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File with NLW

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N L Wicks Esq
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29 July 1986

Dear Nigel,

PROCEEDINGS LEADING UP TO A GENERAL ELECTION

As promised, I enclose a draft paragraph 4 designed to become paragraph 4 of the "up-dated version of Stainton's 1974 note" which I sent Michael Stark on 12 September 1985. The Law Officers have now advised that on a dissolution of Parliament the new Parliament may be summoned, and the Writs for it may issue, while the existing Parliament is still in being, and that in these circumstances no problem arises under section 2 of the Meeting of Parliament Act 1694.

will request grag'd.

2. According to Richard Hatfield's letter of 21 August 1985 to Brian Shillito, the note by this Office on proceedings leading up to a General Election has customarily been included as an annex in the Cabinet Office Precedent Book (in which Chapter Five is to some extent concerned with General Elections). We agreed this morning that there is much to be said for collecting all the learning on General Elections together in "PROCEDURE FOR GENERAL ELECTIONS" ("PGE"), which ought therefore to include the note as an annex, with perhaps a suitable reference to it in section I (if more is needed than its addition to the list of annexes which appears twice in the preliminary pages - once in the full list of Contents, and once in the summary version which precedes it). I leave it to you to decide what to do about Chapter Five of the Cabinet Office Precedent Book, a work which I have not seen. If you decide to keep something about General Elections in Chapter Five, there should presumably be a note referring the reader to PGE.

will request grag'd.

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3. We agreed that you would begin by adding the enlarged note as an annex to PGE, and that when time allows I would work through the text of PGE with a view to suggesting amendments of those passages (and headings) which at present speak of "dissolution" on the fallacious assumption that dissolution necessarily occurs on the date of the proclamation and is therefore virtually synonymous with "the issue of the proclamation summoning a new Parliament".

4. Finally, I see no need to say anything in the note or in PGE about what, in the light of the Law Officers' advice, should be done if the 1983 situation were to recur. In my view, the solution is for the proclamation to dissolve Parliament at midnight (or any other time) on the Saturday or Sunday following the last day's siting on the Friday, thus ensuring that neither House is sitting at the moment of dissolution. I think that any proclamation dissolving Parliament from a future date ought to specify the exact moment of dissolution (eg "We... do hereby dissolve the said Parliament at the end of [Sunday, the 15th day of September 1983]"), since to say, without more, that Parliament is hereby dissolved "on" (or "from") a specified date fails to make it clear when dissolution will occur - there being nothing equivalent to section 4 of the Interpretation Act 1978 (c.30) to provide the answer.

5. I am sending a copy of this letter and the draft paragraph to Derek Oulton, as I think that you and he (the persons principally concerned) need to be content with the new paragraph 4 before it is added to the note (in which the existing paragraphs 4 to 6 would then need to be renumbered). The next step is for the three of us to

agree on the new paragraph, after which I will, if you wish, send you a fresh copy of the note with the date of the new text at the end (the present text being held on a floppy disk). This will probably have to await my return in mid-September from a spell of leave followed by a week's attendance at the Commonwealth Law Conference.

Yours ever

George.

GEORGE ENGLE

4. Dissolution of existing Parliament on a future date (i.e. on a date later than that of the proclamation summoning a new Parliament)

The dissolution of an existing Parliament and the summoning of a new one are effected by a single proclamation, which is normally worded ("We ... do hereby dissolve the said Parliament") so as to effect the dissolution at the moment when the proclamation is issued by being passed under the Great Seal. But the proclamation can, if desired, dissolve the existing Parliament on a future date. (In 1986, in response to an enquiry by the Clerk of the Crown in Chancery, the Law Officers confirmed that this is so, and advised that a new Parliament may be summoned, and the writs for it may issue, at a time when the existing Parliament is still in being.)

Since the time-table in the parliamentary elections rules in Part I of Schedule 1 to the Representation of the People Act 1983 runs from the date of the proclamation and not from the date of the dissolution (see the first and third entries in the time-table in paragraph 1), it is possible to dissolve the existing Parliament on a future date without affecting the date of polling day. There are two situations in which advantage could be taken of this possibility; but since keeping the old Parliament in being during the period of the election campaign means that Members seeking re-election will be campaigning as sitting Members, it seems unlikely that the Prime Minister would wish to bring about such a situation otherwise than with the agreement of all parties. The two situations are-

(A) Where extra time is needed for the conclusion of Parliamentary business.

In 1983, the choice of Thursday 9 June as polling day meant that the proclamation had to be issued on Friday 13 May. The announcement that Parliament would be dissolved on that date was made on Monday 9 May, leaving only the remaining 4 days of that week for the conclusion of outstanding Parliamentary business. Had it been agreed to prolong the life of the old Parliament by a few more days for that purpose, this could have been achieved by dissolving it from, say, midnight on Wednesday 18 May.

