



HOUSE OF LORDS

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Witness: Mark Harper MP

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Members present

Lord Norton of Louth (Chairman)
 Lord Crickhowell
 Lord Goldsmith
 Lord Hart of Chilton
 Lord Irvine of Lairg
 Baroness Jay of Paddington
 Lord Powell of Bayswater
 Lord Renton of Mount Harry
 Lord Rodgers of Quarry Bank
 Lord Shaw of Northstead

Examination of Witnesses

Witnesses: **Mark Harper MP**, [Minister for Political and Constitutional Reform].

Q114 The Chairman: Mr Harper, good morning, and thank you very much for being with us. As you will appreciate, I am not Baroness Jay. She has to get away early, so I will be presiding over the proceedings this morning. Before we get under way, you will appreciate that we are not being televised, but we are being sound-broadcast. For the record, could I ask you to identify yourself?

Mark Harper: I am Mark Harper, Minister for Political and Constitutional Reform.

Q115 The Chairman: Thank you very much. Is there anything you want to say by way of opening or are you happy for us to proceed with questions?

Mark Harper: Very briefly, this is a short Bill, but one with broad effect. It is right that the Government, the Prime Minister, give away the power to call an election early. Two provisions in the Bill allow for an election to be held earlier than the five-year cycle, and looking at the evidence and the questions that have been put, I am sure that that is what we will focus on. The Government think that this is right and broadly there is cross-party support for the principle of fixed-term Parliaments, although there is some debate about the length. Most of the evidence with, I think, one exception, shows broad support, although

obviously there will be debate about the details. So, this is broadly supported, and we look forward to the debate both in the Commons and in your Lordships' House in due course.

The Chairman: Thank you very much. It is a short Bill that gives rise to several constitutional questions. Baroness Jay will put the first question.

Q116 Baroness Jay of Paddington: We have had quite a few representations, not least from our colleagues in the other place, about the way in which the Bill has been produced. We have been asked whether there should have been some more formal pre-legislative scrutiny and whether the public should have been consulted more. As I say, we have had a certain amount of evidence showing that people feel that a constitutional measure of this kind, which is substantial even though it is a short Bill, should have been subject to proper pre-legislative scrutiny.

Mark Harper: Two things drove us on this. The first is a general one about things that Governments do early in their first term of office. If the whole programme was subject to pre-legislative scrutiny—a question that obviously has been raised about the other Bill that will shortly be brought before the House of Lords—frankly, you would not get on and do very much.

With this Bill particularly, there was another question. Given that the Prime Minister had said that he did not intend to use the power he has to ask Her Majesty for an early dissolution at any point in the Parliament, and we said in the coalition agreement that we would look to put a motion before Parliament to that effect, and having looked at the practicalities, it was felt that it would be better to put it beyond doubt and not lay open opportunities during the Parliament to cause the Palace any difficulties. This will make things clear.

We are not rushing this Bill through. It was published on 22 July and, while it has had its Second Reading in the Commons, it has not had its Committee stage. We are taking this Bill

at a far slower pace than the Parliamentary Voting System and Constituencies Bill, so we have some time. The Political and Constitutional Reform Committee in the Commons has had a chance to take evidence and comment on the Bill, and clearly this committee has carried out a considerably thorough investigation as well.

Q117 Baroness Jay of Paddington: You raise the other Bill. I think the point is the one that has been broadly put to us, which is that constitutional changes of this kind need to be handled in a slightly different way from instant government, as it were, by Parliament at the beginning of a term. You have raised a point about the Palace, but there is a question of why it was necessary to go ahead so quickly with fixed-term Parliaments, particularly with the provision of terms of five years.

Mark Harper: Having said in the coalition agreement what the Government planned on doing, with a Motion and then a Bill, we looked into what kind of Motion we could have that would not be binding. If the House had passed a motion that was not binding, it would have left open the theoretical possibility that the Prime Minister could call an election. Potentially, that could have put the Palace in a difficult position. The Government felt it was better to put matters beyond doubt by publishing the Bill and giving it a Second Reading. The House of Commons has effectively now said that in principle it supports fixed-term Parliaments, and the view is that that has already constrained the ability of the Prime Minister to seek an early dissolution if he was so minded. The Government felt that on balance that was the best way to proceed, but we have not sought to rush further scrutiny of the Bill. We have allowed time for both Houses to scrutinise it properly.

Q118 Lord Rodgers of Quarry Bank: Were you personally familiar with the issue before you became a Minister? Had you discussed it over many years either personally or within your party?

Mark Harper: I had not. I am broadly familiar with the issue, but not with constitutional matters prior to being a Member of Parliament. I did take a fair degree of interest in constitutional matters when I was a Back-Bench Member in opposition because I am a great lover of Parliament. I am pleased to have this job, whose role is to look at how we can reform Parliament for the future. I very much support the measures in this Bill, which effectively move powers from the Executive and put them in the hands of the House of Commons.

Q119 Lord Rodgers of Quarry Bank: Yesterday, one of our colleagues in the House of Lords referred in the context of the big society to the fact that it was important to put more power in the people's hands. But if we were to have five-year Parliaments, we would have fewer Houses of Commons than we had in the past. As you well know, there were 18 between 1945 and today, but with five-year Parliaments there would have been only 14. Are you concerned about that? How do you reconcile the two ideas? With your experience of Parliament, are you not slightly suspicious when all parties vote the same way on a Second Reading? It is easy to see that it is a comfortable approach for Members of Parliament and future Governments, but Parliament will not be better off.

Mark Harper: We thought carefully about this. If you look at the history and take out the very short Parliaments, the average is over four years. What must be factored in is that many previous elections were called before the end of a five-year Parliament at a time when the incumbent Prime Minister thought he was best positioned to win an election. There is an argument about whether that was in the interests of the country. Effectively, this is looking back and asking what would have happened if we had not had those constitutional arrangements.

The other point, which I know the Deputy Prime Minister put to you, is that if you have a five-year Parliament, you have four years during which you can crack on with serious work,

and as you get to the end, Members' thoughts turn inevitably towards being re-elected. With a four-year fixed term, you would have three years in which to crack on with serious work, and then Members' thoughts would turn to an election. On balance—of course it is an issue of judgment—we thought that five years is the right term. It is the period that we have as a maximum term for a Parliament, and of course the last Parliament ran for five years, although that was damaged, I think, by the fact that the last two years of it were full of speculation about whether we would or would not have an early election.

Q120 Lord Rodgers of Quarry Bank: In your own constituency, is this matter discussed at all? I come back to the question of whether people have really thought about it.

