chairman make the Report to the House of Lords and Mr John Spellar make the Report to the House of Commons.

Ordered, That embargoed copies of the report be made available, in accordance with the provisions of House of Commons Standing Order No.134.

[The Joint Committee adjourned.]

APPENDIX: DECLARED INTERESTS

Lords Members' Declared Interests

Lord Beith

(Liberal Democrat, Life Peer)

Category 10: Non-financial interests (e)

- **Interest amended 14 June 2018** Chairman, Heritage Committee of the Methodist Church (originally added 14 June 2018)
- **Interest amended 26 February 2020** President and Honorary Member, National Liberal Club (originally added 1 December 2015)
- **Interest amended 1 December 2015** President, Historic Chapels Trust (originally added 1 December 2015)
- **Interest amended 1 December 2015** President, North of England Civic Trust (originally added 1 December 2015)

Category 10: Non-financial interests (b)

- **Interest amended 1 December 2015** Honorary Benchers, Middle Temple (originally added 1 December 2015)

Category 8: Gifts, benefits and hospitality

- **Interest deleted 9 October 2017** Discussion meeting, 20 September 2016, with Conseillers of the Sark Chief Pleas (Parliament of Sark) at their request; overnight accommodation, flight and ferry costs paid by Sark public funds (originally added 5 October 2016)

Category 7: Overseas visits

- **Interest deleted 11 September 2018** Visit to Gibraltar, 7–10 September 2017, for briefings from the Chief and Deputy Chief Minister on the implications of Brexit for Gibraltar, and for National Day events; costs of travel, accommodation and meals met by HM Government of Gibraltar (originally added 13 September 2017)

Lord Grocott

(Labour, Life Peer)

Category 8: Gifts, benefits and hospitality

- **Interest deleted 9 June 2011** Cost of travel in connection with visits to various UK locations as part of Industry and Parliament Trust Fellowship on railway industry is met by host organisations, CrossCountry Trains and Wrexham & Shropshire Trains (originally added 14 April 2010)

Category 10: Non-financial interests (a)

- Interest deleted 1 April 2019 Director, Birmingham City University Enterprise Limited (interest ceased 31 March 2018) (originally added 14 April 2010)

Category 10: Non-financial interests (b)

- Interest deleted 25 July 2019 Chancellor, Leicester University (interest ceased 10 July 2018) (originally added 7 January 2013)
- Interest deleted 1 April 2019 Non-executive Member, Board of Governors, Birmingham City University (interest ceased 31 March 2018) (originally added 14 April 2010)

Category 10: Non-financial interests (e)

- Interest deleted 21 July 2016 Chairman, Hansard Society (interest ceased 20 July 2015) (originally added 14 June 2012)
- Interest amended 14 March 2011 Member, Ironbridge Gorge Museum Trust (originally added 14 March 2011)
- Interest amended 14 April 2010 President, Telford Steam Railway (originally added 14 April 2010)

Category 2: Remunerated employment, office, profession etc.

- Interest deleted 21 July 2016 Trainer, Cumberlege Connections Ltd (NHS leadership/awareness programmes) (interest ceased 21 July 2015) (originally added 13 February 2012)

Category 7: Overseas visits

- Interest deleted 30 September 2016 Visit to Taiwan, 18–25 September 2015, as member of a parliamentary delegation invited as guests of the government of Taiwan; costs of visit met by host government (originally added 5 October 2015)

Lord Jay of Ewelme**(Crossbench, Life Peer)****Category 1: Directorships**

- **Interest deleted 28 February 2017** Non-executive Director, Associated British Foods (ABF) (interest ceased 30 November 2015) (originally added 26 April 2010)
- **Interest deleted 5 January 2015** Non-executive Director, Candover Investments plc (originally added 27 April 2010)
- **Interest deleted 13 May 2011** Non-executive Director, Crédit Agricole SA (originally added 27 April 2010)

- **Interest deleted 16 December 2014** Non-executive Director, Electricité de France (EDF) (originally added 27 April 2010)
- **Interest deleted 27 May 2016** Non-executive Director, Valéo SA (car components) (interest ceased 23 April 2015) (originally added 27 April 2010)
- **Interest amended 16 December 2014** Trustee, Thomson Reuters Founders Share Company (a remunerated non-executive directorship, described as a Trustee) (originally added 16 December 2014)

Category 2: Remunerated employment, office, profession etc.

- **Interest deleted 1 October 2013** Chairman, House of Lords Appointments Commission (originally added 26 April 2010)

Category 5: Land and property

- **Interest amended 8 January 2019** Cottage in Oxfordshire from which rental income is received (originally added 16 November 2018)
- **Interest deleted 9 February 2012** Part ownership (pending sale) of a village house in Nottinghamshire (originally added 15 June 2011)
- **Interest amended 27 April 2010** Shop in Oxfordshire, with rental income from flat above (originally added 26 April 2010)

Category 7: Overseas visits

- **Interest deleted 5 November 2010** Visit to Copenhagen, 23–25 October 2009, for conference of GLOBE International, which met travel and hotel expenses (originally added 26 April 2010)
- **Interest deleted 16 December 2014** Visit to Paris, 3–4 December 2013, for climate change discussions with French Senate and National Assembly; return Eurostar ticket paid for by GLOBE UK (originally added 6 January 2014)
- **Interest deleted 24 June 2010** Visit to Rome, June 2009, for meeting of GLOBE International, which met travel and hotel expenses (originally added 27 April 2010)
- **Interest deleted 4 May 2020** Visit to Stockholm, 23–24 April 2019, travel and accommodation costs paid by European Policy Forum (EPF) (originally added 6 May 2019)

Category 10: Non-financial interests (a)

- **Interest deleted 9 February 2012** Association member, BUPA (originally added 26 April 2010)
- **Interest deleted 2 January 2020** Chairman, Positive Planet UK (British branch of Paris based NGO) (interest ceased 31 December 2018) (originally added 23 March 2016)

Category 10: Non-financial interests (c)

- **Interest deleted 14 September 2017** Vice Chairman, Business for New Europe (BNE) (interest ceased when group disbanded, August 2016) (originally added 26 April 2010)

Category 10: Non-financial interests (e)

- **Interest deleted 13 May 2011** Chairman, Culham Languages and Sciences (educational charity) (originally added 26 April 2010)
- **Interest deleted 28 February 2017** Member, Chatham House Panel of Senior Advisers (interest ceased 27 October 2015) (originally added 26 January 2015)
- **Interest amended 26 January 2015** Member, Senior European Experts Group (an independent group that prepares briefing papers on contemporary European and EU topics) (originally added 26 January 2015)
- **Interest amended 5 January 2015** Trustee, Magdalen College, Oxford, Development Trust (originally added 5 January 2015)
- **Interest amended 16 November 2018** Vice Chairman (formerly Member), Advisory Council, European Policy Forum (originally added 20 October 2016)
- **Interest deleted 16 December 2014** Vice President, GLOBE UK (environmental education) (originally added 6 January 2014)

Category 10: Non-financial interests (d)

- **Interest deleted 9 February 2012** Board Member, Franco-British Chamber of Commerce and Industry, London (originally added 30 June 2010)
- **Interest deleted 23 July 2013** Chairman, Merlin (international medical aid charity) (originally added 27 April 2010)

Category 10: Non-financial interests (b)

- **Interest deleted 23 July 2018** Chairman, British Library Advisory Council (interest ceased 20 July 2017) (originally added 13 May 2011)

Category 8: Gifts, benefits and hospitality

- **Interest deleted 6 July 2020** One night's hotel accommodation at Hartwell House Hotel and Conference Centre near Aylesbury, paid for by European Policy Forum, 4 July 2019 (originally added 24 July 2019)
- **Interest deleted 1 October 2013** Visit to National Nuclear Laboratory, Sellafield, 13–14 September 2012, with All-Party Group on Thorium Energy; return first-class rail fare Euston to Lake District (Oxenholme) paid by Weinberg Foundation (originally added 9 October 2012)

Baroness Lawrence of Clarendon

(Labour, Life Peer)

Category 2: Remunerated employment, office, profession etc.

- **Interest deleted 26 April 2019** Appearance on ITV's Loose Women, 18 April 2018 (originally added 21 May 2018)
- **Interest deleted 30 August 2019** Appearance on ITV's Loose Women, 28 August 2018; fee paid by ITV Studios (originally added 28 November 2018)
- **Interest deleted 26 April 2019** Appearance on the BBC television series Stephen: The Murder that Changed a Nation, 17–19 April 2018 (originally added 21 May 2018)
- **Interest amended 13 March 2018** Consultant on establishment of Stephen Lawrence Research Centre, De Montfort University (originally added 13 March 2018)
- **Interest amended 28 January 2020** Consultant on TV production project with Hat Trick Productions Ltd (originally added 28 January 2020)
- **Interest deleted 15 April 2016** Director, Stephen Lawrence Charitable Trust (interest ceased 21 March 2015) (originally added 17 October 2013)
- **Interest deleted 26 April 2019** Interview with Daily Mail, 6 April 2018 (originally added 21 May 2018)
- **Interest deleted 29 January 2016** Marks and Spencer Summer 14 Leading Ladies campaign (originally added 1 April 2014)
- **Interest amended 11 May 2020** Remuneration received from De Montfort University for loan of Stephen Lawrence archive materials to The Stephen Lawrence Research Centre at De Montfort University, Leicester, 7 May 2020 (originally added 7 May 2020)
- **Interest deleted 28 February 2017** Speaking engagement, 10 December 2015, M&S Inspiring Women, Marks and Spencer plc, London (originally added 4 February 2016)
- **Interest deleted 28 February 2017** Speaking engagement, 29 October 2015, Black History Month, Bournemouth University (originally added 2 February 2016)

Category 10: Non-financial interests (d)

- **Interest deleted 19 June 2018** Trustee, Liberty (interest ceased 15 June 2017) (originally added 17 October 2013)

