

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT**

BETWEEN:

**THE QUEEN
on the application of
GINA MILLER**

Claimant

- and -

THE PRIME MINISTER

Defendant

-and-

**(1) BARONESS CHAKRABARTI, CBE, PC
(2) THE COUNSEL GENERAL FOR WALES**

Interveners

**FIRST EXHIBIT TO THE WITNESS STATEMENT OF JONATHAN GUY JONES
DATED 2 SEPTEMBER 2019**

This is the exhibit marked "Exhibit JGJ/1" exhibited to the witness statement of Jonathan Guy Jones dated 2 September 2019.

ACTION

ENDING THE SESSION

Deadline: 16 August 2019

Date: 16 August 2019

PRIME MINISTER'S COMMENTS:

- ① The June September session is a nightmare introduced [REDACTED] [REDACTED] [REDACTED] to show the public that MPs were earning their crust
- ② So I don't see anything especially shocking about this proposition
- ③ As Nikki notes, it is OVER THE CONFERENCE SEASON, so that the sitting days cost are actually very few

From: Nikki Da Costa

Date: 15 August 2019

PRIME MINISTER

cc: Mark Sedwill
Peter Hill
Martin Reynolds
Stuart Glassborow
Harry Carter

Ed Lister
Dominic
Cummings

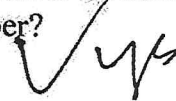
ENDING THE SESSION

SUMMARY

1. The current session is the longest since records began, and all bills announced as part of the last Queen's Speech have now received Royal Assent, or are paused awaiting carry over into the next session: this makes it increasingly difficult to fill parliamentary time with anything other than general debates. As a new Prime Minister, there is an expectation that you will set out a refreshed domestic programme and it would be natural to do so when the House returns in the autumn.
2. As the first week's business in September has already been announced, I recommend dedicating the second to wash-up on bills such as R&R. We would then prorogue sometime between the end of Monday 9th September and Thursday 12th September, allowing for the long-standing conference recess, and return on Monday 14th October with the State Opening of Parliament.

3. 

RECOMMENDATION

2. Are you content for your PPS to approach the Palace with a request for prorogation to begin within the period Monday 9th September to Thursday 12th September, and for a Queen's Speech on Monday 14th October? 

DEADLINE

3. 16 August – with only two months until 14th October it would be wise to open discussions this week, with the aim of securing confirmation next week. We would announce the Queen's Speech after the G7 summit and before Parliament returns.

BACKGROUND

4. This has been the longest session since records began. MPs from across the House have been asking for months when the session will be brought to an end. In the Lords, there is a question on the first day back.
5. Due to the length of the session, we are at the very end of the legislative programme of the previous administration. Even small bills long considered to be low priority in policy terms, relating to wild animals in circuses and tax relief on the provision of public toilets, are now having to be introduced to fill time. More substantial bills, such as the Immigration, Agriculture and Fisheries Bills are being held to preserve the ability to carry them over into the next session (all are ready for their final amending stage in the Commons but once that takes place, carry-over is no longer possible, and the Bills would either need to complete their passage, requiring many more months, or be lost when the session ends).
6. At the same time, both Commons and Lords Business Managers are requesting new bills to ensure Parliament is using its time gainfully. However, if we introduce new bills now, we would have to accept that either we continue the session for another four to six months at a minimum, or that we are introducing them knowing that they will fall at the end of the session and that we are simply using them to keep MPs and Peers busy.
7. The last Prime Minister was aware of these tensions and for these reasons dates were placed in the diary for a Queen's Speech in April/May 2019 and in October 2019. At the time, October was considered a very late end to the session, and as a result a decision is now pressing.
8. There are two decisions you will need to make: when to end the session and start a period of prorogation, and when to hold the State Opening of Parliament, subject to the availability of Her Majesty the Queen. The decision will be influenced by practical, legal and political considerations.