Mark Harper: I have to say that on the doorstep there was not a great clamour for this Bill to be brought forward, but there was concern and discussion about when the previous Prime Minister took office. There was a lot of speculation about whether we would or would not have an election, and members of the public did not think that that whole debate and the uncertainty was very healthy. Certainly from conversations I have had with people in my own constituency, having a fixed term so we know when the election will be, and getting rid of the ability of Prime Ministers to choose the date for political reasons, has been broadly welcomed. However, given the other issues facing the country at the moment, it is fair to say that this is not at the top of people's list of immediate priorities.

The Chairman: Lord Powell, did you want to follow up on that?

Q121 Lord Powell of Bayswater: No, Lord Rodgers has shot at my fox, even if he has not quite demolished it. The majority of our evidence has been in favour of four-year Parliaments. It has been pointed out that the great majority of fixed-term Parliaments are for four years. Did you take that into account and decide that, none the less, it would be better to have five-year terms? Was that not also partly for political reasons? Was it convenient for a coalition Government to have a nice long stretch ahead of them without an election?

Mark Harper: If we had been starting with a clean sheet of paper, we might have reached a different conclusion, but we started from our existing position where the length of a Parliament is up to five years. As I have said, when they are shorter than that, it is usually because the Prime Minister judged not that a shorter Parliament was good for the country, but that an election at that point was good for the governing party. On balance, we thought that starting from a five-year term was right for the UK Parliament.

Q122 Lord Powell of Bayswater: And you are not moved by the argument that four-year Parliaments allow people to vote rather more often, given that your intention is to increase public participation?

Mark Harper: I think there are countervailing pressures as well. There is an awful lot of debate, particularly given some of the tough decisions we have taken on the economy, about whether people want Governments to be able to take difficult decisions for the long term. There is clearly a balance between giving Governments time to take difficult decisions and see them through, and giving voters the opportunity to give their verdict on the Government. It is not an exact science, but a matter of balance. We think that we have struck the right balance, albeit that I recognise that your evidence came up with a different view.

Q123 Lord Goldsmith: On that last point, you have not actually asked the public, have you?

Mark Harper: No, we haven't.

Q124 Lord Goldsmith: Can I go back for a moment to Lady Jay's question about something other than a Bill? You said that there were practicalities. Perhaps I may get some clarification on this. You have identified the practicality of not wanting to put the Palace in a difficult position. Was there any other reason?

Mark Harper: We had said in the coalition agreement that we were going to have two stages. We would bring a Motion before Parliament and then we would legislate. So the question before us at this early stage of the Parliament is whether that two-stage process still makes sense. We think it does not and that it would be better to legislate, setting the principle out in statute.

Q125 Lord Goldsmith: Was there any reason you identified other than the concerns about the Palace? I still do not understand what these practicalities are.

Mark Harper: We talked in the coalition agreement about a binding motion being put before the House of Commons, but there isn't really an appropriate type of motion which would have that effect. Having considered the options, it seemed that legislating early would be the best solution in order to put into effect what the Government said they wanted to do in the coalition agreement.

Q126 Lord Goldsmith: An Act of Parliament can be repealed as well, can't it?

Mark Harper: Yes, it can. The view that we have taken—and the evidence that you have taken sets this out—is that it changes the nature of the political debate. If you have legislated and there is broad support for what the Government have done, it is of course theoretically possible for Parliament to repeal that Act but it becomes very difficult if the settled view of both parliamentarians and the public—and of academics and those who take a great interest—is: that is the constitutional settlement.

Lord Goldsmith: You mentioned the public again, but you haven't asked the public.

Mark Harper: No, we haven't formally asked the public in a consultation or something like it but the sense is that if you look at public opinion, as expressed in opinion polls and things, they are broadly welcoming of the view that we should move to fixed-term Parliaments. I do not think the public were ever very keen on the idea that Prime Ministers could dissolve Parliament at their political convenience.

Q127 Lord Goldsmith: I don't want to pursue this, but I just want to be clear. The concern about the Palace—and the sensitive report they were talking about—is simply that the Palace might be in a difficult position if Mr Cameron said that he wasn't going to have an election and then said that he wanted to call one. Is that it?

Mark Harper: That is part of it, yes. That wasn't the only reason for the decision but it was something we took into account.

Q128 Lord Goldsmith: Forgive me, but what is the other reason? I just want to understand.

Mark Harper: Well, as I said, in the coalition agreement, we had said that the process was set out to be a Motion followed by an Act of Parliament. There isn't actually a very satisfactory parliamentary device for a binding Motion. We felt that the best binding method was to have an Act of Parliament—passed by both Houses, of course, not just the House of Commons.

Q129 Lord Goldsmith: But so far as the concerns about the Palace are concerned, have I correctly identified the concern?

Mark Harper: Yes, you have.

The Chairman: I think you are saying that, in terms of a binding Motion, it was discovered that nobody could be bound by the Motion.

Mark Harper: Correct, yes, and the other thing is that the Motion would only be a House of Commons Motion, and by having an Act of Parliament you have better control by having both Houses having passed it.

Q130 Lord Crickhowell: You have been basing your case for a fixed-term Parliament, whether for four or five years, on the disadvantage that in the past the Prime Minister has been able to choose the date of the election. I expect that you have read Vernon Bogdanor's pretty compelling piece of evidence from when we saw him a week ago, in which

he argued that the, “disadvantage to dissolving early is outweighed by the serious disadvantages of a fixed-term Parliament, which prevents Prime Ministers leading a Government in an unviable Parliament from going to the country”—he had cited the Attlee example earlier in his evidence—“which prevents a newly chosen Prime Minister between Parliaments from going to the country, which prevents a Prime Minister who has a new policy for which he may seek a mandate from going to the country. Most importantly of all, because we could be moving into that situation with our hung Parliaments, it means that coalitions can change in the middle of a Parliament without the people being allowed to pronounce on that.” He concluded: “the balance of argument is against fixed-term Parliaments”. He argued that what you are actually doing is taking power away from the people when you are arguing that you are trying to give it to them.

Mark Harper: Yes, I did read Vernon Bogdanor’s argument. It may interest the Committee to know that, in the same way as he taught the Prime Minister, he also taught me politics at Oxford. It is fair to say that he and I did not always see eye to eye in tutorials either, about Europe or electoral reform, so the fact that he and I are disagreeing on this subject isn’t new; perhaps he won’t be surprised. What he outlines is not, I think, a change in reality from the current position. Certainly, in some of the debate that we had on this Bill at Second Reading in the Commons, people’s views about what happens when a Government does not have a majority in the House of Commons or loses a vote of confidence is very much shaped by recent events, because it has not happened very often. They immediately think of the 1979 example and the loss of a vote of confidence automatically triggering an election. There are older examples when that was not the case.

The reality at the moment is that if the Government does not have a working majority and loses a vote of confidence, there is no necessity for an election to be called already. It is perfectly possible under our existing arrangements for a new Government to be formed

without an election taking place, so I do not think we are doing anything new. But perhaps it is the case that, both in Parliament and among the public, expectation about what would happen in certain cases is not as clear as it ought to be. The debate on this Bill, the evidence you have taken and the evidence that the committee in the Commons has taken is actually a good opportunity for explaining the current position both to Members of both Houses and to the public, where perhaps some of them are not as clear as they could be.

Q131 Lord Crickhowell: Some of us feel that the 1979 example is a particularly good one. I declare an interest, in that I became a Minister because of it. But there was no doubt. The Prime Minister of the day immediately said that he would go to the country and the country had the choice. Although there may be circumstances—we will come to examine them—in which this may happen, the fact is that this Bill will make it much more difficult. We could have had a situation in the way this Bill is drafted in which, over 14 days, every sort of effort was made to encourage the Scots, the Welsh, the Irish, or someone else to form a new coalition. It might have dragged on with a weak Government for a time with the people having no say. It is not self-evident to me that we are in a better position as a result of this Bill.

Mark Harper: I think the reality would be that if you were in that position, a great deal of effort would have taken place prior to any key vote taking place to get the smaller parties that you are talking about on side anyway to avoid the loss of a vote of confidence. A lot of that work would have taken place beforehand.

If the Government lost a vote of confidence, you would have your 14-day period. I suspect it would become clear pretty quickly that the Government could not put together an alternative Government, or a different Government could not be formed. Indeed, there would then be a general election, but I do not think that that should necessarily be automatic. If a Government can be formed with a majority to get a vote of confidence in the

House of Commons, particularly if it takes place early in a Parliament, we are not necessarily depriving the public of something by not having a general election as a matter of course.

That isn't what would happen in the current situation anyway. I don't think we are changing huge amounts by the way we have laid down the procedures in the Bill.

Q132 Lord Crickhowell: We will come to that on later questions. The fixed term will result in a clash with elections to the devolved institutions in 2015 and every 20 years thereafter. What do you propose to do to alleviate that situation? It has been suggested, for example, that the Scottish Parliament, and possibly the Welsh if the situation changes there, might be allowed to decide on the date of their own elections. You could avoid a clash by implementing automatic four-year fixed election dates. What are you proposing to do about what is considered by the devolved Administrations as a drawback in the present proposals?

Mark Harper: The first thing to say is that our Bill, if anything, highlights the potential problem but does not actually cause it. It is perfectly possible without our Bill. If this Parliament ran its full term you would have had the clash anyway. Indeed, what would likely have happened is you would have got to 2014 and once you got past May or June 2014 without an election, immediately speculation would start about the likely date. We would have had exactly this debate, but it would have been taking place at a point when, frankly, we could not have done anything about it.

In a sense, we have crystallised the issue so that everyone is aware of it. We have made it very clear. We think that the coincidence of dates next year with elections and the referendum is one situation which we do not think is problematic. But we accept that there is a bigger question when elections clash—the UK general election and the general elections in the devolved nations—partly for practicalities and partly for the arguments taking place about who should govern at the various different levels.

We are considering within Government what the appropriate solutions might be. We then intend to have a proper consultation process with all the parties in each of the devolved Administrations to come up with an agreed way forward. We hope that that will be implemented in the Bill before it leaves the House of Commons and gets to your Lordships' House.

Lord Crickhowell: I welcome the fact that we are going to have consultation. It is what we are pressing for.

Q133 The Chairman: So the proposed length of the consultation will be the normal consultation period. Is that the intention?

Mark Harper: We want to do two things. We want to make sure that we get the chance to make the changes in the Bill while it is still in the House of Commons, but we will have full consultation with the parties in each of the devolved Administrations to see the level that there is a consensus. We are just thinking in government at the moment about what might work across the three devolved nations. But we recognise that it is an issue and we have said that clearly in debates in the House of Commons. We very much hope that we can get to an agreed solution.

The Chairman: So that could produce amendments to the Bill before it had concluded its process?

Mark Harper: Yes.

Q134 Baroness Jay of Paddington: I want to ask about the timing. I am sorry to come back on this, but if you are going to do the consultation before you bring the Bill here based on your conclusions in the other place, does that suggest that the Bill may well be delayed in being introduced in this House?

Mark Harper: As I have said, we have not yet set the parliamentary timetable for the Bill. Unlike the Parliamentary Voting System and Constituencies Bill, where clearly the timetables

link to the choice of date for the referendum next year, this Bill is being taken on a much more considered timetable. We are not in any sense trying to rush it, and we would rather get it right before it exits the Commons and gets to your Lordships.

Baroness Jay of Paddington: If I may say so, you have rather illustrated the point that I was trying to make in my earlier question about how it would have been helpful to have prospective rather than retrospective consultation.

Mark Harper: One of the issues—and we did get this a little bit in the Commons—is that there is a balance here. There is also the issue about the Government announcing their policies and positions to Parliament before they go out and talk quite widely. If you are going to talk to each of the parties in the Parliament, in effect you are putting your proposals in public. There is of course an argument about announcing the Government's proposals to Parliament first. That was the balance that we struck. The territorial Secretaries of State then engaged in negotiations with each of the parties in the devolved nations and their First Ministers about how we might solve the obvious clash.

Q135 The Chairman: As a consequence of the proposal to have fixed term Parliaments with elections in May, Sir George Young has announced the move to a May-to-May parliamentary session, so we have the unusual position that the current session will be a long one. Some have argued that having a two-year session rather than finishing it next May strengthens the Executive rather than Parliament. What is your response to that?

Mark Harper: First, the reason for doing that is that, if we are to have a fixed-term Parliament and we know that the election is to be in May 2015, we want to avoid having a very short final session, where frankly you would not get a lot done. Given that the first session in a new Parliament is traditionally a longer one anyway and so we would have run through to next autumn, we thought that on balance it was better to extend the current session and then align the State Opening and the new sessions with the new fixed-term

cycle. That was the judgment that we took, and I do not see that it changes the balance between Parliament and the Executive at all.

Q136 The Chairman: The issue is obviously specific to this session. I take the point about subsequent sessions.

Mark Harper: I think that you could argue that, pre carryover, there may well have been an issue but, as the Government have the power to carry Bills over from sessions, I do not think that the longer session has changed the position in any significant way.

Q137 Lord Renton of Mount Harry: We now move on to Clause 2, “Early parliamentary general elections”. Before we do so, perhaps I may say that, after many years in the House of Commons, I personally think that you are right to go, if possible, for five-year rather than four-year terms.

Clause 2(1)—this goes against support for the fixed five-year term that you have been talking about and agreeing with rather strongly—sets out a safety-valve mechanism, whereby an early general election will take place if two-thirds or more of the total number of MPs vote in favour of an early dissolution of Parliament. In a strange way, this goes quite strangely with what you have been saying. What is the purpose of that mechanism and in what circumstances do you envisage it being used?