(B) Where in exceptional circumstances it is desired, in the first part of the election campaign, to be able to recall the old Parliament.

If the proclamation disolves Parliament from a future date, Parliament can meet in the interval between the issue of the proclamation and the moment of dissolution. If, where this is done, Parliament has been prorogued to a date after the dissolution, the date of meeting can be accelerated under section 1 of this Meeting of Parliament Act 1797; and if it has not been prorogued, the two Houses could be recalled under their Standing Orders (assuming - see paragraph 3 above - that the public interest requires this).

File

SPW

(47)

10 DOWNING STREET

From the Principal Private Secretary

15 September 1986

PROCEEDINGS LEADING UP TO A GENERAL ELECTION

I am sorry that leave and other preoccupations have delayed my replying to your letter of 29 July in which you kindly provided a draft paragraph 4 designed to become paragraph 4 of the "updated version of Stainton's 1974 note".

I have now studied this draft and can confirm my agreement to it. As you will have seen from his letter of 6 August, Derek Oulton is also content. The way is therefore open for you to send me a fresh copy of the note. I agree, too, that this should be included as an annex to "Procedures for General Elections " (PGE), with a suitable reference to it in section 1.

As for chapter 5 of the Cabinet Office Precedent Book, I understand from the Cabinet Office that this is not regarded there as an operational manual. PGE is the manual for operational purposes. It is the place where all the guidance, including Stainton's note, suitably updated, should be assembled.

(N. L. WICKS)

Sir George Engle KCB QC

12/63

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PROCEEDINGS LEADING UP TO A GENERAL ELECTION

1. A general election in the summer adjournment.
2. Prorogation instead of adjournment.
3. Disposal of further business before a general election.
4. Postponement of meeting of new Parliament.
5. The law about prorogation.
6. The Meeting of Parliament Act 1799.

This, I assume, is Stanley's note, unpublished referred to in Ryder's letter of 29 July '86. Please file immediately after note & sketch of 4 Aug. '86

NCU
15.9

PROCEEDINGS LEADING UP TO A GENERAL ELECTION

A general election in the summer adjournment

1. It is possible that there might be a general election in the summer when Parliament is not sitting. There are recent precedents for dissolving Parliament when not sitting (and not prorogued) - the dissolutions of September 1964, September 1974 and May 1983.

Prorogation instead of adjournment

2. If the Government have decided on a general election round about the end of the summer break, or perhaps the Christmas break, without recalling Parliament, and wish to keep the exact date open, there may be a case for proroguing, rather than adjourning, in July or, as the case may be, December. Prorogation, of course, terminates the Session, and so a decision to prorogue may virtually commit the Government to a general election, but it has the advantage that the length of the recess is entirely in their hands. Proclamations can be issued under the Prorogation Act 1867 (c.81) from time to time to postpone, or further postpone, the time fixed by the prorogation for the meeting of Parliament, and Parliament can be dissolved at any time during the recess (or of course later). By contrast, the date to which either House is adjourned is a matter for the House (and something which the Government may not be able to dictate) and there is no way of postponing the date for either House to meet.

Disposal of further business before general election

3. Neither adjournment nor prorogation in the circumstances discussed above would prevent further business being transacted before the general election, although of course prorogation will have terminated the previous Session. If the Houses have been adjourned, there is power to

accelerate their meeting under Commons S.O. No.143 and Lords S.O. No.14 and there is also power by proclamation to accelerate their meeting, subject to certain time limits, under the Meeting of Parliament Act 1799. The Standing Orders require the Speaker and the Lord Chancellor to be satisfied that recall is in the public interest, and there may be circumstances where this cannot be taken for granted.

If Parliament has been prorogued there is power to bring forward the date of meeting by proclamation under section 1 of the Meeting of Parliament Act 1797 (c.127).

These powers would allow, for instance, unexpected proceedings under the Emergency Powers Act 1920 to be disposed of prior to the election. In these circumstances Parliament would, after the business had been disposed of, be adjourned and subsequently dissolved, it being no longer the practice to prorogue in cases where dissolution is intended shortly.

Postponement of meeting of new Parliament

4. When Parliament sat less frequently than it does now, the date of meeting of a new Parliament was sometimes postponed by prorogation, notably on occasions when the election ended before the usual time for Parliament to meet. There is power to prorogue for this purpose in the Prorogation Act 1867, but the date to which the meeting is postponed must be more than fourteen days after the date of the proclamation. It is unlikely that the power would be needed today just to prolong the summer break, or some other break in parliamentary business, but it is possible that the power would be useful in case the election did not produce a clear majority. In such a case it cannot be assumed that each House will agree with the Government on a suitable adjournment and, because of the time limit of fourteen days, any decision to prorogue may have to be taken quickly.

The Prorogation Act 1867 did not supersede the earlier power of proroguing in the same circumstances by writ, but this procedure is now moribund and would probably be difficult to resuscitate. The difference is that the earlier power to prorogue by writ was not subject to any time limit.

The law about prorogation

5. The law about prorogation is not easy. The familiar procedure is prorogation by Royal Commission to terminate a Session and fix a meeting of Parliament to begin a new Session. Until recently, by convention, if not by law, a Parliament was prorogued before being dissolved; but the practice is now to dissolve when both Houses are adjourned, as happened in 1964, in September 1974 and in 1983 - unless, of course, prorogation has already occurred.

It is very doubtful whether Parliament can be prorogued when both Houses, or either, are adjourned.

Once the date for the meeting of Parliament at the beginning of a new Session has been fixed by prorogation, the date can be brought forward, or postponed on one or more occasions, by proclamation. It can be brought forward under section 1 of the Meeting of Parliament Act 1797 (c.127) as amended by section 34 of the Parliament (Elections and Meeting) Act 1943 (c.48) to any day after the date of the proclamation. It can be postponed under the Prorogation Act 1867 (c.81) to any date more than fourteen days after the date of the proclamation, and the postponement can be repeated subject to the same time limit.

The Acts of 1797 and 1867 have given rise to doubts. The Act of 1797 has been thought to authorise postponement, as well as acceleration, but this is almost certainly wrong. And it does not authorise acceleration of the meeting of either House where both or either Houses are adjourned.

The Act of 1867 does not apply so as to authorise the termination of a Session by proclamation (whether Parliament is sitting or adjourned); and this is borne out both by the terms of section 1 and by section 2 which perhaps adds nothing to section 1. It is possible to read section 1 as making the time limit of fourteen days run not from the date of proclamation but from the previous date fixed for the meeting of Parliament, but this construction is almost certainly wrong. In 1878 the time limit was overlooked, though the error was not observed at the time.

As noted above, the Act of 1867 also authorises a proclamation to postpone the date of meeting of a new Parliament fixed by the proclamation dissolving the previous Parliament.

The Meeting of Parliament Act 1799

6. This Act (1799 c.14) as amended by section 2 of the Meeting of Parliament Act 1870 (c.81) authorises a proclamation bringing forward the date of meeting of Parliament when both Houses are adjourned. The power is subject to two time limits. First there must be fourteen days between the date of the proclamation and the dates to which each House stands adjourned. Secondly, the new date of meeting must be not less than six days from the date of proclamation. (Note that the text

of section 1 of the 1799 Act as currently published in Statutes in Force wrongly shows the second time limit as fourteen days instead of six. The text in vol.24 of Halsbury's Laws, 3rd ed, is correct.)

There is no power, by Act or otherwise, to prolong an adjournment.

G.E.

PARLIAMENTARY COUNSEL OFFICE

12th August 1985

From Sir Derek Oulton, K.C.B., Q.C.

HOUSE OF LORDS,
LONDON SW1A 0PW

01-219 3246

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6 August 1986

NCW

Dear Nigel,

PROCEEDINGS LEADING UP TO A GENERAL ELECTION

George Engle has copied to me his letter of 29th July 1986 at Nap to you, enclosing a new draft paragraph 4 designed to become paragraph 4 of the up-dated version of Stainton's 1974 note.

I am content with the new paragraph, which accurately reflects the effect of the advice I received from the Law Officers.

A copy of this letter goes to George Engle.

Yours sincerely,

Derek

A.D.M. Oulton

N.L. Wicks Esq.
10 Downing Street
LONDON SW1

FILE
DCA

10 DOWNING STREET

From the Principal Private Secretary

MR. STARK
CABINET OFFICE

PROCEEDINGS LEADING UP TO A GENERAL ELECTION

I mentioned to you the other day the letter, now attached, which George Engle has sent me about a certain aspect of election law. You will see that this letter refers to the Cabinet Office Precedent Book, and in particular to "Stainton's 1974 note" a revised edition of which George sent you on 12 September 1985.

I believe you agreed that all the learning on General Elections should be collected together in "Procedure for General Elections" ("PGE"), and that "Stainton's note", suitably revised, ought to be included as an annex to PGE.

I am not sure how this leaves Chapter Five of the Cabinet Office Precedent Book, a document which I have not seen, nor, I think, need to. Perhaps I could leave it to you to decide how to deal with that Chapter.

But could I ask that you should send me a copy of the "updated version of Stainton's 1974 note" which George Engle sent you on 12 September 1985. Subject to checking the note, I will then proceed as he suggests.

N.L.W.

(N.L. WICKS)

4 August 1986