

# Constitutional change

The government's defence yesterday of its action to prorogue Parliament was simple. They thought their actions were entirely legal and based on precedent. This was confirmed by the English High Court. The Supreme Court then decided to create a new legal test over prorogation and change it from being a matter for government and sovereign to decide into a matter that is justiciable under the new rules of prorogation set out by the Court. The government accepts their ability to do this. It will fall to a future Parliament to decide if Parliament wishes to continue with the approach set out by the Supreme Court or if it wishes to legislate to change the approach.

The heart of our constitution rests on a series of checks and balances. Our constitution is written down in various Acts of Parliament, court decisions, the rules or Standing Orders of Parliament and precedents where executive power has traditionally been used. An activist Supreme Court can change our constitution. An Act of Parliament can change our constitution. Executive action can change our constitution, as with the decision to negotiate and enter into the EU Treaties, though these were also subject to confirmatory Acts of Parliament. Parliament often passed them under government guidance that we would be failing to meet our international obligations entered into by the executive at the end of the negotiation if the Bill was not passed.

There is a daily battle between the three elements of the constitution. Parliament regularly criticises the executive and seeks to amend or change its ways. Courts regularly review government decisions and sometimes find them wanting. Government seeks more discretionary power by seeking wide ranging powers in Acts of Parliament, or general approvals of spending with considerable freedom to decide the detail of programmes.

In two wide ranging prerogative areas, the power to declare war and the power to negotiate a treaty, Parliament increasingly asserts its right to approve or prevent the decision. Past great wars have been entered into on the basis of substantial cross party support. Other wars have proved more contentious and have needed Parliamentary majorities with votes.

The battles so far over Brexit have concerned the need for an Act of Parliament to send the letter of notification of withdrawal, and the refusal of prorogation owing to the importance of the Brexit issue. The biggest clash lies ahead. The government claims it has authority to take the UK out of the EU on 31 October. There are two Acts of Parliament to that effect, a referendum vote and the 2017 Election result. It is the government's job to negotiate a possible new Withdrawal Agreement and to decide on a No deal or a Withdrawal deal exit. Some in Parliament say its European Withdrawal Act No 2 trumps the other two pieces of legislation and expects the Courts to enforce its requirement of the Prime Minister to seek a further delay in our exit. Is it good law to demand a PM to do the opposite of his promises and Manifesto? How are its terms enforceable?

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## Wither our constitution?

I was surprised to learn reading the Supreme Court text of Lady Hale's statement about the judgement that "Mr Mark Harper, chief whip" attended a meeting of the Privy Council at Balmoral on 28th August 2019.

I seem to recall Mark Harper ceased to be Chief Whip well before recent events.

I was also interested to read that "During a recess (as opposed to a Prorogation break) written Parliamentary Questions can be asked and must be answered." When we broke for the last summer recess the Order Paper told us written questions submitted after the last day of session would be tabled and answered when Parliament returned in September.

The Supreme Court argued that Prorogation was different from recess though there are many similarities.

Lady Hale argued that the memorandum from Nikki da Costa which recommended prorogation left out important matters Lady Hale wished to see in it. She stated that the "effect upon the fundamentals of our democracy was extreme".

Most of us believe in the separation of powers. We need independent judges to judge individual cases and sometimes to interpret Statute and Common Law, and all the time we are in the EU overarching EU law as well. Where Judges use their powers to interpret Statutes in ways Parliament does not like, then Parliament can of course amend the Statute to clarify the intent.

Parliament has more power to decide the law by passing Acts of Parliament and Statutory Instruments, but usually has no power to judge individual cases under the law. Parliaments develop their own relations with the Executive or government which is part of Parliament but also has independent powers to decide and spend beneath a general Parliamentary approval. By convention government proposes new laws to Parliament for Parliament's approval, amendment or rejection.

The danger of the present situation is no-one is in charge because the government no longer has a Parliamentary majority. We see daily jousting for temporary power or control of the agenda where no-one has the authority that comes from commanding a majority of MPs. The right answer is a General election so the public can decide who they want to govern the country. Instead we have a PM being held hostage by Parliament and Courts who are seeking to force him to do the opposite of what he has promised and believes to be right.

It cannot be the right answer to the big question of whether we remain or leave the EU to have that finally determined in a court of law based on an Act of Parliament rushed through against the wishes of the PM, the government

and the majority who voted Leave in the referendum. Acts of Parliament were designed to provide sound and fair law for us all, not to be political traps and political statements against a Prime Minister who has insufficient MPs to endorse his view.

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## [The collapse of Thomas Cook](#)

The Thomas Cook business has been short of cash for much of the last decade, with refinancings to keep it going. At the end it was decided the business was so short of money that it had to go into liquidation. If it had gone into Administration that would have been an expression of more hope of finding a buyer for it as a going concern after some new financial restructuring.

