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Baroness Taylor of Bolton
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House of Lords
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13th December 2021

Dear Ann,

Government Response to the Lords' Constitution Committee report - Dissolution and Calling of Parliament Bill (Sixth Report of Session 2021-22)

I would like to express my thanks to the Committee for its report on the Dissolution and Calling of Parliament Bill. I hope to have responded to each of your main points below.

Constitutional legislation

The Government agrees that this is a Bill of constitutional significance as it seeks to deliver increased legal, constitutional and political certainty around the process for dissolving one Parliament and calling another. Political consensus is of course valuable when possible, and this Bill delivers on the 2019 general election manifesto commitments of both main parties to repeal the Fixed-term Parliaments Act ('2011 Act').

Moreover, the Government has been committed to ensuring Parliament is properly consulted on its proposals to repeal the 2011 Act, and for this reason presented its draft Bill for pre-legislative scrutiny by the Joint Committee on the Fixed-term Parliaments Act ("the Joint Committee"). We welcome the debate and discussion that have been had in both Houses as part of the passage of the legislation.

The Government agrees with the report's emphasis on the need for our constitutional arrangements to stand the test of time. As your Committee noted in a report on the 2011 Act, the approach of that legislation "*owe[d] more to short-term considerations than to a mature assessment of enduring constitutional principles or sustained public demand.*"[1] Instead, we

[1] Constitution Committee, Eighth Report - Fixed-term Parliaments Bill, Ch 6: Summary of Recommendations, paragraph 183, printed 1 December 2010.

are restoring the tried-and-tested constitutional principles that previously applied to the exercise of the prerogative power to dissolve Parliament. These principles can only operate effectively when they are commonly understood and where there is tacit agreement that they should be respected irrespective of the particular political challenges and circumstances of the day - therefore standing the test of time as your Committee describes.

Legal certainty

The Government recognises that there is an academic debate about the revival of prerogative powers. However, the Government believes there is a sound legal basis for the view that such a power can be revived. This was set out in the letter from the former Minister for the Constitution and Devolution to the Chair of the Public Administration and Constitutional Affairs Committee ('the response to PACAC'). It is helpful to restate the Government's position:

> "The courts have said that the revival of prerogative powers is possible. Bradley, Ewing and Knight[2] discuss the case law in this area as follows:
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> "*...where the statute restricting the prerogative is repealed, "the prerogative power would apparently re-emerge as it existed before the statute"*[3]*. This is subject to "words in the repealing statute which make it clear that the prerogative power is not intended by Parliament to be revived again or brought into use*"[4].
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> More recently, in *Miller 1*, the Supreme Court took a slightly more cautious approach, stating that "if prerogative powers are curtailed by legislation, they may sometimes be reinstated by the repeal of that legislation, depending on the construction of the statutes in question."[5]
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> In the Government's view the Bill makes it very clear that in repealing the Fixed-term Parliaments Act (which curtailed the prerogative powers to dissolve Parliament), the intention of Parliament is to revive this prerogative. Even under the more cautious approach in *Miller 1* this will mean that the power is indeed reinstated.
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> Further support for the Government's position is provided by section 15 and section 16(1) of the Interpretation Act 1978. Although the general rule is that, *"where an Act repeals an enactment, the repeal does not.....revive anything not in force or existing at the time at which the repeal takes effect"*, this is subject to the appearance of a *"contrary intention"*. Not only is this position found in the Interpretation Act 1978, but it is also confirmed through common law.[6] The Government considers that Clause 2

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[2] *Constitutional & Administrative Law* (Pearson, 17th Edition), page 269.
[3] *Burmah Oil Co Ltd v Lord Advocate* [1965] AC 75, Lord Pearce at page148.
[4] *R v Foreign Secretary, ex p CCSU* [1984] IRLR 309, at page 321 (Glidewell J).
[5] *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)* [2017] UKSC 5, paragraph 112.
[6] *Kay v Goodwin* (1830) 6 Bing 576, 582. "I take the effect of repealing a statute to be to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be

provides very strong evidence of a contrary intention and so the Bill will revive something *"not in force or existing at the time"* of repeal, namely the prerogative power to dissolve Parliament."

On this basis we are confident the Bill will revive the prerogative powers relating to the dissolution of one Parliament and the calling of another. In doing so, it will return us to the system for dissolving Parliament and calling elections that existed prior to the 2011 Act.

Notwithstanding the Government's arguments set out above, your Committee has stated that "*uncertainty remains as to how the courts will interpret clause 2— namely, whether they will interpret it as an instruction to treat the power of dissolution in the same manner as a prerogative power. This is important in determining whether, in exceptional circumstances, the courts would feel compelled to override a decision to dissolve Parliament".*[7]

The Government remains of the view set out in the letter to PACAC that, even if there were uncertainty about the source of the prerogative power to dissolve Parliament, this would not be significant. As we stated in that letter:

> "The Government agrees with the former First Parliamentary Counsel Sir Stephen Laws who in his evidence to the Joint Committee expressed the view that the question of whether or not the prerogative powers can be revived is a "red herring":
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> *"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."*[8]
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> The words in clause 2 will tell the courts to treat the powers to dissolve and call Parliament as if they were prerogative powers."

The Government welcomes your Committee's recognition of the Joint Committee's view that the drafting of Clause 2 is "*sufficiently clear to give effect to the Government's intention of returning to the constitutional position" that existed prior to the 2011 Act.*[9]

Non-justiciability clause

The Committee highlighted the value of ouster clauses that can provide legal clarity in areas which are considered more appropriate to political rather than judicial deliberations. In the case of clause 3, the Government is clear that these prerogative powers, relating as they do to the dissolution of Parliament in order to hold a general election, are inherently political in nature - given that the exercise of these powers will enable the electorate to express its view

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considered as a law that never existed except for the purposes of those actions which were commenced, prosecuted and concluded whilst it was an existing law."

[7] Select Committee on the Constitution, Report, Dissolution and Calling of Parliament Bill (Session 2021–22, HL 100), paragraph 13.

[8] Joint Committee on Fixed-term Parliaments Act, Report, (Session 2019–21, HC 1046, HL Paper 253), paragraph 111.

[9] *Ibid.* paragraph 118-119.

on who should form the next Government - and so are not suitable for review by the courts. The majority of the Joint Committee agreed, stating that clause 3 is acceptable because "the power in question is to enable the electorate to determine who should hold power"[10] and the Government's response to the Joint Committee provided evidence from case law to further support this point.[11]

During the Second Reading debate of the Bill on 30 November, there was a good debate on the drafting of clause 3.

I would like to set out the Government's approach to Clause 3 in more detail, and in doing so address some of the concerns raised by the Committee and peers during that debate, ahead of further deliberation at Committee.

The dissolution and calling of Parliament should not be subject to review by the courts

It was the long-standing position prior to the 2011 Act that the exercise of the prerogative power to dissolve Parliament was non-justiciable.

The Government shares the view expressed by Lord Roskill in the landmark *GCHQ* case that "***the courts are not the place ... to determine whether ... Parliament [should be] dissolved on one date rather than another***".[12] These are inherently political matters that the Courts are not equipped to assess. Therefore they should be the preserve of the political not the judicial sphere. As Lord Justice Taylor in *R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Everett* observed, dissolving Parliament is "*a matter of high policy*" "*at the top of the scale of executive functions" and therefore should not be justiciable*.[13]

The proper forum for the dissolution (and calling) of Parliament to be scrutinised is the general election where the actions of the Government will be judged by the electorate at the ballot box. While there were some different views within the Joint Committee, the majority found that making provision for the non-justiciability of the prerogative power to dissolve Parliament was acceptable given "***the power in question is to enable the electorate to determine who should hold power***".[14]

It needs to be clearly understood, as Sir Stephen Laws pointed out in his evidence to the Joint Committee, that giving the court some jurisdiction over the dissolution and calling of Parliament "means giving the courts the power to stop an election being held" (or at least to delay an election). This would mean **denying** the electorate an opportunity to express its view on the actions of the Government at a particular point in time.

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[10] *Ibid.* Chapter: 'Conclusions and recommendations', paragraph 23.
[11] Government response to the Joint Committee, May 2021 (Session 2019–21, CP 430), p11-12.
[12] *CCSU v Minister for the Civil Service* [1985] AC 374, 418.
[13] *R v Secretary of State for Foreign and Commonwealth Affairs; ex P Everett* [1989] 1 QB 811, 820.
[14] Joint Committee on Fixed-term Parliaments Act, Report, (Session 2019–21, HC 1046, HL Paper 253), paragraph 162.

