Dr Mark Ryan, Coventry University – written evidence (FTA0005)

1. My name is Dr Mark Ryan and I am an Assistant Professor of Law (Constitutional and Administrative Law) at Coventry University and I have written a textbook on Constitutional and Administrative Law (4th edition, Routledge/Taylor & Francis Group, September 2018). I have a particular interest in the Fixed-term Parliaments Act 2011 having had an Analysis piece published in the journal Public Law ('The Fixed-term Parliaments Act 2011' [2012] PL 213) which had been based on both a 2011 SLS Conference Paper delivered at Cambridge University, as well as a written submission in 2010 to the House of Lords Select Committee on the Constitution (HL paper 69, FTP 32). My submission below, however, is made in my personal capacity (and so in no way reflects the views of my employer: Coventry University) and indicates my observations on the 2011 Act.

2. At the outset, the Committee is to be warmly commended for providing post-legislative scrutiny of this Act in advance of the Prime Minister's committee to be established next year under section 7 of the Act. Indeed, it is perhaps fitting that it is a committee from the second chamber which is leading on this issue, given that it was the House of Lords which effectively forced the Coalition Government's compromise of an amendment in lieu providing for post-legislative scrutiny of the Act. Although in general the United Kingdom is somewhat deficient in terms of pre-legislative scrutiny, unfortunately, it is even worse in respect of its provision for post-legislative scrutiny.

3. Although legally the Act has resulted in a technical reduction of prime ministerial power and its transfer to the House of Commons, it is however arguable whether this transfer has been meaningful in practice as illustrated by the events of April 2017. After all, it was the Prime Minister who begged to move that there should be an early parliamentary election (HC Deb, 19 April 2017, vol 624, col 681) and was successful. Thus, the Act proved to be of no real impediment to seeking an early election, albeit that the desire for an election had the overwhelming support of the House of Commons (522 to 13). In any case, it is contended that (as with many constitutional matters) the public may well not be conversant with, or even aware of, the 2011 Act and so a public perception of the power of a Prime Minister to call an election at will may well remain unimpaired, irrespective of the technical changes made by the legislation.

4. I have longed argued that five years is too long for a parliamentary term and four years is instead preferable. There was debate around this issue during the passage of the Bill and it did appear that the dominant opinion fell on the side of a four year term. Not only is this period more democratic by ensuring more regular electoral and political accountability, but it also fits in with the experience of actual terms in modern times. In fact, it is contended that - historically - a Government having to make use of a full five year term was no doubt perceived as a failure owing to the lack of confidence to call an early election. A four year term also fits into our historical constitutional structure in terms of local government and devolution, albeit the latter has now embraced five year terms.

5. The certainty of elections and electoral cycles is clearly good for governance, the Civil Service, politicians and the country in general (including the economy). It undoubtedly helps the legislative process which can be more structured and organised, particularly in relation to the planning of pre-legislative scrutiny and draft Bills. Moreover, it should (theoretically) remove the legislative anomaly of the 'wash up' process which undermines the integrity of legislative scrutiny. It also enables select committees to plan projects more coherently, as neatly illustrated by the 2010-15 House of Commons Political and Constitutional Reform Committee's examination of a written/codified constitution for the United Kingdom ('A new Magna Carta?' HC 463) - something which was clearly aided with knowledge of a fixed term.

6. Section 2 of the Act ensures that the Fixed-term Parliaments Act 2011 is somewhat of a misnomer given that it is not a rigidly fixed term. This is in contrast to Parliament's Norwegian counterpart which cannot be dissolved between elections. Although the Norwegian experience provides certainty, it is inevitable that there are going to be exceptional political circumstances when a Parliament simply can no longer function as an institution and a new composition is required. Section 2 of the 2011 Act facilitates this and so the legislation is really an oxymoron of a 'quasi' Fixed-term Parliament. In terms of the 14 day period under the Act, this could be shortened in order to reduce any political chaos or instability which could arise following a vote of no confidence in an incumbent Government. After all, if there is a credible Government in waiting, is the period of 14 days really necessary? Perhaps this period could be halved in order to minimise any political uncertainty.

7. The issue of what constitutes a vote of no confidence was thankfully narrowed and particularised during the passage of the Bill, so that under the Act the Motion must follow the wording in section 2(4) and so no other motion would suffice.

8. The 14 day period as alluded to above, does inevitably mean that there will be some instability in the context of the vacuum of the ensuing political horse-trading (which may well appear rather unseemly to those outside Westminster). In fact, it is not an impossible scenario for there to be more than one Government in waiting (composed of shifting political alliances) which would inevitably and regrettably place the Monarch in an invidious constitutional position (akin to a constitutional crisis).

9. If the Act were to be repealed, the constitution could revert back to a five year term as established under the Parliament Act 1911, with the expectation, based on recent history that many Governments would not use the full term. In strict legal and constitutional terms it is not absolutely clear the impact that revocation of the Act would have on the royal prerogative. However, it does seem possible (and certainly in order to avoid a constitutional and legal vacuum) that the pre-existing prerogative powers would simply revive. After all, one key characteristic of the British constriction (as illustrated by the various constitutional issues thrown up by Brexit) is it practical adaptability to a new constitutional landscape.

28th August 2019.