Category 7: Overseas visits

- **Interest deleted 5 March 2020** Visit to Cape Town, South Africa, 24 February – 3 March 2019, with a delegation of students organised by De Montfort University; costs of trip met by the University (originally added 6 March 2019)
- **Interest deleted 1 September 2016** Visit to Jamaica, 12–18 June 2015, to attend conference on the diaspora; cost of flights met by Jamaican National Bank; cost of hotel accommodation and hospitality met by Jamaican High Commissioner (originally added 6 July 2015)
- **Interest deleted 10 January 2019** Visit to New York, 4–9 January 2018, with a delegation of students organised by De Montfort University; costs of trip met by the University (originally added 18 January 2018)
- **Interest deleted 10 June 2019** Visit to New York, USA, 4–9 June 2018, with a delegation of students organised by De Montfort University; costs of trip met by the University (originally added 12 June 2018)
- **Interest deleted 16 January 2020** Visit to New York, USA, 5–8 January 2019, with a delegation of students organised by De Montfort University; costs of trip met by the University (originally added 6 March 2019)
- **Interest deleted 26 April 2019** Visit to Sudan, 8–13 April 2018, on delegation; costs of transport, accommodation and hospitality met by the National Assembly of Sudan (originally added 25 April 2018)

Category 10: Non-financial interests (b)

- **Interest amended 28 January 2020** Chancellor, De Montfort University, Leicester (interest ceased 28 January 2020) (originally added 29 January 2016)

Category 6: Sponsorship

- **Interest amended 6 November 2019** Community Trade Union supports member's executive PA for three days per week (by way of political donation) to help with her parliamentary work (originally added 6 November 2019)
- **Interest deleted 12 October 2020** De Montfort University in Leicester pay for one of their staff to act for three days a week as the member's executive PA to help with her parliamentary work (see category 10(b)) (interest ceased 30 September 2019) (originally added 29 January 2016)

Category 10: Non-financial interests (e)

- **Interest amended 10 February 2020** Founder and Trustee, Stephen Lawrence Day Foundation (originally added 10 February 2020)
- **Interest amended 12 October 2020** President, Stephen Lawrence Charitable Trust (interest ceased 22 July 2020) (originally added 21 May 2018)

Lord McLoughlin**(Conservative, Life Peer)****Category 2: Remunerated employment, office, profession etc.**

- **Interest amended 13 October 2020** Chairman, British Tourist Authority (originally added 13 October 2020)

Lord Mancroft**(Conservative, Excepted Hereditary)****Category 1: Directorships**

- **Interest deleted 24 February 2017** Chairman, Advisory Board, Fleurette Group (mining in DRC) (interest ceased 31 October 2015) (originally added 4 July 2013)
- **Interest amended 13 June 2019** Chairman, Avida Global Ltd (medicinal cannabis producer) (originally added 13 June 2019)
- **Interest deleted 18 June 2019** Chairman, Avida Global Ltd (producers of high quality cannabis oils for medicinal, health and well-being market place) (originally added 18 June 2019)
- **Interest amended 18 June 2019** Chairman, Bantu RG Energy Ltd (infrastructure in Africa) (originally added 18 June 2019)
- **Interest deleted 13 May 2020** Chairman, Billion Dollar Draw plc (interest ceased 10 May 2019) (originally added 9 August 2018)
- **Interest deleted 2 May 2018** Chairman, BNN Technology plc (formerly DJI Holdings Limited) (Chinese technology provider) (interest ceased 1 May 2017) (originally added 20 April 2010)
- **Interest amended 25 February 2017** Chairman, Landtrader (UK and Ireland) Ltd (originally added 24 February 2017)
- **Interest amended 19 August 2020** Chairman, Mainbridge Infrastructure Ltd (undertakes infrastructure projects in Africa) (interest ceased 17 August 2020) (originally added 26 February 2020)
- **Interest amended 19 August 2020** Chairman, Nuenergy Systems Ltd (originally added 19 August 2020)
- **Interest deleted 30 September 2016** Chairman, PYX Financial Group (Hong Kong) (interest ceased 30 September 2015) (originally added 4 July 2013)
- **Interest deleted 26 February 2018** Executive Chairman, Phoenix Gaming Limited (interest ceased 24 February 2017) (originally added 20 April 2010)
- **Interest amended 25 February 2017** Non-executive Deputy Chairman, ROK Mobile Limited (originally added 20 April 2010)

- **Interest deleted 16 January 2019** Non-executive Director, BNN Technology plc (Chinese technology provider) (interest ceased 15 January 2018) (originally added 19 June 2017)
- **Interest amended 25 February 2017** Non-executive Director, ROK Global plc (technologies, applications and services development) (originally added 20 April 2010)

Category 4: Shareholdings (b)

- **Interest amended 19 August 2020** Bantu RG Energy Ltd (test drilling and boring) (originally added 19 August 2020)
- **Interest deleted 29 November 2018** Billion Dollar Draw plc (originally added 9 August 2018)
- **Interest amended 19 August 2020** BNN Technology plc (formerly DJI Holdings Limited) (Chinese technology provider) (interest ceased 17 August 2020) (originally added 20 April 2010)
- **Interest amended 19 August 2020** Nuenergy Systems Ltd (batteries and accumulators) (originally added 19 August 2020)
- **Interest amended 25 February 2017** ROK Global plc (technologies, applications and services development) (originally added 20 April 2010)

Category 10: Non-financial interests (a)

- **Interest deleted 24 February 2017** Director, Conservative Party Foundation Limited (interest ceased 13 January 2016) (originally added 24 May 2010)
- **Interest deleted 24 February 2017** Director, Lottery for London CIC (interest ceased 13 January 2016) (originally added 20 April 2010)

Category 10: Non-financial interests (d)

- **Interest amended 4 February 2020** Chairman, Masters of Foxhounds Association (originally added 24 February 2017)
- **Interest deleted 16 June 2020** Deputy Chairman, Countryside Alliance (interest ceased 13 June 2019) (originally added 20 April 2010)
- **Interest amended 20 June 2011** President, the Lotteries Council (originally added 20 April 2010)

Category 10: Non-financial interests (e)

- **Interest deleted 19 June 2019** Trustee, Mentor Foundation UK (interest ceased 31 December 2017) (originally added 20 April 2010)

Commons' Members Declared Interests

Aaron Bell (Newcastle-under-Lyme)

2. (a) Support linked to an MP but received by a local party organisation or indirectly via a central party organisation

Name of donor: J C Bamford Excavators Ltd

Address of donor: Lakeside Works, Denstone Rd, Rocester ST14 5JP

Amount of donation, or nature and value if donation in kind: £5,000 for my 2019 general election campaign

Donor status: company, registration 00561597

(Registered 09 January 2020)

Name of donor: Nicholas F Bacon

Address of donor: private

Amount of donation, or nature and value if donation in kind: £5,000 for my 2019 general election campaign

Donor status: individual

(Registered 09 January 2020)

Name of donor: The Leamington Fund

Address of donor: The Hill Farm, Edgioc, Astwood Bank, B96 6JZ

Amount of donation, or nature and value if donation in kind: £7,500 for my 2019 general election campaign

Donor status: unincorporated association

(Registered 09 January 2020)

Name of donor: The Staffordshire Westminster Club

Address of donor: Enson Moor House, Enson, Stafford, Staffordshire, ST18 9TA

Amount of donation or nature and value if donation in kind: £3,500 for my 2019 general election campaign

Donor status: members' association (unincorporated)

(Registered 09 January 2020)

Name of donor: D Contracts Ltd

Address of donor: Charter Buildings, 9 Ashton Lane, M33 6WT

Amount of donation or nature and value if donation in kind: £3,000 for my 2019 General election campaign

Donor status: company, registration 07371646

(Registered 09 January 2020)

Name of donor: Association of Conservative Clubs Ltd

Address of donor: 24 Old Queen St, Woodford Rd, London SW1H 9HP

Amount of donation, or nature and value if donation in kind: £5,000 for my 2019 General Election campaign

Donor status: company, registration 00457188

(Registered 09 January 2020)

7. (ii) Other shareholdings, valued at more than £70,000

Rematch Credit Ltd; parent company of interest free credit provider DivideBuy.

(Registered 09 January 2020)

8. Miscellaneous

From 8 January 2020, member of the Town Deal Board for Newcastle-under-Lyme. This is an unpaid role. (Registered 21 January 2020)

Bryant, Chris (Rhondda)

1. Employment and earnings

Payments received via United Agents, 12–26 Lexington Street, London W1F 0LE:

6 March 2020, received £7,600 from Mother Pictures Ltd, Biscuit Building, 10 Redchurch Street, London E2 7DD, for the rights to make a television series based on my forthcoming book. Hours: no additional hours. (Registered 13 March 2020)

12 August 2020, received £2,660 from W F Howes Ltd, Unit 5, St George's House, Rearsby Business Park, Gaddesby Lane, Rearsby, LE7 4YH, for audiobook rights to my forthcoming book. Hours: no additional hours. (Registered 17 August 2020)

Payments from Guardian News and Media, Kings Place, 90 York Way, London N1 9GU, for articles in the Guardian and Observer:

21 May 2020, received £100. Hours: 1 hr. (Registered 08 June 2020)

Payment of £200 expected for article on written on 30 May 2020. Hours: 1 hr. (Registered 08 June 2020)

Payment of £200 expected for article on written on 7 June 2020. Hours: 1 hr.
(Registered 08 June 2020)

Payments for articles from the Telegraph Media Group, 111 Buckingham Palace Road,
London SW1W 0DT:

24 July 2020, received £250. Hours: 1 hr. (Registered 24 July 2020)

8. Miscellaneous

From June 2018, Chairman (unpaid) of Rhondda Arts Festival in Treorchy (RAFT).
(Registered 17 August 2020)

Along with For the Citizens Ltd (known as The Citizens) and three other MPs, since
19 October 2020 I have been party to judicial review proceedings crowdfunded
through The Citizens, The Old Workshop, 1 Ecclesall Road South, Sheffield, S11
9PA. (Registered 27 October 2020)

Doyle-Price, Jackie (Thurrock)

2. (a) Support linked to an MP but received by a local party organisation or indirectly via a central party organisation

Name of donor: IPGL Ltd

Address of donor: Level 28, Citypoint, 1 Ropemaker Street, London EC2Y 9AW

Amount of donation or nature and value if donation in kind: £2,000 for the General
Election

Donor status: company, registration 2011009

(Registered 07 January 2020)

Name of donor: John Kinder

Address of donor: private

Amount of donation or nature and value if donation in kind: £2,000 for the General
Election

Donor status: individual

(Registered 07 January 2020)

Name of donor: The Red House (Ashstead) Ltd

Address of donor: 18 Brookway, London SE3 9BJ

Amount of donation or nature and value if donation in kind: £2,500 for the General Election

Donor status: company, registration 03187173

(Registered 07 January 2020)

Name of donor: Stephen Day

Address of donor: private

Amount of donation or nature and value if donation in kind: £2,000 for the General Election

Donor status: individual

(Registered 07 January 2020)

Name of donor: Stalbury Trustees

Address of donor: 31 Hill Street, London W1J 4LS

Amount of donation or nature and value if donation in kind: £5,000 for the General Election

Donor status: company, registration 1430799

(Registered 07 January 2020)

Name of donor: The United and Cecil Club

Address of donor: Abbatt Group, New Penderel House 283–287, High Holborn, London WC1V 7HF

Amount of donation or nature and value if donation in kind: £3,500 for the General Election

Donor status: unincorporated association

(Registered 07 January 2020)

Name of donor: Lord Philip Harris

Address of donor: private

Amount of donation or nature and value if donation in kind: £7,000 for the General Election

Donor status: individual

(Registered 07 January 2020)

4. Visits outside the UK

Name of donor: Ministry of Foreign Affairs, Qatar

Address of donor: 1 South Audley Street, London W1K 1NB

Estimate of the probable value (or amount of any donation): air travel, food and accommodation to a value of £2,700

Destination of visit: Qatar

Dates of visit: 16–19 February 2020

Purpose of visit: British-Qatar APPG visit to meet Ministers and officials, discuss the Gulf Cooperation Council crisis, workers' rights, bilateral relations and regional issues.

(Registered 05 March 2020)

8. Miscellaneous

From 24 January 2020, Deputy Chairman of Tilbury Town Board. This is an unpaid role. (Registered 25 February 2020)

From 31 January 2020, Deputy Chairman of Grays Town Board. This is an unpaid role. (Registered 25 February 2020)

9. Family members employed and paid from parliamentary expenses

I employ my partner, Mark Coxshall, as Office Manager.

Eagle, Ms Angela (Wallasey)

2. (b) Any other support not included in Category 2(a)

Name of donor: Unite the Union

Address of donor: Jack Jones House 2 Churchill Way Liverpool, L3 8EF

Amount of donation or nature and value if donation in kind: Franked envelopes with a value of £2,508.32

Date received: 4 November 2019

Date accepted: 4 November 2019

Donor status: trade union

(Registered 17 December 2019)

Name of donor: Anthony Watson

Address of donor: private

Amount of donation or nature and value if donation in kind: £2,500

Date received: 14 November 2019

Date accepted: 16 November 2019

Donor status: individual

(Registered 17 December 2019)

Eagle, Maria (Garston and Halewood)

2. (b) Any other support not included in Category 2(a)

Name of donor: Anthony Watson

Address of donor: private

Amount of donation or nature and value if donation in kind: £1,000

Date received: 22 August 2019

Date accepted: 22 August 2019

Donor status: individual

(Registered 20 December 2019)

Name of donor: Anthony Watson

Address of donor: private

Amount of donation or nature and value if donation in kind: £1,000

Date received: 14 November 2019

Date accepted: 14 November 2019

Donor status: individual

(Registered 20 December 2019)

Gibson, Peter (Darlington)

1. Employment and earnings

Until further notice, contracted to Kingly Solicitors, Standard Way, Northallerton, DL6 2XQ, to provide advice on law firm management and services as executor, trustee deputy or attorney for clients. Services will be provided and payments received on an ad hoc basis. (Registered 10 January 2020)

13 February 2020, received £250 for consultancy services. Hours: 5 hrs.

(Registered 24 February 2020)

Contracted to Clark Willis LLP Law Firm, 105 Bondgate, Darlington DL3 7LB, to provide advice and consultancy services. Services will be provided and payments received on an ad hoc basis. (Registered 09 July 2020)

2. (a) Support linked to an MP but received by a local party organisation or indirectly via a central party organisation

Name of donor: United & Cecil Club

Address of donor: 18 Thorney Lane North, Iver, Buckinghamshire SLO 9JY

Amount of donation or nature and value if donation in kind: £4,000

Donor status: unincorporated association

(Registered 10 January 2020)

Name of donor: P & R Construction Ltd

Address of donor: Roseville Court, Blair Avenue, Ingleby Barwick TS17 5BL

Amount of donation or nature and value if donation in kind: £2,500

Donor status: company, registration 08447137

(Registered 10 January 2020)

Name of donor: Mr Antony E Endfield

Address of donor: private

Amount of donation or nature and value if donation in kind: £2,000

Donor status: individual

(Registered 10 January 2020)

Name of donor: Association of Conservative Clubs Limited

Address of donor: 24 Old Queen Street, London SW1H 9HP

Amount of donation or nature and value if donation in kind: £2,500

Donor status: company, registration 00457188

(Registered 10 January 2020)

Name of donor: Dukehill Services Ltd

Address of donor: 4 Birchley Estate, Birchfield Lane, Oldbury, B69 1DT

Amount of donation or nature and value if donation in kind: £4,000

Donor status: company, registration 06317947

(Registered 10 January 2020)

4. Visits outside the UK

Name of donor: Conservative Friends of Israel Ltd (CFI Ltd)

Address of donor: Blick Rothenberg, 7–10 Chandos Street, London W1G 9DG

Estimate of the probable value (or amount of any donation): Air travel, accommodation and hospitality with a value of £2,000

Destination of visit: Israel and the West Bank

Dates of visit: 7–12 July 2019

Purpose of visit: Fact finding political delegation.

(Registered 10 January 2020)

6. Land and property portfolio: (i) value over £100,000 and/or (ii) giving rental income of over £10,000 a year

House in North Yorkshire owned jointly with my civil partner: (i) and (ii).

(Registered 10 January 2020)

7. (i) Shareholdings: over 15% of issued share capital

Wedgwood Alexander Properties Ltd; owning and letting of property. (Registered 10 January 2020)

8. Miscellaneous

Trustee of Thormanby United Charities, which supports residents of Thormanby who face personal hardship. (Registered 10 January 2020)

Trustee and Director of two hospices: Harrogate and District Hospice and Herriot Hospice Homecare. (Registered 10 January 2020)

Practising solicitor registered on the roll. (Registered 10 January 2020)

Trustee Deputy, Attorney and Executor of many trusts, estates and individuals'

affairs accumulated through my professional role as a solicitor. (Registered 10 January 2020)

Goodwill, Mr Robert (Scarborough and Whitby)

2. (a) Support linked to an MP but received by a local party organisation or indirectly via a central party organisation

Name of donor: John Guthrie OBE

Address of donor: private

Amount of donation or nature and value if donation in kind: £10,000 to

Scarborough and Whitby Conservative Association Fighting Fund

Donor status: individual

(Registered 06 January 2020)

Name of donor: Nick Thomas MBE

Address of donor: private

Amount of donation or nature and value if donation in kind: £5,000 to Scarborough and Whitby Conservative Association Fighting Fund

Donor status: individual

(Registered 06 January 2020)

Name of donor: Toby Glaysher

Address of donor: private

Amount of donation or nature and value if donation in kind: £10,000 to Scarborough and Whitby Conservative Association Fighting Fund

Donor status: individual

(Registered 06 January 2020)

6. Land and property portfolio: (i) value over £100,000 and/or (ii) giving rental income of over £10,000 a year

Southwood Farm, Terrington, York, which is farmed “in hand”: (i) and (ii). Three industrial units at Southwood Farm, Terrington, York: (i) and (ii). Since January 2018, only two of these units are let. (Updated 06 January 2020)

Four houses in Teesside. Administered by R W Goodwill, Property Division: (i) and (ii).

Until 1 October 2020, a residential property in North Yorkshire, administered by R W Goodwill, Property Division: (i) and, from June 2018, (ii). (Registered 03 April 2012; updated 06 January 2020 and 01 October 2020)

Flat in London. Administered by R W Goodwill, Property Division: (i) and (ii).

(Registered 10 April 2012)

7. (i) Shareholdings: over 15% of issued share capital

Mowthorpe (UK) Ltd; cemetery company

From 21 September 2020, 76 Warwick Way Ltd; a company which owns a property freehold. (Registered 23 September 2020)

8. Miscellaneous

Unremunerated managing director of Mowthorpe (UK) Ltd; see entry in Category 7 above. (Updated 13 May 2015)

Farmer; R W Goodwill, Southwood Farm, Terrington, York. I draw no money from the farm. (Updated 13 May 2015)

9. Family members employed and paid from parliamentary expenses

I employ my wife, Maureen Goodwill, as Parliamentary Assistant and Caseworker.

Linden, David (Glasgow East)

Nil

Mak, Alan (Havant)**2. (a) Support linked to an MP but received by a local party organisation or indirectly via a central party organisation**

Name of donor: Harbour Hotels Holdings Limited

Address of donor: Harbour House, 60 Purewell, Christchurch BH23 1ES

Amount of donation, or nature and value if donation in kind: £10,000

Donor status: company, registration 09908188

(Registered 08 January 2020)

Name of donor: Radleigh House Limited

Address of donor: 1 St George's Road, London SW19 4DR

Amount of donation, or nature and value if donation in kind: £3,500

Donor status: company, registration 08144239

(Registered 08 January 2020)

Name of donor: Anthony Howard

Address of donor: private

Amount of donation, or nature and value if donation in kind: £2,000

Donor status: individual

(Registered 08 January 2020)

Name of donor: Lewmar Limited

Address of donor: Southmoor Lane, Havant PO9 1JJ

Amount of donation, or nature and value if donation in kind: £2,000

Donor status: company, registration 00620277 (Registered 08 January 2020)

Name of donor: Michael Davis

Address of donor: private

Amount of donation, or nature and value if donation in kind: £2,000

Donor status: individual

(Registered 08 January 2020)

Name of donor: Andrew Law

Address of donor: private

Amount of donation, or nature and value if donation in kind: £2,000

Donor status: individual

(Registered 08 January 2020)

Name of donor: IPGL

Limited Address of donor: 39 Sloane Street, London SW1X 9LP

Amount of donation, or nature and value if donation in kind: £2,000

Donor status: company, registration 02011009

(Registered 08 January 2020)

Name of donor: Jesmond Ventures Limited

Address of donor: 2 West Eaton Place, London, SW1X 8LS

Amount of donation, or nature and value if donation in kind: £2,000

Donor status: company, registration 11864067

(Registered 08 January 2020)

2. (b) Any other support not included in Category 2(a)

Name of donor: Senator Press Limited

Address of donor: Units 3–4, Hayward Centre, New Lane, Havant PO9 2NL

Amount of donation or nature and value if donation in kind: Printing of constituency newsletter, value £2,760

Date received: 11 September 2020

Date accepted: 11 September 2020

Donor status: company, registration 03247723 (Registered 29 September 2020)

3. Gifts, benefits and hospitality from UK sources

Name of donor: Langstone Quays Hotel Ltd

Address of donor: Weston Rhyn, Oswestry, SY11 3EN

Amount of donation or nature and value if donation in kind: use of venue for local Party member function; value £600

Date received: 2 February 2020

Date accepted: 2 February 2020

Donor status: company, registration 11203032

(Registered 12 February 2020)

8. Miscellaneous Solicitor, England and Wales (non-practising).

(Registered 05 June 2015) From 1 January 2020, ambassador for The Blossom Awards (non-profit initiative for the British-Chinese community, administered by my partner's company). This is an unpaid role. (Registered 08 January 2020)

From 25 February 2020, Vice Chairman of the Conservative Party. This is an unpaid role. (Registered 03 March 2020)

Miller, Mrs Maria (Basingstoke)**8. Miscellaneous**

From 12 July 2017, a director and trustee of the Commonwealth Parliamentary Association (unremunerated). (Registered 12 October 2017) Trustee of Belarus Free Theatre (unremunerated). (Registered 13 November 2017)

Spellar, John (Warley)

Nil

Stafford, Alexander (Rother Valley)**1. Employment and earnings**

20 December 2019, received £5,158.44 from my former employer, Shell Ltd, Shell Centre, 2 York Road, London SE1 7NA, for providing communications services. Hours: none since my election. (Registered 06 January 2020)

Until 30 March 2020, Councillor, Ealing Council, 14 Uxbridge Road, Ealing W5 2HL. I received a monthly allowance of £1,503 in return for an expected commitment of 10 hrs a month. Final payment received on 26 March 2020. (Registered 06 January 2020; updated 07 April 2020)

Payments from YouGov plc, 50 Featherstone St, London EC1Y 8RT, for opinion surveys:

21 February 2020, received £110. Hours: 30 mins. (Registered 25 February 2020)

21 April 2020, received £50. Hours: 30 mins. (Registered 04 May 2020)

21 April 2020, received £100. Hours: 30 mins. (Registered 04 May 2020)

21 April 2020, received £100. Hours: 30 mins. (Registered 04 May 2020)

9 July 2020, received £70. Hours: 30 mins. (Registered 24 August 2020)

31 July 2020, received £100. Hours: 30 mins. (Registered 24 August 2020)

Payments from from Savanta ComRes, 3 Melville Street, Edinburgh EH3 7PE, for opinion surveys:

10 March 2020, received £75. Hours: 30 mins. (Registered 24 August 2020) 11 May 2020, received £75. Hours: 30 mins. (Registered 24 August 2020)

20 May 2020, received £75. Hours: 30 mins. (Registered 24 August 2020)

9 June 2020, received £75. Hours: 30 mins. (Registered 24 August 2020)

5 August 2020, received £75. Hours: 30 mins. (Registered 24 August 2020)

Vara, Mr Shailesh (North West Cambridgeshire)**6. Land and property portfolio: (i) value over £100,000 and/or (ii) giving rental income of over £10,000 a year**

Until 6 February 2020, a flat in London: (i) and (ii). (Updated 25 February 2020)

8. Miscellaneous

Non-practising solicitor

Whittaker, Craig (Calder Valley)**2. (b) Any other support not included in Category 2(a)**

Name of donor: Castle Villas Ltd

Address of donor: 25a Aire Valley Business Centre, Lawkholme Lane, Keighley BD21 3BB

Amount of donation or nature and value if donation in kind: £4,000 for campaign funds at General Election

Date received: 2 November 2019

Date accepted: 11 November 2019

Donor status: company, registration 03952886

(Registered 23 December 2019)

Name of donor: Waxman International Limited

Address of donor: Grove Mills, Elland Lane, Elland HX5 9DZ

Amount of donation or nature and value if donation in kind: £3,000 for campaign funds at General Election

Date received: 11 November 2019

Date accepted: 14 November 2019

Donor status: company, registration 01403332

(Registered 23 December 2019)

Name of donor: The United and Cecil Club

Address of donor: New Penderel House, 283 - 287, High Holborn, London WC1V 7HF

Amount of donation or nature and value if donation in kind: £2,500 for campaigning funds at General Election

Date received: 6 November 2019

Date accepted: 14 November 2019

Donor status: unincorporated association

(Registered 23 December 2019)

Name of donor: HC Whitehead Ltd

Address of donor: Prospect Works, Bradford Road, Brighouse HD6 4DJ

Amount of donation or nature and value if donation in kind: £2,000 for campaigning funds at General Election

Date received: 1 November 2019

Date accepted: 11 November 2019

Donor status: company, registration 00352679

(Registered 23 December 2019)

Name of donor: IM Group Ltd

Address of donor: The Gate, International Drive, Shirley, Solihull B90 4WA

Amount of donation or nature and value if donation in kind: £3,000 for campaigning funds at General Election

Date received: 12 November 2019

Date accepted: 13 November 2019

Donor status: company, registration 03456018

(Registered 23 December 2019)