The senior management of the company said their aim was to make it the “most loved holiday company”. I doubt it is today. They wanted to take customers on a journey “from dream to experience”. The experience this week is not quite what customers had in mind. We were told in the last annual report that the “customer” is “at our heart”, and the employees put their “heart into it”. Now the employees are out of a job.

In the last Report the Directors assured us they had stress tested its future viability as a business for a three year period. They said “the Directors have a reasonable expectation that the Group will be able to continue in operation and meet its liabilities as they fall due over the three year period of the assessment”

The Audit Committee also looked into viability and stated “there are no material uncertainties as to the Group’s ability to operate as a going concern” drawing on the three year stress tests no doubt.

Finally the auditors wrote “We conclude that the use of the going concern basis of accounting is appropriate and concur with the Directors that no significant uncertainty has been identified”.

Thomas Cook did not short change the senior management when setting salaries and bonuses for them. People will be asking just how did this company fall so far and so fast this year after the positive statements made about it in the last Annual Report?

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## [Information for Thomas Cook customers](#)

## and staff

I have received this letter from the Secretary of State for Transport:

Dear John

The Thomas Cook Group has confirmed to my Department that it has ceased trading and been placed into compulsory liquidation. I am writing to set out the steps the Government is taking to support passengers and staff affected, and where your constituents can find further information if needed [see Annex below].

I recognise that this is a distressing situation for all involved, and I would like to assure you that the Government is committed to supporting those affected, including by providing repatriation flights free of charge. We have been contingency planning for some time to prepare for this scenario. The Government and UK Civil Aviation Authority (CAA) have run similar operations in the past and will be working hard to minimise disruption for passengers and assist Thomas Cook's staff.

Despite the preparations and previous experience, the task before us represents the largest peacetime repatriation undertaken by the UK Government – more than 150,000 Thomas Cook customers are currently abroad. Some disruption and delay is inevitable and we ask for understanding, particularly for the Thomas Cook staff who, together with UK Government staff either in place or en route, are working to ensure the safe return of customers.

All Thomas Cook flights have now been cancelled and the CAA and UK Government are working together to get passengers home as close as possible to their planned date. Normally, the CAA's responsibility for bringing passengers back would extend only to customers whose trips are covered by the Air Travel Organiser's Licence (ATOL) scheme, with the costs of assisting those passengers falling to the Air Travel Trust Fund (ATTF).

However, due to the unprecedented size of this operation there is insufficient capacity in the commercial aviation market to enable all of Thomas Cook's non-ATOL passengers to get home on other airlines. Some passengers would have to wait for a week, or longer, and many would suffer financial and personal hardship while they waited for an available flight with another airline. With tens of thousands of passengers abroad and with no easy means of returning to the UK, **I have therefore instructed the CAA to bring home without charge all those currently abroad and due to return to the UK.**

Our advice to passengers at this stage is to be patient and follow the guidance given by the CAA. **People should complete their holidays** and, in most circumstances, will not be flown home ahead of their scheduled return date. **A small number of passengers may need to book their own flight home and reclaim the costs.** Passengers should check the dedicated website for more information – [thomascook.caa.co.uk](http://thomascook.caa.co.uk)

The decision by the Thomas Cook Group's board will be deeply upsetting for their employees. DWP's **Jobcentre Plus** Rapid Response Service is there to help workers get back into employment. The Jobcentre Plus Rapid Response Managers across the UK are ready to engage with the administrators to get started on this vital work. In the event of any redundancies, there are special arrangements for employees who are owed redundancy pay and notice pay by their insolvent employer: the Redundancy Payments Service in the Insolvency Service can pay statutory amounts owed to the former employees from the National Insurance Fund. Further information on pension questions can be found below. A cross-government Task Force is also being established to address the impact on employees and local communities (more detail will be shortly available)

Finally, I want to address directly the issue of the cost of this operation. The operation is modelled on the successful repatriation of passengers after the collapse of Monarch Airways. The final cost of that operation to taxpayers was about £50m. The repatriation effort for Thomas Cook is about twice the size. It has also been suggested in the press that the Government could have avoided the collapse with a bailout of up to £250m for the company and its shareholders. This was simply not the case, with no guarantee that such an injection would have secured the future of the company.

Should your constituents have any further questions, please direct them towards the CAA website ([thomascook.caa.co.uk](http://thomascook.caa.co.uk)) in the first instance. Colleagues are also welcome to contact me with any questions.

Yours ever,  
Rt Hon Grant Shapps MP  
SECRETARY OF STATE FOR TRANSPORT

#### **ANNEX: Information for Thomas Cook customers and staff**

Thomas Cook customers (including with those with flights, hotels or both) The Civil Aviation Authority (CAA) and Department for Transport (DfT) have put in place an emergency plan to help Thomas Cook customers return to the UK – flights will be free of charge (or can be claimed back) while additional hotel costs, in the event of a departure delay, can be claimed on insurance. If Thomas Cook customers do not have insurance or are covered by ATOL, a hardship fund will be accessible to cover these costs in reasonable cases.