PRACTICAL CONSIDERATIONS

9. Choosing when to end the session is a balance between having enough time for wash up – completing the passage of bills that are already close to Royal Assent - and not wasting time that could be used for new measures in a fresh session. As there are very few bills that would be considered good candidates for wash-up, such as the Restoration & Renewal Bill and the Commonwealth Games Bill, at most this will take three to four days. This points to bringing the session to a close in September. We would therefore recommend asking for an Order in Council for prorogation to commence within the period 9th September to 12th September.

10. With regard to a date for the Queen's Speech, No.10 and the legislative focussed parts of Whitehall, and the Business Managers, have long had a mid-October date in the diary and it has been a central planning assumption. However, additional work now needs to be undertaken so that the Queen's Speech is shaped to your domestic priorities. In my view, the w/c 14th October is achievable, but any earlier is extremely pressured.

11. On a lesser note, a Queen's Speech on 7th October will place key votes on the days of the SNP conference. The SNP do not traditionally benefit from the conference recess period but we have usually tried to accommodate their needs, and while we realise it's not ideal to have the Queen's Speech coincide with their conference, the three line whip for their party is likely to be for the end of the six days of debate on the Loyal Address rather than the start.

LEGAL

12.

13.

POLITICAL CONSIDERATIONS

14. Finally, politically it is essential that Parliament is sitting before and after EU Council — MPs and Peers must be in a position to consider what is negotiated, and hopefully pass the Withdrawal Agreement Bill. If there is no deal, they need to have an opportunity to hear what you have to say, and respond accordingly.

15. From the Government's perspective it is equally important that the key votes associated with the Queen's Speech — traditionally seen as matters of confidence — fall at a time when parliamentarians are best placed to judge your programme, and whether to endorse it. If the Queen's Speech is on 14th October, the usual six day debate would mean votes would fall on 21st 22nd October. Parliament would have the opportunity to debate your Government's overall approach to Brexit in the run up to EU Council and then vote on this once we know the outcome of the council.

The debate on the Loyal Address can be truncated, but ideally it would be coming to a close anyway immediately after EU Council.

16. This does mean there will be a vote risk in mid to late October, but that might also have political benefits: those MPs most anxious about no-deal may welcome the Government facilitating key votes on a known date close to EU Council, and the chance to table amendments, rather than having to find some peculiar mechanism which tears up convention and parliamentary procedure.
17. By contrast, a Queen's Speech on 8/9th October would put the key votes at the same time as EU Council – forcing MPs to make critical decisions on future of the UK government before they've seen the result of the negotiations.
18. Finally, it must be recognised that the situation has become more complicated because prorogation, on its own and separate of a Queen's Speech has been portrayed as a potential tool to prevent MPs intervening prior to the UK's departure from the EU on 31st October. Despite usually being an annual affair, there will be nervousness about prorogation even to start a new session. The dates proposed seek to provide reassurance by ensuring parliament will sit for three weeks prior to exit, and that a maximum of seven sitting days are lost separate of the period usually set aside for conference recess.

PRECEDENT FOR PERIODS OF PROROGATION

19. There is no statutory provision governing the required length of a prorogation, and different periods have been applied in different circumstances. It appears that in modern practice the usual length of a prorogation (not attendant on a General Election) varies but is usually under 10 days, although more historic practice in the first half of the 20th Century saw very lengthy prorogations. There have been five occasions since 1980 in which Parliament stood prorogued for longer than that, the longest of which was 21 calendar days. The present proposal would mean that Parliament stood prorogued for a period of up to 34 calendar days. However, given the expected conference recess period of typically three weeks, the number of sitting days lost by such prorogation would be far less than that: 1-3 sitting days during the week commencing 9th September, and 4 sitting days during the week commencing 7th October.
20. Practically the length of the prorogation, whilst unusual based on recent trends, merely reflects the fact that Parliament would have been in recess for most of the relevant period and the practical undesirability of holding wash-up over until return from conference recess, or interrupting conference recess purely for the purposes of shortening the prorogation period. It is also worth noting, that there is no record of the Commons sitting in late September or early October since the start of the 20th Century.

21. Taking all of the above into account, are you content for your PPS to approach the Palace with a request for prorogation within the period Monday 9th September to Thursday 12th September, and for a Queen's Speech on Monday 14 October?

NIKKI DA COSTA

ANNEX A:

