

Evidence to the Joint Committee on the Fixed Term Parliaments Act

submitted by David H Smith, 12th December 2020

This is a personal submission

I support the retention of the Fixed Term Parliaments Act (FTPA), with perhaps a minor amendment (see below).

The government's claim that '[It is the FTPA which] led to paralysis when the country needed decisive action', is at best tendentious. The real cause of the paralysis was the way in which the 2016 referendum was conducted.

Firstly referendums have been held to be advisory rather than mandatory because 'The Queen in Parliament' is supposed to be supreme. However Cameron promised to deliver on the result of the referendum whatever it would be, and when he resigned following the narrow Leave majority, Parliament failed to condemn that promise and say that a new government could not be bound by it. In effect therefore, the constitution has changed - Parliament is no longer supreme; its authority is much weakened. Given that we do not have an entrenched constitution this is very dangerous; the threat of a populist dictatorship has come nearer, and the abandonment of the FTPA would only make this more likely.

Secondly it seems obvious to me that if the result of a referendum is to be honoured, Parliament and the government should know what is expected of them. Events showed that they did not. The referendum question should have been ruled invalid.

What Cameron should have done, before agreeing to a referendum, was to seek clarification from the Brexiteers as to what they wanted. Did they want to remain in a customs union? Were they content to break the Good Friday agreement? The civil service should have been able to pose further questions.

I believe that the FTPA should remain but that there has been one issue that should have been anticipated and could have been fixed. Up until the publication of the Cabinet Manual it was understood that in choosing a new Prime Minister, the Queen would appoint the person most likely to be able to command the majority in the House. The Cabinet Manual attempted to codify how the Queen had interpreted that principle up to date. In July 2019, following the Conservative Party leadership election and the resignation of Mrs May the Queen faced a new situation. Should she appoint the new party leader although he could not command a majority in that parliament? The Cabinet Manual did not provide for that eventuality. Indeed it could not; it does not anticipate. The Queen appointed Boris Johnson without any delay, thus in my opinion setting a new (and unwelcome) precedent.

When I spoke to the Cabinet Office recently they had no plans to revise the Cabinet Manual, though Professor Robert Hazell tells me, "The Cabinet Manual will have to be revised, quite substantially, when we leave the EU, because it contains so many references to British membership and European law. And indeed it will need to be revised if the FTPA is repealed."

If the FTPA is retained the situation the Queen faced in July 2019 could re-occur. In my opinion, in that situation the rule should be to appoint the Prime Minister on the nomination of the House of Commons as is the position in the Irish republic.

There are two ways in which this rule could be implemented. The first is to put the matter on a

statutory basis by amending the FTPA. The second is for the Prime Minister to advise the Queen (in advance) that if the July 2019 situatio re-occurs then she should seek the nomination of the House of Commons. I cannot see Mr Johnson doing this however.