Name of donor: Decorative Panels Ltd

Address of donor: Century House, Premier Way, Lowfields Business Park, Elland, HX5 9HF 501

Amount of donation or nature and value if donation in kind: £2,500 for campaigning funds at General Election

Date received: 22 November 2019

Date accepted: 22 November 2019

Donor status: company, registration 0792998

(Registered 23 December 2019)

Name of donor: IM Group Ltd

Address of donor: The Gate, International Drive, Shirley, Solihull B90 4WA

Amount of donation or nature and value if donation in kind: £1,000 for campaigning funds at General Election

Date received: 27 November 2019

Date accepted: 2 December 2019

Donor status: company, registration 03456018

(Registered 23 December 2019)

Name of donor: Harris Ventures Ltd

Address of donor: Philip Harris House, 1a Spur Road, Orpington, Kent BR6 0PH

Amount of donation or nature and value if donation in kind: £3,000 for campaigning funds at General Election

Date received: 19 November 2019

Date accepted: 2 December 2019

Donor status: company, registration 02278367

(Registered 27 December 2019)

8. Miscellaneous

From 1 March 2020, member of Todmorden Town Funds Board and Brighthouse Town Funds Board. These are unpaid roles. (Registered 09 March 2020)

9. Family members employed and paid from parliamentary expenses

I employ my daughter, Sophie Whittaker, as full-time Executive Office Manager. (Updated 15 July 2019)

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Thursday 10 December 2020

Professor Alison Young, Sir David Williams Professor of Public Law, University of Cambridge; **Sir Stephen Laws**, First Parliamentary Counsel 2006–12, Senior Fellow, Policy Exchange 2018–present [Q1–36](#)

Thursday 17 December 2020

Sir Malcolm Jack KCB, former Clerk of the House of Commons (2006 to 2011), and **Lord Lisvane**, former Clerk of the House of Commons (2011 to 2014) [Q37–75](#)

Thursday 7 January 2021

Baroness Hale of Richmond, President of the Supreme Court 2017–2020 and **Lord Sumption**, Justice of the Supreme Court 2011–2018 [Q76–121](#)

Thursday 14 January 2021

Rt Hon Sir Oliver Letwin [Q122–145](#)

The Rt Hon the Lord Butler of Brockwell KG GCB CVO [Q146–179](#)

Thursday 21 January 2021

Professor Anne Twomey, University of Sydney, Australia, and **Professor Philippe Lagassé**, Carleton University, Canada [Q180–219](#)

Thursday 28 January 2021

Lord Hennessy of Nympsfield, and **Professor Robert Hazell**, Professor of Government and the Constitution, University College London (UCL) [Q220–282](#)

Thursday 4 February 2021

Rt Hon Margaret Beckett MP [Q0283–326](#)

Thursday 11 February 2021

Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, Cabinet Office; **The Lord True CBE**, Minister of State, Cabinet Office; **Peter Lee**, Acting Director General of Constitution Group, Cabinet Office [Q327–374](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

FTP numbers are generated by the evidence processing system and so may not be complete.

- 1 Ali, Junade ([FTP0004](#))
- 2 Association of Electoral Administrators ([FTP0021](#))
- 3 Blick, Dr Andrew ([FTP0018](#))
- 4 Bogdanor, Vernon (Professor of Government, Kings College London) ([FTP0001](#))
- 5 Craig, Mr Robert ([FTP0019](#))
- 6 Electoral Commission ([FTP0023](#))
- 7 Evans, Paul ([FTP0006](#))
- 8 Cabinet Office ([FTP0024](#))
- 9 Fleming, Dr Thomas (Lecturer in Politics, University of York) ([FTP0012](#))
- 10 Greenberg, Daniel (Counsel for Domestic Legislation, Office of Speaker's Counsel, House of Commons) ([FTP0010](#))
- 11 Greene, Dr Alan (Senior Lecturer, Birmingham Law School) ([FTP0009](#))
- 12 Hazell, CBE, Professor Robert ([FTP0003](#))
- 13 Hazell, CBE, Professor Robert ([FTP0013](#))
- 14 Hickman QC, Professor Tom (Professor of Public Law, University College London (UCL)) ([FTP0014](#))
- 15 The Law Society of Scotland ([FTP0005](#))
- 16 McGarry, Dr John (Senior Lecturer in Law, Department of Law and Centre for Crime Justice and Security at Staffordshire University) ([FTP0011](#))
- 17 Natzler, KCB, Sir David ([FTP0017](#))
- 18 Phillipson, Professor Gavin (Professor of Law, University of Bristol Law School) ([FTP0020](#))
- 19 Policy Exchange's Judicial Power Project ([FTP0007](#))
- 20 Prescott, Dr Craig (Lecturer in Law, Bangor University) ([FTP0016](#))
- 21 Schleiter, Professor Petra (Professor of Comparative Politics, University of Oxford) ([FTP0012](#))
- 22 Smalley, Mr Matthew ([FTP0015](#))
- 23 Smith, Mr David H ([FTP0002](#))
- 24 Spadijer, Steven (DPhil Candidate (Law); Lecturer and Tutor Pembroke College, Oxford, Oxford University) ([FTP0008](#))
- 25 Whisker, Dr Ben ([FTP0022](#))