



BRIEFING PAPER

Number 6111, 24 December 2020

Fixed-term Parliaments Act 2011

By Richard Kelly

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Summary

Overview of the Act

The *Fixed-term Parliaments Act 2011* set a five-year interval between ordinary general elections. General elections are scheduled to take place on the first Thursday in May in every fifth year. The next general election is scheduled to take place on 2 May 2024.

The Act includes two mechanisms that could lead to early general elections. The Act specifies that early elections can be held only:

- if a motion for an early general election is agreed either by at least two-thirds of the whole House or without division; or
- if a motion of no confidence is passed and no alternative government is confirmed by the Commons within 14 days.

The Act put [dissolution on a statutory footing](#). Previously Parliament was dissolved by the Queen, on the advice of the Prime Minister. Now Parliament can only be dissolved in accordance with the Act. However, the Act [did not alter the prerogative power to prorogue Parliament](#).

The House of Commons has considered five motions under the Act. On [19 April 2017](#), the House agreed to an early general election that took place in June 2017. It rejected a motion of no confidence on [19 January 2019](#). Before the 2019 general election, the Government failed on three occasions to secure the necessary two thirds majority to trigger an early election under the Act ([4 September 2019](#); [9 September 2019](#); and [28 October 2019](#)).

The Government subsequently secured the support of Parliament for the [Early Parliamentary General Election Act 2019](#). This Act set the date of the 2019 general election and treated it as if it were a day appointed by the 2011 Act.

In their manifestos for the general election, both the Conservative Party and the Labour Party called for the Act to be repealed:

- [“We will get rid of the Fixed Term Parliaments Act – it has led to paralysis at a time the country needed decisive action”](#) – Conservative Party Manifesto 2019;
- [“A Labour government will repeal the Fixed-term Parliaments Act 2011, which has stifled democracy and propped up weak governments”](#) – Labour Party Manifesto, 2019.

Statutory review of the Act and Government plans to repeal the Act

The Act [has to be reviewed](#). It requires the Prime Minister to make arrangements for a committee to carry out a review of the Act and to publish the committee’s findings and recommendations, which can include repealing or amending the Act. A majority of the members of the committee have to be MPs. The Prime Minister has to make arrangements for the committee between 1 June and 30 November 2020. In evidence to PACAC, Chloe Smith, Minister of State, Cabinet Office, [confirmed](#) that she expected the arrangements to be made in that period.

On 10 November 2020, the House of Commons [agreed](#) to the Prime Minister’s proposal to appoint a joint committee to undertake the statutory review of the Act. Fourteen MPs were appointed to serve on the joint committee. The joint committee will also be asked to

report on the Government's plans to repeal the Act, which will be set out in a draft bill. The joint committee has to report by Friday 26 February 2021.

On 24 November 2020, the House of Lords [agreed](#) that a joint committee should be appointed to review the Act and nominated six members to serve on it.

On 26 November 2020, Lord McLoughlin was [chosen](#) by the joint committee to be its chair.

The Government's [Draft Fixed-term Parliaments Act 2011 \(Repeal\) Bill](#) was published on 1 December 2020. The draft bill provides for the repeal of the 2011 Act; confirms that the maximum term of a Parliament (rather than the period between general elections) shall be five years; and contains an express provision to restore the prerogative power to dissolve Parliament.

Alongside the draft bill, the Government published a single-page "[draft statement of the non-legislative constitutional principles that apply to dissolution](#)".

On the same day, Chloe Smith issued a [written statement](#), which outlined the provisions of the draft bill and announced the publication of the summary of dissolution principles.

At its meeting on 26 November 2020, the joint committee [issued](#) a call for written evidence on either the operation of the Act or the draft bill; and said that it would take into account evidence that had been submitted to the inquiries undertaken by parliamentary committees recently.

Possible questions for the statutory review

Both the [Public Administration and Constitutional Affairs Committee](#) (PACAC) and the House of Lords [Constitution Committee](#) reported on the *Fixed-term Parliaments Act 2011* in September 2020. Their reports suggested a number of issues that the statutory review committee should consider. PACAC also recommended that "The review committee should be a joint select committee subject to parliamentary approval and not an executive-appointed committee".

PACAC recommended that the review committee should consider

- "mechanisms providing the House of Commons with the power to set the date of an early general election" (para 69);
- "proposals to include the ability for the Government to designate a vote of confidence", although this could be a "retrograde step" (para 83); and
- "setting out the power of prorogation in statute" (para 94).

It recommended against attempting to entrench a super-majority for an early election in any proposals to replace the *Fixed-term Parliaments Act 2011*.