Mark Harper: There are two things. First, it clearly gives the power to Parliament. Setting the number at two-thirds is of course a change from what is in the coalition agreement and there was a fair bit of debate about that at the beginning of this session of Parliament. The purpose of setting the level at two-thirds is so that the Government—either a single-party Government or in this case two parties—do not have the power to call an election, so it would have to be a cross-party decision. I do not particularly want to speculate on hypothetical examples, but there may well be circumstances where there is a general view that an election is necessary and that is shared across parties.

Without such a mechanism, you would force the Parliament to have to engineer the loss of a confidence vote, as has happened elsewhere. Clause 2(1) will give the Commons the mechanism that we gave to the devolved Administrations for eventualities that may exist but that we cannot predict. However, the power very much belongs to the House and not to the Government. It may be a power that is never used, but I think that it is right that it is there.

Q138 Lord Renton of Mount Harry: It sounds as though you are saying “Let’s call it two-thirds because that is a reasonable number”. There is not much more thinking behind that two-thirds other than, “We must have a target so this should be it”.

Mark Harper: I think the logic was to set a number that was sufficiently high that it was unlikely that a Government could reach it. If you look at the experience post-war, no Government could have reached that target. The message that it sends out is that the Government do not have the ability to get an early general election; it would have to be a cross-party decision with broad support across the House, which means that it would not be being done for partisan reasons but because of the general sense that an early election was in the interests of the country. That why we chose that number. The obvious example that we had to go on is what Parliament decided to legislate for in terms of the devolved Assemblies. We tested that against the experience of Governments in the past and it seemed to be the right balance to hit our objective.

The Chairman: That is the practice in legislatures elsewhere. Where they have a threshold, the requirement is normally for a two-thirds majority.

Q139 Lord Goldsmith: You have referred to examples in other countries where governments have succeeded in engineering votes of no confidence. This Bill does not prevent the same thing from happening here, does it?

Mark Harper: No, it does not in technical terms, but it changes the view that the public would take of such behaviour by the Government. The position to date, or the expectation, has been that it is perfectly reasonable for the Prime Minister to seek an early election. Once the Bill, which has been approved by the House on Second Reading, becomes law, the expectation will be that we have a fixed-term Parliament. It would then still be technically possible for a Government to engineer the loss of the vote of confidence, but I think that the public would take a dim view of that and would make a judgment in the subsequent general election about whether they thought that that was the right way for a Government to conduct themselves. Ultimately, the choice would be with the public.

Q140 Lord Goldsmith: Let us be clear about that. There is no other mechanism that you are considering putting in the Bill that would prevent a Government from engineering a vote of no confidence other than the belief, or possibility, that the Government would take a dim view of it. Is that the case?

Mark Harper: Yes, that is right. The backstop against a Government behaving in that way is that it would be transparently obvious that that is what they had done and the public could take a view on that when asked for its opinion in the subsequent general election.

Lord Goldsmith: I suppose the Government might be absolutely transparent about it and say, “This is the only way we can bring the country back into a position where we can govern it properly because for this or that reason we are not succeeding at the moment. We therefore want to go to you to ask you to reconstitute Parliament”.

Mark Harper: If the Government chose to do that, ultimately the public would be the ones who made the choice about whether the Government were behaving appropriately. That is the right place for it to be. It is technically possible—we have been very open about that—but my view is that the public would take a very dim view of that and the Government

would be punished accordingly. I think that that is the best control mechanism rather than coming up with some technical device.

Q141 Lord Goldsmith: I want to ask just one other point, although I will come back to another issue later. When you talked about the 14 days, you said that you did not think that we were moving much from the present position. However, the 14 days would allow a completely different composition of government. For example, we could end up with Labour and Liberal Democrats. That could not happen under the present system, could it?

Mark Harper: That depends on the way people conduct themselves, but I think that it could. It depends on a range of factors, including the balance of power of the parties in Parliament, where we are in the parliamentary term and the position of the Palace. If we were early in a Parliament and there was a viable alternative Government and—prior to having published this Bill—a Prime Minister had sought a dissolution, it is perfectly possible that a dissolution would not have been granted and that an alternative person would have been sent for to form a Government.

Q142 Lord Goldsmith: Is there a recent example of that?

Mark Harper: There is not a recent example of that, because there have not been very many examples over the past century when Governments have been in that position. As I said, the narrative tends to be driven by the most recent example—where we were at the tail-end of a Parliament, and therefore, when the Prime Minister decided to seek an election, the dissolution was granted, but there was an earlier example in the 1920s when a Government went and a minority Government with a different Prime Minister and a different party were formed. You are right, there have not been very many examples; that is perfectly true.

Q143 Lord Goldsmith: I am a little bit surprised by the suggestion that this is not actually a very significant change. Do you think that it is not a significant change to the present position?

Mark Harper: No. I think the fact is that there have not been many examples in recent history where we have not had Governments with majorities able to govern alone. If that isn't the case, the existing constitutional position, or the way we behaved, would have been different even if we had not brought the Bill forward,

Q144 The Chairman: Your reference to the 1920s leads us on neatly to votes of confidence, because in the past, a Government could lose the confidence of the House without an explicit vote of no confidence being carried against the Government. The Bill now seeks to put in statute the concept of a no-confidence vote, but the way it is drafted raises the question of whether it would have to be explicitly a vote of no confidence, as opposed to the Government bringing forward a vote of confidence in themselves and losing it, or a major measure being brought forward by the Government and their announcing, "Confidence attaches to this. If we lose, we cannot sensibly continue". Is the intention that the Bill as drafted would encompass those circumstances, or is it meant to be specific—that it must be, say, the Opposition moving a vote of no confidence in the Government?

Mark Harper: No, I think the intention is that the Bill would encompass those examples, not changing the current position. Ultimately, the Speaker is the person who has to certify that a confidence vote has been lost or passed. Our view is that the Speaker would make it very clear before such a vote took place whether it was a vote on which he would issue his certificate. If you think through the examples, I do not think that there would be any doubt in the minds of Members of Parliament voting that they were voting on something which would be treated as a confidence vote.

Q145 The Chairman: My concern would be that, if you look at past examples, the Government said that confidence attached to it, but the problem for the Speaker would be the lack of guidance if just the words of the Bill, or the Act, were before him. If they referred to a vote of no confidence, it would be up to the Speaker to interpret that, and he may decide that it is not an explicit vote of no confidence.

Mark Harper: I think the important thing is the Speaker making that clear before the debate and the vote, and then everyone would be clear about what was going to happen as a result of it. If you think through examples in the past, I do not think that anyone has been in any doubt about the significance of what they were going to do. In practice, I do not think that that would be a serious problem.

Q146 The Chairman: I wonder whether it might make more sense to do it the other way round, so that the Bill is amended so that we get clarity, so that it does not leave it to the Speaker. There is always the prospect of a challenge to the Speaker's certificate.

Mark Harper: The reason we decided to use the device of the Speaker's certificate was exactly to deal with the issue that the Clerk of the House of Commons has raised with you about the potential to challenge in court. We decided to use the device of a Speaker's certificate without specifying in legislation any more detail of the procedures of the House for that very reason—to use a tried and trusted formulation. That was why we decided to do it the way that we have.

Q147 The Chairman: But it would presumably put pressure on the Speaker if, let us say, he did not make an announcement in advance.

Mark Harper: I think the Speaker would want to make sure that the House was clear about the nature of the debate and the vote attached to it. I am not sure that it would put pressure on him; I think there would be an expectation that he would set out clearly the nature of the debate and vote that was to take place, the consequences of the vote and what

he would do as a result, so that people were clear about it. I think that there would be an expectation that that is what would happen.

Q148 The Chairman: Yes. Seeking clarification, the Speaker would have a role in making clear beforehand his interpretation of the situation.

Mark Harper: Yes, and I think if his interpretation was made clear beforehand, people wouldn't be left in any doubt about the consequences of their vote and what would happen as a consequence.

Q149 Lord Shaw of Northstead: Arising out of that, there is an argument that a defeat on a Motion of no confidence should automatically be followed by a general election. That, I think, has been put on one side. But, arising out of the questions that follow now, it seems to me that the Speaker can only speak as a result of decisions taken in the House. By him deciding, without the agreement of the House necessarily, that this is a vote of confidence, it seems to me that that takes away some of the power of the House. The House should itself decide that this is a vote of confidence, not the Speaker.

Mark Harper: On explicit confidence votes, I don't think there's much doubt. The votes in more doubt are those that have been treated as confidence votes by the Government. I don't think it's asking the Speaker to make decisions beyond those he should make if there is an expectation. If there is a convention that certain kinds of votes, like votes on the Address, are treated as confidence votes and are treated as those by the Government, for the Speaker to make that explicit, effectively, it is a convention that exists and he is simply going to be setting out the consequences of that convention. He is not really creating any new rules. He is just making it more explicit about the effect of existing conventions that are already in place.

Q150 Lord Shaw of Northstead: I think this is an important principle. Who is to decide whether or not it is a vote of confidence—the House or the Speaker?

Mark Harper: On votes, for example, that convention suggests are confidence votes, like votes on the Address, it is convention that dictates that. Those are rules that have grown up. They are not hard and fast tied to the vote in the same way an explicit confidence vote is. It would just mean that the Speaker would be making those conventions more explicit. I do not think that it changes the nature of his role vis-à-vis the House.

Q151 Lord Shaw of Northstead: But, surely, if, at the beginning of the debate, the Speaker announces, “I am going to regard this debate and its result as a vote of confidence”, if the House then has its debate and specifically says that it does not want this to be regarded as a vote of confidence, who is in the lead?

Mark Harper: If the House decided formally to amend the Motion that was being put to the House to explicitly say that it was not a vote of confidence, clearly the Speaker would take his direction from the House. But that isn’t what traditionally happens with those votes. They do not explicitly say one way or the other, but convention suggests that certain kinds of votes are votes of confidence. That is the way they have been treated.

Q152 The Chairman: You have touched on a grey area, because sometimes the Government would regard it as a vote of confidence and at other times they would then follow that defeat by introducing a vote of confidence to get the confidence of the House.

I am thinking of a situation where there is a vote on a central issue of government policy that is key to the Government’s programme, which is unexpectedly defeated. I think that yours is premised on an issue where the Government might be in trouble, but the Speaker makes it clear that it is a vote of confidence. It might be one where, in the light of the debate, some Members vote against and it’s an unexpected defeat of the Government on a major Bill. If there is a defeat, the Speaker would have to determine after the event whether it is a vote of confidence or not.

Mark Harper: Yes, but I think the Speaker, as is usual in these cases, would be guided by convention. I am not going to start suggesting and giving hypothetical examples about the way the Speaker should conduct himself, but I think he would be guided by convention in those cases. What would typically happen in cases where there was an unexpected defeat on a major area of government policy is the Government would respond accordingly. As Lord Norton suggested, they would put forward an explicit Motion to demonstrate that the Government still have the confidence of the House.

I do not think that we would be leaping forward into new realms. We would use some of the existing conventions and processes to make it clear.

Q153 The Chairman: So in a way it would be up to the Government to make representations to the Speaker that they didn't regard that as a vote of confidence and they would wish to seek an explicit vote of confidence from the House.

Mark Harper: I think that one of the things that would happen with this procedure is that there would be more clarity from the Government beforehand about the nature of the way that they were conducting themselves, and I think that some transparency and clarity would be helpful for the House and the country.

Q154 The Chairman: So the Government would indicate in advance how they wished to treat any significant issue.

Mark Harper: Yes.

Q155 Baroness Jay of Paddington: But if, as you say, the Speaker relied on convention if the hypothetical situation that you alluded to arose—and you have also alluded to the fact that we have received the opinion of the Clerk that this could go to the court—then there would be a potential difficulty in that the Speaker could be in an even more difficult situation. There would be a tension with the political imperative, with the Government, as Lord Norton suggested, driving in one direction, and the convention would presumably depend

on the advice being received by the Speaker from the Clerks. If the Clerks' position was the one that has been suggested to us by the current Clerk, there would be considerable difficulty.

Mark Harper: Perhaps I may deal first with the concern that the Clerk outlined, which we discussed with him prior to introducing the Bill, and then briefly explain why, having had that discussion with him prior to introducing the Bill, we still decided to proceed. His argument goes to the safety of the certification process—whether it is still robust and whether the courts would wish to challenge it. He was concerned that they might. Our view was that that is a tried and tested process which has held up in the past. We also felt that in the circumstances we are talking about, courts would not wish to trespass in those areas; they would hold to the traditions and powers in the Bill of Rights and stick to doing that. We had that conversation with the Clerk in advance. The reason that we wanted to put the certification procedure in the Bill rather than in Standing Orders of the House was that you simply can't achieve the policy effect—as we talked about in answer to earlier questions from Lord Renton concerning the two-thirds majority—by relying on Standing Orders in the House, because Standing Orders can be amended by a simple majority. It was really a debate about the fact that, if you want to achieve that policy effect, you have to legislate for it rather than use internal procedures. There is a disagreement with the Clerk about our view. We tested it a little bit at Second Reading and I anticipate that we will have a pretty full debate on it in Committee in the House. Ultimately, the House will take a view on whether it thinks that the Clerk's arguments are more compelling than those of the Government or vice versa, and we will see what view the House takes.

Q156 The Chairman: One thought occurs, coming back to the point about confidence and who determines it. If the Government lost an important vote, even though it had not been certified as a vote of confidence but was clearly a critical vote—and there were

circumstances in the 1920s in which the Government, in a sense, retrospectively decided that it was a confidence vote and that they would go—but they none the less said, “Well, we can’t carry on because we lost this important vote”, and they resigned without losing a vote of confidence, would that trigger the 14-day provision?

Mark Harper: If the Government resigned and we were without a Government, you would then have to have a process of government formation. I believe that we think that would be the case.

Q157 The Chairman: In circumstances where they had lost a vote of confidence and the 14-day provision then kicked in under the Bill, would it be possible for that Government to try to reconstitute themselves, perhaps in a slightly different way? Presumably they could carry on as the Government, if a Government were formed, with the same people.

Mark Harper: Rather than giving you a rushed answer, let me think about it and I will come back to you, either later in this evidence session or in writing, if that is all right.

The Chairman: Okay, we will move on to the consequences.

Q158 Lord Goldsmith: But would you please also consider, in the example that Lord Norton put to you, that you said that there would have to be a process of formation of Government? If not now, perhaps you could help us with which provision in the Bill would enable that to happen because the Bill seems to say that you cannot have Dissolution without one of the events taking place which has been identified. Could you help on that as well?

Mark Harper: Yes.

Q159 Lord Goldsmith: On the consequences, you have picked up already on what the Clerk has said and the disagreement. First, on the point that the Clerk raised about the risk that the courts might intervene, is it the Government’s view that that is not possible at all or that the risk is slight?

Mark Harper: Looking at the precedents, there is always a theoretical risk, but we do not think it is realistic to think that the courts would intervene in these particular cases. The precedents and the other examples in law where you use the device of the Speaker's certificate suggest that our judgment on that is correct and would be supported by the courts.

Lord Goldsmith: We have seen material, such as an opinion from Richard Gordon QC, who is pretty expert in the field of judicial review and who considers that in modern terms there is at least a risk that the courts might be prepared to intervene.

Mark Harper: The response that we made to the Clerk's memorandum, which we placed in the Library of the House, was on the argument about the risk. We took the view that on these very political matters, the risk of the courts straying into or getting involved with them was very small. I am not sure whether the Clerk disagreed and thought that the risk was high, but he felt it his duty to flag up the risk. The Government's view, which we have set out, is that looking at how this has worked in the past—using the device of the Speaker's certificate and the way that the courts have behaved, even in the relatively recent past—we thought it a very small risk and, on that basis, we were content to proceed.

Q160 Lord Goldsmith: Content, as it were, to take that risk. You have said more than once that you therefore went for the route of the tried and tested formula, but I do not believe that the language which is used in the Bill is the same as that, for example, in the Parliament Act, which specifically says that the certificate shall not be questioned in any court. Is there a reason why the language is not the same?

Mark Harper: It simply uses a more modern drafting style, using the more recent precedent where the same language was used in the House of Lords Act, which this committee's chairman steered through the House of Lords and which uses that formulation rather than the other one. There was no particular policy decision. It is simply that we have used a

more up-to-date form of language from that which was in the Parliament Acts. We think it has the same policy effect.

Q161 Lord Hart of Chilton: Let's assume that there's a fixed-term Parliament and that it is dissolved by one of the two ways of doing that. Why should the clock be reset for a full and new five-year term rather than the rump of the term being served by that new Parliament? The latter would act as a disincentive for any contrived end of the Government.

Mark Harper: We thought about this. There is no rule here; it was a judgment issue. We thought about the two options and both have their merits. We came down on balance for the view that you would reset the clock, for this reason: we felt that the public would think it odd if you were to have an early election and the public were to make a clear decision about a Government—perhaps returning it with a good majority—and then, a very short time afterwards, you were to ask the public to go back and vote all over again.

I recognise the point you make: you could argue that it would be an incentive for a Government to have an early election and give itself another full term, but with the provisions in the Bill that make it very difficult for a Government to do that, on balance we have taken the view that resetting the clock is the right one. It is arguable and it is a balance, but we felt that the balance was better in saying that if a Government has been returned with a majority, it should get the full term and you should effectively reset the clock.

Q162 Lord Renton of Mount Harry: On other issues, Clause 4(1) states that the Monarch's power to prorogue Parliament is not affected. One slightly wonders why this clause has been included at all. What is the basis for not legislating on the prerogative part of the power to prorogue? One says that against the background that an incumbent Government in Canada, in order to avoid facing a vote of no confidence, thought of proroguing their Parliament.

Mark Harper: I think that the reason was that the changes made to the Royal Prerogative in this Bill are the minimum changes necessary to achieve the policy effect; they do not change the prerogative more widely. In effect, we have kept the prorogation powers as they are now. The risk that you highlighted, which was also brought up in the debate, is what happened in Canada. That is theoretically possible now. The convention that if the Opposition want to table a Motion of no confidence the Government make that time available has worked well in the past. Although it was a theoretical risk we did not think it was a practical risk. If a Government were so minded, it could not prorogue the House for a significant period as they need the House's power to continue in government. Although that was a theoretical risk, we did not think it a practical one

Lord Renton of Mount Harry: In general terms, it would not go down at all well if the Government tried to do this.

Mark Harper: No. Part of the check here is a political one. If the Government were abusing procedure to prolong its period in office artificially, there would be a reckoning when it eventually sought a mandate from the public. As I said, there is a theoretical risk but we did not think it a realistic or practical one.

Q163 Lord Shaw of Northstead: The Parliamentary Voting Systems and Constituencies Bill provides for reviews of constituency boundaries every five years. How do the Government propose to ensure that the reviews are aligned with elections under the Fixed-term Parliaments Bill? Do the Government envisage amending the review period if the two cycles move out of synch in the future?

Mark Harper: We thought about this carefully when we were considering both Bills. We took the view that the present position is that boundary reviews under the current cycle are not synchronised with parliamentary terms. Sometimes boundary reviews have taken place very near to a general election and sometimes they have been much earlier in the

Parliament. We did not think that it was absolutely necessary to synchronise them. You will know that the Parliamentary Voting Systems and Constituencies Bill sets out that we want boundary reviews once every five years—broadly once per Parliament—but I do not think that it is that important that they are absolutely synchronised. We will see how it works. We thought about it and did not think it necessary to synchronise the reviews in the two Bills.

Lord Shaw of Northstead: So it is open to discussion. We will see how it works.

Mark Harper: Yes. It is not currently the case that they are aligned, so we did not think it important to align them or make provision in this Bill or in the Parliamentary Voting System and Constituencies Bill to tie the two together.

Q164 The Chairman: Since it has been mentioned, we shall just raise one or two questions about the Parliamentary Voting System and Constituencies Bill. It has now cleared the Commons so we await it here. You are reviewing the boundaries in a very quick period of time. What is the justification for moving so quickly?

Mark Harper: First, we are reviewing the boundaries in a very quick period only compared to our present practice. It is not particularly quick internationally. The key reason is that the boundaries on which this year's general election was fought were based on electoral registration data dating from 2000, so they are a full decade out of date. The Government's view is that that is just too slow and we wanted to speed up the process. If the Bill gets Royal Assent, the boundary commissions will have to report by October 2013. They are confident that they can do a boundary review consistent with all the normal provisions in that period. That is why we have made changes to remove local inquiries but increase the amount of time available for people to submit written representations from one month to three months. We think that that strikes the right balance and enables a review to take place

more quickly, and for subsequent reviews to happen once per Parliament, which will keep boundaries much more up to date and in line with where electors actually live.

Q165 The Chairman: So your argument would be that the current disparity in size would justify moving quickly in time for the next election rather than, say, making provision now but giving more time for the Boundary Commission, so that the changes took effect for the election after next, which would give Members themselves more time to prepare for changes?

Mark Harper: We think the process for boundary reviews should be quicker, but also that it should happen more frequently, so that boundaries are kept more in line with shifts in electors than has previously been the case. Clearly, the first review will be a significant one; partly because it is a reducing review, reducing the size of the House of Commons; but also, by making parity the primary determinant, we will be dealing with the areas of the country which are currently overrepresented. Subsequent to that, the trade-off for Members of the House of Commons is that boundary reviews will be more frequent but less disruptive, because we will be keeping boundaries more aligned with population moves, so the shifts will be smaller but more frequent.

Q166 The Chairman: So there will be fewer disappearances of constituencies once the big change has taken place?

Mark Harper: Yes, once the big change has happened, we will keep them aligned, so we will have more frequent, smaller changes, rather than saving them all up for a really significant change on a less frequent basis.

Q167 Lord Crickhowell: I understand that argument, but on this occasion some of the changes are going to be very substantial indeed. I mean, Wales, for perfectly understandable reasons, is facing a very large reduction of about 25% in the number of seats—creating, incidentally, some extremely difficult alignments for the Boundary Commission to undertake

if it is to keep the kind of connections which are thought to be desirable with social and historic boundaries. Candidates are going to find themselves with totally different constituencies and an extraordinarily short time to set up associations and organisations to fight elections. The Welsh Committee has already commented on this. Isn't it a terribly tight timetable for such a radical transformation of constituencies?

Mark Harper: You have picked up two issues there. The first one you alluded to was the significant change in the number of Members of Parliament who will represent Welsh constituencies. Yes, it is a significant change, but it is because Wales is currently the most overrepresented part of the United Kingdom. We have had a significant amount of debate in the House of Commons about this—and a significant amount of debate about Wales, among all the constituent parts of the UK, both because the Labour Front-Bench spokesman is a Welsh Member of Parliament and because the Welsh Members of Parliament have taken a considerable interest in the debate. The fact is that it is about treating all parts of the United Kingdom fairly, and it is just not justifiable that there are significant number of seats in Wales where Members of Parliament represent only 50,000 constituents. That is an enormous disparity with the rest of the country. It is simply not justifiable. In fact, in the debate, we have not heard any good reasons, apart from sticking with the status quo, why that should be the case.

Lord Crickhowell: As a former Welsh Member, I am not going to press that case, so you need not argue with that.

Mark Harper: That is the view that we have taken. Clearly it is controversial, but I think it is treating all parts of the United Kingdom fairly. On your point that it is a significant change and about the timetable, the reason why we set the timetable for the Boundary Commission to report in October 2013 is that that will enable them to report by that date, for the Order in Council to be moved, the House to approve the boundaries so that they are final and to

give the parties time to select candidates and get them in place in the early part of 2014, with a year or so to go before an election in 2015. That is a challenging timetable, but we think it is deliverable, which is why we have set the timetable that we have. I don't think there is any way of avoiding the fact that we are doing a reducing review, reducing the size of the Commons, and dealing with some of the significant disparities, making seats of more equal size across the country, is going to lead to a significant amount of change in those constituencies. I don't think there is any way you can avoid that significant change or make it easier by spreading it over a longer period of time. I think you have to accept that there is going to be a significant amount of change and get on and do it. I am sure that Members will rise to the challenge.

The Chairman: You mentioned that the change in the boundaries also ties up with reducing the size of the House. Lord Hart has a question on that.

Q168 Lord Hart of Chilton: What was the evidence base for choosing 600? Both parties to the coalition had different numbers in mind. Was this just a horse trade or was it rather a sophisticated process? There does not appear in any of the debates to be evidence for why 600 was chosen. Would it not have been better to have carried out a process of looking at MPs' functions, which would be a rather more focal view of what the House of Commons should be up to, rather than going for 600 on no evidence?

Mark Harper: The view was this. The Conservative Party had a proposal based on the existing electoral system to reduce to 585. That was not a scientifically calculated number because it represented a 10% reduction in the size of the House. The Liberal Democrats had in mind a much sharper reduction to 500, but that was based on a change to the single transferable voting system. We didn't just take the two and come up with an answer. We looked at our own proposal—600 is not a magic number. There was a balance between the size of a constituency that would allow Members of Parliament to carry out the work they

do. With a very much smaller House, constituencies would be significantly larger than traditionally we have been used to, and that would change the nature of the role. The size of House we have settled on comes out broadly in line with the numbers on the last electoral register, at an average size of 76,000. It means that a third of the House would represent constituencies of that size. On balance, we felt that that was about the right number. It would not qualitatively change the nature of the representative role that Members of Parliament carry out.

I am not going to pretend that there is a magic science to this. It is a judgment. We felt that a reduction was necessary and, at just over 7%, this is a fairly modest one. There was no scientific process to it because it was a matter of judging the balance between two competing forces. We think that we have the balance about right.

Q169 The Chairman: How do you respond to the concern that, by abolishing the local inquiries, the number of applications for judicial review of Boundary Commission recommendations might increase?

Mark Harper: The view we have taken is that we want local people to be able to express their views to the Boundary Commission and to give the commission evidence to consider. We think that a lengthened process of written representations makes it perfectly possible for that to happen. Quite a lot of the academic evidence on local inquiries makes the point that they are largely exercises in political parties putting forward their points of view. While there are exceptions, they are not generally vehicles for ordinary electors to be able to put forward their view. We feel that a longer period for written representations is a different process, but it is perfectly satisfactory for ensuring that the boundary commissioners have had people's views made available to them. It is a process that is used elsewhere. Although the timetable for the review sounds challenging in our context, if you look at what happens

in other countries such as Australia, which by comparison is much pacier, we are still going at a fairly leisurely pace.

The boundary commissioners are content, based on the provisions in the Bill and the resources they will have, that they can deliver what we have asked them to within the timetable.

Q170 Lord Renton of Mount Harry: If I understood you right, on the question of the number of MPs, you said that the Liberals were thinking of 500 MPs because of the single transferable vote. What difference would that make?

Mark Harper: Lord Hart's question was about whether we had had a horse-trading exercise and I said that we had not, because although both parties in the coalition had set out proposals to reduce the size of the House, the Liberals' proposals were not just on the current arrangements but were about changing the system completely and moving to larger, multi-Member constituencies with the single transferable vote. The two systems could not be traded off against each other because they were qualitatively different.

Q171 Lord Renton of Mount Harry: I was really wondering why the single transferrable vote should mean fewer constituencies. What you are saying is that the Liberals had two things to say. It wasn't really that one meant the other.

Mark Harper: Not at all, no. I was making the point that both coalition parties thought that the number of Members of Parliament should be reduced. I raised the issue of the single transferable vote just to say that this was not about there being two numbers that, with other things being equal, we traded off against each other. It was not that kind of discussion. That was the point I was trying to make. I clearly didn't make it very well.

Q172 The Chairman: The other provision of the Bill provides for a referendum. How confident are you that there will be time, given that the Bill has yet to complete its parliamentary passage?

Mark Harper: It is not giving away a secret to say that the timetable is challenging. The Electoral Commission—obviously, it has an important role to play, because its chairman will be the chief accounting officer—has set out in evidence to the Commons Constitutional Reform Committee that it wants the key important sense of the rules to be settled six months before the election. Obviously, that is before your Lordships get to consider the Bill, but I do not think that that fetters your ability to amend the Bill.

All the key provisions around the date and the question have been debated and voted on by the Commons. The Electoral Commission has been working closely with our officials and will clearly take a very close interest in the parliamentary passage. If there are areas where the House of Lords, doing its usual excellent job of scrutiny and revision, thinks that there are things that would make the conduct of the referendum smoother or work better or in other ways could be improved, I am sure that the Electoral Commission will follow that as we go along. I do not think that that would be insuperable. The point that it made was that, if your Lordships made significant changes, it would have to consider those and come back and express a view about what that meant for the conduct of the referendum. We will have to see how the debate in the House of Lords proceeds.

Q173 The Chairman: When you say significant changes, do you have any examples of what would be significant as opposed to not so significant?

Mark Harper: Those are matters of judgment. The Electoral Commission has been working closely with our officials and will no doubt take a close interest in what goes on in this House. I know it will provide briefing for Members of the House of Lords as the debate proceeds at each of its stages. We will see what happens.

Q174 Lord Crickhowell: I have a different question. I am in favour of reducing the number of MPs, but if you don't reduce the number of Ministers and PPSs, you are actually strengthening the Executive. Clearly, at some point you will have to face this. There will be

great pressure on you to do so. Are you going to face up to it while we are dealing with the legislation? What is the Government's position?

Mark Harper: I think your point is very well made. In one sense, the Government have a difficult argument. We accept that there is a problem that needs to be dealt with, but we do not think that this Bill is the right vehicle to do it in. I know that that provokes some cynicism. "Well, he would say that and they're not going to deal with it".

I would say two things. First, I think that the Government have demonstrated, both by the previous discussion we have had where the Prime Minister has given up a significant power and by the steps we have taken in the Commons to pass power to the House—setting up the Back-Bench Business Committee, the election of Select Committee chairmen and carrying out a lot of the Wright committee recommendations—that we want to strengthen Parliament.

The reason for looking a little wider is that the debate we had in the Commons and the clause we voted on affected only the number of Ministers. If you only look at it narrowly, it did not look at prime ministerial patronage as a whole. It would not, for example, have affected the number of PPSs. It would not have looked at the balance in ministerial ranks between those Ministers who are Members of the House of Commons and those who are Members of the House of Lords. So it would not have looked at that balance.

There is also an argument on which, interestingly, I had a debate with Chris Mullin, who wrote in the first volume of his memoirs about how he felt as a junior Minister work was created in order to keep him busy. But he acknowledged that there are some parliamentary innovations which the last Government made which have been very valuable—for example, the Westminster Hall debates we have had, which have generally been a success. But they impose a burden on the Government in terms of Ministers to respond to them and you have to take ministerial accountability into account.

The Government's position is that we want to deal with this issue, but you have to look at the size of government and the balance between the two Houses. There is an argument that you do not just deal with Ministers, but you look at all the other positions. All you do if you deal only with Ministers and do not look at PPSs and other roles that might be created that are considered to be on the payroll is squeeze one part of the balloon and patronage will just appear elsewhere, perhaps in a less accountable form.

The Government want to deal with it and recognise the issue. We will bring forward proposals during the Parliament, but we do not think that dealing with it in this Bill is the right vehicle.

Q175 The Chairman: The statute at the moment only deals with Ministers, so I am not sure how you can deal by statute with people such as Parliamentary Private Secretaries. You can devise any old status for a Member and say that it somehow binds you to government.

Mark Harper: That is one of the things we want to consider. If the concern of the House is about patronage—and that is the concern, rather than Ministers—but if there is a pressure, which may be for perfectly valid reasons, for people to carry out government business and you artificially constrain it in one area, all you do is to force something else to happen. During the period of the previous Government, we saw roles being created such as regional Ministers, assistants to regional Ministers and special envoys, all of whom were considered to be on the payroll—or they did not have any pay.

There is an argument that, during this Parliament, we could have a debate about the size of the Government and the role of Ministers, looking at it in the round rather than focusing on one particular narrow aspect of it. There will be legislative opportunities during the Parliament. The Government doesn't have a closed mind on this. They recognise that there is a problem and want to solve it but did not think that just solving it in that narrow way, by looking at the number of Ministers in the Commons, was the right way to deal with it.

There may well be a partly legislative and partly non-legislative solution. That is the long answer.

Q176 Lord Goldsmith: May I make a request rather than asking a question? Earlier, when members of the Committee were asking you about consultation, you referred to opinion polls. I, for one, would find it very helpful—it may be that others would not—to see what opinion poll or polls you had in mind, so that we can understand to what extent this has been the subject of public debate. Would you be able to provide us with the opinion poll?

Mark Harper: On which aspect—the fixed-term Parliaments?

Lord Goldsmith: On fixed-term Parliaments, I am not sure what it is that you say is to be found in the opinion polls. That is part of the reason I would like to see what it is.

Mark Harper: OK, fine.

The Chairman: The only other point I would make on the discussion we were just having, from a suggestion that was made to me, is that rather than referring to the payroll vote—because you have already indicated that quite a lot of the so-called payroll vote is not paid—it should be simply referred to as the jobsworth vote, which I think is more encompassing. Anyway, Minister, we are very grateful for the time that you have spent with us and for the ground you have covered. That has been extraordinarily helpful to us and, from what you were saying earlier, we will be hearing from you on one or two other points that we have raised with you as well. We are very grateful indeed for your being with us today. It has been extremely helpful for our purposes. Thank you very much.

Mark Harper: A pleasure, and thank you very much for the invitation.