- Thomas Cook customers seeking information on their flights and on other issues should visit the dedicated website at [thomascook.caa.co.uk](http://thomascook.caa.co.uk) – the best and quickest way to get information and access the helpline.
- British nationals overseas who require specific consular assistance, for example if they have a medical condition or issues with their travel documents, will be referred to consular staff from the Foreign and Commonwealth Office.
- Contact details for UK embassies and consulates can be found through <https://www.gov.uk/world/embassies>
- Wider consular assistance offered by the Foreign Office is set out in our guide to Supporting British nationals abroad: <https://www.gov.uk/government/publications/support-for-british-nationals>

## [-abroad-a-guide](#)

Passengers arriving back in the UK on special repatriation flights:

The CAA will attempt to fly people to the airport they had originally booked. This will not always be possible and in such cases the CAA will arrange onward transfer the customers original return destination in the UK. MHCLG will work with local authorities and their Local Resilience Forums to provide welfare support for passengers requiring this, for example, if they arrive at anti-social hours.

For more information see [thomascook.caa.co.uk](https://thomascook.caa.co.uk)

### **People booked and about to travel with Thomas Cook?**

People in the UK should not go to the airport – there will be no further outbound Thomas Cook flights for passengers. In these cases, ATOL-protected trips will be refunded in line with the scheme. For those who do not have ATOL cover, they may be able to recover the cost of their holiday through their own credit or debit card company, or some travel insurance policies. Passengers should also contact their travel company to see if they can change their holiday or claim a refund. More information is available on the dedicated CAA website.

### **Thomas Cook Staff**

The Government's Jobcentre Plus Rapid Response Service stands ready to help people find a new job as soon as possible by offering tailored support. A Department for Work and Pensions's Jobcentre Plus Rapid Response Service Team will be live across the UK and ready to begin working with administrators as soon as possible.

A cross-government Task Force is also being established to assist the staff and high-streets affect.

Staff with specific employment questions (including pensions) should visit [thomascook.caa.co.uk](https://thomascook.caa.co.uk) or <https://www.ppf.co.uk/>

### **Customers with a future booking**

For those who've booked holidays, hotels, flights or other services, they should visit [thomascook.caa.co.uk](https://thomascook.caa.co.uk) for information on options to seek refunds.

### **Contact number**

The **CAA's website is the best 'source of truth'** during this operation ([thomascook.caa.co.uk](https://thomascook.caa.co.uk)). The CAA's call centre for Thomas Cook customers can be contacted as follows:

- Phoning from the UK (reduced rate): 0300 303 2800
- Phoning from overseas: +44 1753 330 330

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## Flexible working and decent working terms and conditions

I do not think a company should be able to make employees declare they are self employed whilst they work more or less full time for a single employer. Such a device is just a way of avoiding some National Insurance, and cutting out sickness and holiday pay, pensions and other employee benefits. Nor do I like zero hours contracts which require someone to be always available when the employer chooses but not to have flexibility about when they choose to work. I do not like cheap skate employers nor employers who are only flexible for themselves when it comes to hours.

It is important, however, to recognise that there are plenty of flexible employment relationships that work well for both employer and employee. It is important as governments seek to regulate to prevent poor treatment of genuine employees they do not stifle innovation and flexibility in employment models that are fine for both sides. I have recent cases and recent encounters with people working in flexible ways that reminds me some of these models are good in many ways. I have several complaints about the Inland Revenue trying to make people into employees when they are sure they are independent contractors.

Let's take a couple of examples. A taxi driver told me he had recently qualified in digital technology whilst driving limited hours to pay his bills whilst studying. He wants to continue driving when it suits him, as he is now setting up his own tech business. He wants to be free to meet potential clients when they wish, and to develop the business when he needs to, whilst relying on the driving for a bit longer to pay the domestic bills. He is happy to be a self employed contractor, even if he often gets his taxi passengers from the same source. He does not want to be an employee for fear that then he would have to work when the employer told him to which could conflict with his new business needs.

A delivery rider for a pizza firm or food delivery business also wants to be self employed. He may usually get jobs from the same source, but wants to be free to ride for someone else if they have more to offer when he is available or if the rates change. He is paid by the deliveries effected, and does not have to turn up on days or at times when he has something better to do. This is another way people can study, set up a business, undertake training or develop some new interest whilst being able to pay the bills. No-one makes them do this, and they have the choice to become full time employees of a firm in a similar line of business.

Many of these models are success stories. Those running them have to negotiate with the Revenue over how far they can go in supporting and backing the drivers or riders before they are said to be their employer. The

individuals concerned have to be careful to take work from more than one, or to keep flexing the hours to show they are not in effect employees. What do you think the rules should say? How can we keep the flexibility this type of work allows, without it becoming exploitative of relatively low paid people? Where it is a voluntary choice and other options are available, why should the government try and stop it?