Further, litigation or threatened litigation about the dissolution and calling of Parliament would create uncertainty about the timing and the validity of a general election which would be highly undesirable. It is of paramount importance that the electorate is able to trust our democratic process; that they have confidence that the timing of an election is commonly understood; and that the outcome of the election is recognised as the will of the public. If there were a judicial review of the decision to call an election this would cast doubt on how the election timetable (which would otherwise run automatically following the dissolution of Parliament in accordance with Rule 1 of Schedule 1 to the Representation of the People Act 1983) should proceed. There might be a doubt about the validity of the election result in the event that the matter wasn't settled before the election took place.

Clause 3 has been included for a good reason

The question has been asked why clause 3 is needed in view of the long-standing position prior to the 2011 Act that the exercise of the prerogative power to dissolve Parliament is non-justiciable. The Government is concerned that the courts could take a different approach in future given the direction of travel of the courts in favour of regarding more prerogative powers as reviewable, as most recently seen in the *Miller 2* Supreme Court judgment.[15] The response to PACAC explains:

> "As the Explanatory Notes set out, since *Council of Civil Service Unions v Minister of State for Civil Service 13* (the *GCHQ* case) some prerogative powers that were previously considered to be non-justiciable have been reviewed by the courts. For example, the prerogative powers to grant passports and grant pardons, as well as the prerogative of mercy have been held to be justiciable. The Independent Review of Administrative Law [IRAL] documents this "decline in the importance of non-justiciability" in some detail. In particular it notes:
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> "*....the past 40 years or so have seen a steady retreat within the law on judicial review away from the view that exercises of certain public powers are by their very nature non-justiciable in favour of the view that the exercises of those powers are either justiciable or reviewable on some grounds but not others".*
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> *"Since the decision in GCHQ, the range of prerogative powers that are regarded as reviewable on one or more grounds has steadily expanded, so much so that the latest edition of De Smith's Principles of Judicial Review feels able to assert that "no power – whether statutory, common law or under the prerogative – is inherently unreviewable." To similar effect, the authors of a casebook on administrative law argue that it is "meaningless to classify particular powers...as non-justiciable" and that the principle of non-justiciability should be seen as focusing instead on whether "a given exercise of power raises an issue upon which courts are able to adjudicate".*

[15] *R(Miller) v The Prime Minister & HM Advocate General for Scotland v Cherry* [2019] UKSC 41, [2020] AC 373.

As we will explain below, we think this view of the law overstates the position – at least so far as the common law of judicial review is concerned – in that there are still some powers that are non-reviewable on any ground. But the direction of travel in favour of regarding more and more prerogative powers as reviewable in principle is undeniable and has existed for many years."[16]

It is in the context of this direction of travel that the Government has chosen to include Clause 3 in the Bill. It is to make clear and preserve the "no-go" area around the prerogative powers relating to the dissolution and calling of Parliament."

The Report of the Joint Committee has recognised this rationale for clause 3:

"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. 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."[17]

Clause 3 is to confirm and preserve non-justiciability

Accordingly, the Bill contains express provision to confirm and preserve the pre-existing position that the courts do not have jurisdiction in relation to the dissolution and calling of Parliament. The clause covers the exercise (or purported exercise - see below) of the prerogative powers relating to the dissolution and calling of Parliament, and any decision (or purported decision), relating to those powers. The reference to any 'decision' is intended to cover the preliminary steps leading to the exercise of the prerogative powers, including a request from the Prime Minister to the Sovereign to dissolve Parliament and any related advice. This is to ensure that all aspects of the process connected to the dissolution and calling of Parliament are captured.

This characterisation of clause 3 as a confirming and preserving clause is supported by the recent comments of IRAL on clause 3.[18] In examining more generally the option of legislating to specify that a particular exercise of power is non-justiciable, IRAL distinguished between (a) a codifying clause that seeks to prevent the courts from in future declaring something to be justiciable that is currently understood to be non-justiciable and (b) a reforming clause that seeks to turn something that is currently understood to be justiciable into something that is not justiciable. It expressed the view that *"it may be incorrect to regard a type (a) clause as being an "ouster clause". The argument might be made that as these provisions define the*

[16] Independent Review of Administrative Law (Session 2019–21, CP 407), paragraphs 2.16-2.17.
[17] Joint Committee on Fixed-term Parliaments Act, Report, (Session 2019–21, HC 1046, HL Paper 253), paragraph 164.
[18] Independent Review of Administrative Law (Session 2019–21, CP 407), paragraphs 2.81-2.84.

limits of the jurisdiction of the courts in reviewing the exercise of the public power; they do not seek to oust that jurisdiction as there is nothing to oust". It stated that "*[b]ecause a type (a) clause may not be correctly regarded as being an ouster clause, we think that such a clause may not face the kind of judicial pushback that normally attends attempts by Parliament to use "ouster clauses" to cut back on the ambit of judicial review.*"

IRAL went on to suggest that clause 3 can be categorised as a type (a) clause: "*it could be argued that there is nothing objectionable in clause 3 of the [then called] draft Fixed-term Parliaments Act 2011 (Repeal) Bill, which was published in December 2020 [...]. The powers referred to are the prerogative powers to dissolve Parliament and call a new Parliament. It could be argued that Clause 3 therefore simply restates the position that everyone understood obtained before the Fixed-term Parliaments Act 2011 was passed, and cannot be sensibly described as an "ouster clause"*.[19]

Parliament is entitled to draw the boundary

The Government's position is that Parliament is entitled to seek to set out where the boundaries lie in relation to matters to be regarded as non-justiciable.

IRAL stated "*[i]t is ultimately for Parliament to decide what the law in this area (as with every other area of law) should be, and it is for the courts to interpret what Parliament has said.*"[20]

In the context of clause 3, the Joint Committee accepted (while noting that there were different views within the Committee) 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."*[21]

The courts have said that clear wording is needed

As the case law makes clear the jurisdiction of the courts can only be excluded by the most clear and explicit words and provisions seeking to exclude the courts' jurisdiction will be

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[19] *Ibid.* paragraphs 2.82-2.84.
[20] *Ibid.* paragraph 2.10.
[21] Joint Committee on Fixed-term Parliaments Act, Report, (Session 2019–21, HC 1046, HL Paper 253), paragraph 162,

construed strictly[22]. Clause 3 has been drafted to try and make it as clear and explicit as possible where the boundaries lie: it has been drafted in a comprehensive way in order to ensure that it is clear that all elements of the process connected to the dissolution and calling of Parliament are intended to be a 'no-go' area for the courts.

It may be helpful to provide further explanation about two aspects of clause 3 which a number of Noble Lords have asked about or commented on, namely the term 'purported' and clause 3(c) which refers to the limits or extent of the prerogative powers revived by clause 2.

Purported

Clause 3 provides that a court or tribunal may not question the "purported exercise of the powers referred to in section 2" and "any purported decision relating to those powers". As I set out during the debate, 'purported' refers to matters that would be considered by a court to be invalid or a nullity and therefore not a real exercise of power or decision because they have been done on the basis of an error of law.[23] The reference to "purported" in clause 3 is in response to the decision in *Anisminic Ltd v Foreign Compensation Commission*[24] that a determination of the commission on a claim for compensation vitiated by an error of law was not a determination at all, rather it was merely a 'purported' determination. This meant that the provision excluding the court's jurisdiction in relation to a 'determination' of the commission did not prevent the court from looking at whether the commission had made a correct determination in law on the question of eligibility to claim compensation.

Lord Lloyd-Jones in *Privacy International* remarked that it was a striking feature that the ouster in that case did not mention purported decisions given that the drafter must have been aware of *Anisminic*. He expressed an expectation that those drafting legislation would make it clear if purported decisions were intended to be outside the jurisdiction of the courts. [25] In view of this, clause 3 has been drafted to include purported exercises of power and decisions, otherwise it potentially leaves the door open to the court to use that kind of reasoning again.

This has been done to give effect to the principle that the matters concerning the dissolution and calling of Parliament are best judged by the electorate and that the courts should not be

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[22] For example Laws LJ in the Court of Appeal judgment in *R (Cart) v The Upper Tribunal* [2011] QB 120, para 31 cited in *R (on the application of Privacy International) v Investigatory Powers Tribunal and others* [2019] UKSC 22.

[23] Hansard, Lords Chamber, Volume 816: debated on Tuesday 30 November 2021, Dissolution and Calling of Parliament Bill, Second Reading, columns 1280-1281.

[24] [1969] 2 AC 147.

[25] *R (on the application of Privacy International) v Investigatory Powers Tribunal and others* [2019] UKSC 22, paragraph 164. See also Lord Sumption's evidence to the Joint Committee in response to Question 111: 'In *Privacy International*, at paragraph 111, Lord Carnwath, delivering the leading speech, when dealing with the interpretation of ouster clauses, pointed out that a reference to the purported exercise of a power might be sufficient to make the courts accept that was what Parliament intended to do."

able negotiate that principle by treating a decision to dissolve Parliament as null and void (i.e. as only a 'purported' decision).

The Joint Committee's reference to expert evidence on this point is informative:

> *"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:*
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> *"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. 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.'"*[26]

Clause 3(c) - Limits or extent

Your Committee's report focuses in particular on clause 3(c) which provides that a court or tribunal may not question the limits or extent of the powers relating to the dissolution and calling of Parliament. I was also asked about this aspect of clause 3 during Second Reading.

Clause 3(c) is drafted in response to the judgment of the Supreme Court in *Miller 2*. In that case the Court acknowledged the arguments relating to the non-justiciability of prorogation decisions, but avoided this restriction by framing its decision as being about the scope of the power to prorogue, rather than its exercise. The court held that "*no question of justiciability...can arise in relation to whether the law recognises the existence of a prerogative power, or in relation to its legal limits. Those are by definition questions of law. Under the separation of powers, it is the function of the courts to determine them*".[27] The

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[26] Joint Committee on Fixed-term Parliaments Act, Report, (Session 2019–21, HC 1046, HL Paper 253), paragraph 168.

[27] *R(Miller) v The Prime Minister & HM Advocate General for Scotland v Cherry [2019] UKSC 41, [2020] AC 373,* paragraph 36.

Court considered whether the action was lawful (with reference to certain constitutional principles). Concluding that it was not lawful, it observed that the Court was therefore "*not concerned with the mode of exercise of the prerogative power within its lawful limits.*"[28] Rather, it was considering an action which fell outside the scope of the prerogative power. In consequence, it concluded that no question of justiciability arose, such that the action was reviewable.

IRAL has noted that this judgment "*creates the potential for the courts to circumvent the "no-go" signs currently mounted around the exercise of prerogative powers in relation to matters of high policy…[such as] …dissolving Parliament…The proposition that the exercise of such powers is non-justiciable – and therefore non-reviewable – could be evaded by*" employing the Supreme Court's methodology.[29] Clause 3(c) seeks to make it clear that in the context of the dissolution and calling of Parliament the "no-go" signs should not be circumvented in this way. In the Government's view it is a commensurate response that seeks to put beyond doubt that the dissolution and calling of Parliament should not be a matter for the courts.

Both 'purported' and clause 3(c) have been included to give effect to the principle that the matters concerning the dissolution and calling of Parliament are inherently political matters best judged by the electorate rather than the courts. As already noted, the courts are not equipped to assess such matters.

Safeguards from abuse

The Committee, and some peers, have raised concerns about the risk of a Prime Minister "abusing" the prerogative power to dissolve and call Parliament. I would reiterate that the exercise of the prerogative power is a question for the political, not the judicial sphere. I would draw the Committee's attention to the oral evidence Baroness Hale and Lord Sumption gave to the Joint Committee, in which they highlighted two possible "abuses". First, that a Prime Minister sought to dissolve Parliament without having a general election. Second, that a Prime Minister sought to dissolve Parliament without setting the date for a meeting of a new Parliament, or to significantly delay the meeting of a new Parliament.

On the former, following a recommendation from the Joint Committee, the Government amended the Bill prior to its introduction to Parliament so that the statutory election period will be triggered automatically by the dissolution of Parliament. This will ensure that the theoretical possibility of a dissolution without an ensuing election period is eliminated.

On the latter, there are already checks and incentives on the executive that have worked for many years, effectively compelling Parliament to be called as soon as feasible. For example, the control by the Commons of tax and expenditure serves as a compelling necessity for a Government to ensure the new Parliament meets as soon as possible. No Government can manage without supply. Neither can it manage without legislative authority to levy taxes. Furthermore, the Government of the day must be able to command the confidence of the

[28] *Ibid.* paragraph 52.
[29] Independent Review of Administrative Law (Session 2019–21, CP 407), paragraph 2.36.

elected House. Unduly and unnecessarily delaying the calling of a new Parliament is not in the interest of any Government seeking to make progress on the mandate it has received through a general election.

The Bill also contains a safeguard in the event that a Prime Minister fails to request a dissolution at all. Clause 4 provides that if Parliament has not been dissolved within five years of its first meeting, it will automatically dissolve. This in turn would trigger the timetable leading to a general election (under Rule 1 in Schedule 1 to the Representation of the People Act 1983).

In conclusion, the Government agrees with the Committee (and the Joint Committee) that it is appropriate for Parliament to make clear where it thinks the constitutional boundaries lie. The Bill's intervention here is clear and well defined: clause 3 has been drafted to capture all elements of the process connected to the dissolution and calling of Parliament so that it is clear that this a 'no-go area' for the courts. In doing so, the clause takes on board the position of the courts that the "most clear and explicit words" are needed to exclude the courts' jurisdiction.[30] A more limited approach would be less effective in confirming and preserving the long-standing position that these prerogative powers are non-justiciable.

The Government also agrees that Parliament should determine whether the non-justiciability clause is acceptable. During the Bill's passage through the House of Commons, clause 3 was left unamended and indeed, no amendments were even tabled on this clause, indicating that the Commons viewed the non-justiciability clause as acceptable.

Maximum term of a parliament

The Government agrees that five years is the suitable length for a maximum Parliamentary term. This provision will allow successive Governments to take a full four years to implement and see through their policies before the run up to a general election.

The role of the Monarch

In returning to the position where the Prime Minister is able to request that Parliament be dissolved, there remains a role for the Sovereign to in exceptional circumstances refuse a dissolution request. It is not possible to predict every scenario and challenge that a country might face. That is why a constitution that provides flexibility in exceptional circumstances is necessary for a functioning and modern democracy.

During Second Reading in the Lords, there were suggestions from some that a vote in the House of Commons in relation to dissolution would serve to act as a clear indication to the Sovereign on the views of Parliament, and would therefore mean that the Monarch would not need to perform the role of a 'constitutional backstop' as noted in the Lords Constitution Committee report. I believe that anything that risks a return to the situation of 2019, whereby the expression of confidence of the House of Commons is separated from the means by

[30] Laws LJ in the Court of Appeal judgment in *Cart 2011 QB 120*, para 31.

which a general election may be triggered, would not deliver on our objective to return to the status quo ante.

It is incumbent on those involved in the political process to ensure that the Sovereign is not drawn into party politics and not involved in the negotiations that follow in a period of Government formation (whether after the withdrawal of confidence or an uncertain election outcome). As the Crown's principal adviser this responsibility falls especially on the incumbent Prime Minister.[31] It is also worth reiterating that judgement on the Government's actions on the issue of calling an election is a matter for the electorate at the polling booth.

To seek to introduce a role for the Commons in approving an election, for the purposes of protecting the Sovereign from politics, would be to maintain one of the worst aspects of the 2011 Act. By withholding a simple, rather than entrenched, majority, factions in the Commons could deny resolution of a major national question by means of a General Election, thus compromising the electorate's right to express their view.

I would also like to thank you for your recent report on the Cabinet Manual and take this opportunity to apologise for the delay in responding. The Government is grateful to the Committee for its consideration of the revision of the Cabinet Manual.

The Government is giving careful consideration to its recommendations and will respond to the report soon. We agree that once the 2011 Act has been repealed the Government will need to revisit these sections of the Cabinet Manual in due course.

We agree that conventions operate more effectively when there is a shared understanding of them. It is for this reason that the Government published the Dissolution Principles alongside a draft copy of the Bill and then issued a fuller explanation on the conventions on confidence motions, dissolution and government formation in our response to the Joint Committee.[32] During the passage of the Bill in the Commons there was discussion of the conventions and principles surrounding dissolution. We welcome further discussion in the House of Lords on these conventions. That is the best way to develop our shared understanding.

It is worth emphasising, however, that the Government does not think that formalising the conventions so that they cover every possible scenario would be feasible or desirable. We have seen, under the 2011 Act, that attempts to codify this area have not been able to anticipate every scenario that might arise. Flexibility is an essential part of our parliamentary system and a constitution that can adapt and respond to exceptional circumstances is necessary for a functioning and modern democracy.

[31] Cabinet Manual, 1st edition, October 2011, paragraph 2.9.
[32] Government response to the Joint Committee, May 2021 (Session 2019–21, CP 430), p16-18.

Devolution implications

The Government is cognisant of the administrative challenges of holding simultaneous or closely scheduled elections and the potential impact this could have on the electorate. We are committed to ensuring that the interests of voters and their experience of the democratic process are being protected. It is for this reason that in choosing to call an election, the UK Government will be mindful of any elections due to take place for the Scottish Parliament and Welsh Senedd.

Yours sincerely,

Lord True CBE