The Constitution Committee considered that:

to determine the future of the Fixed-term Parliaments Act 2011 a series of linked questions must be answered. These are:

- Should the length of parliaments be fixed absolutely or should mechanisms allow for early general elections?
- What should be the maximum length of a parliament?
- Should the calling of an early general election require the consent of the House of Commons?
- If the consent of the Commons is required for an early general election, what threshold, if any, should be set for approving the motion?

- If the consent of the Commons is required for an early general election, should the Commons be asked to approve the date for the election?

These questions are ultimately ones that Parliament must determine.

154. In making those determinations, Parliament may also wish to consider the separate question of whether it should be asked to approve the prorogation of Parliament.

Both the [Constitution Committee](#) and the [PACAC](#) published responses from the Government to their reports on 8 and 9 December 2020, respectively.

In both responses, the Government reiterated its intention, set out in the draft bill, published on 1 December 2020, to “return to the tried and tested system (where the PM is able to seek a dissolution from the Sovereign at the time of the Prime Minister’s choosing)”.

1. Background

The *Fixed-term Parliaments Act 2011* sets a maximum time period between elections, rather than the actual length of the Parliament: it fixed the period between ordinary general elections at five years. It also puts dissolution on a statutory footing.

Until the passage of the *Fixed-term Parliaments Act 2011*, the legislation governing the maximum term of the UK Parliament was the *Septennial Act 1715*, as amended by the *Parliament Act 1911*. This set the maximum length of a Parliament at five years (from the meeting of a Parliament after an election to dissolution).¹ Parliaments were ended by the Monarch dissolving them – using prerogative powers – on the recommendation of the Prime Minister.

Proposals to reduce the likelihood of an early dissolution of Parliament were a key element of the 2010 Coalition Agreement between the Conservatives and the Liberal Democrats.² Initially the Coalition's Programme for Government proposed a procedure for early dissolution on a vote of 55 per cent of the membership of the House of Commons by resolution of the House alone, but in the event the Government decided to move straight to legislation.³

During its passage, the Bill was subject to considerable criticism, particularly in the Lords. Members argued that such important constitutional legislation should have been subject to pre-legislative scrutiny. There was also criticism that the main motivation for the legislation was to sustain the Coalition Government for a full parliamentary term and that the proper length of term should be four years, not five.

But transferring power from the Prime Minister to the House of Commons was also an argument for the legislation. The Public Administration and Constitutional Affairs Committee acknowledged both reasons:

[The Fixed-term Parliaments Act 2011] was introduced to serve the dual purposes of delivering a permanent constitutional reform—transferring the power to call an early general election from the Prime Minister to the House of Commons—and to provide an additional measure of stability to the Coalition Government.⁴

The House of Lords Constitution Committee concluded that the *Fixed-term Parliaments Act 2011* had transferred power from the Prime Minister to the House of Commons but not markedly:

¹ Further information is given in House of Commons Library Research Paper, [Election Timetables](#), RP 15/11, 4 March 2015

² House of Commons Library Research Paper, [Fixed Term Parliaments Bill](#), RP 10/54, 26 August 2010 describes the coalition commitment in detail

³ The initial Bill and changes made to it during its passage through Parliament are described in House of Commons Research Paper, [Fixed Term Parliaments Bill: Commons stages](#), RP 11/09 and House of Commons Library Standard Note [Fixed Term Parliaments Bill - Lords Stages](#), SN05932

⁴ Public Administration and Constitutional Affairs Committee, [The Fixed-term Parliaments Act 2011](#), 15 September 2020, HC 167 2019-21, Summary

30. The events of the early autumn of 2019 demonstrated that the Coalition Government's objective "to remove the right of a Prime Minister to seek the dissolution of Parliament for pure political gain" has been achieved. Even if the Early General Election Act 2019 circumvented the requirements of the Fixed-term Parliaments Act 2011, it demonstrated that the consent of the House of Commons—irrespective of the legislative mechanism used—was necessary for the Government to dissolve Parliament.

31. That the consent of the House of Commons is needed does not mean that the power of the Prime Minister has been markedly reduced. A Prime Minister with a majority, or who can muster one in favour of an early election, is not encumbered by the Fixed-term Parliaments Act 2011.⁵

⁵ Constitution Committee, [*A Question of Confidence? The Fixed-term Parliaments Act 2011*](#), 4 September 2020, HL Paper 121 2019-21, paras 30-31

2. Fixed-term Parliaments – an overview of the Act

2.1 Five year fixed-term elections

The *Fixed-term Parliaments Act 2011* set a five-year interval between ordinary general elections. Section 1 of the *Fixed-term Parliaments Act 2011* set the date of the subsequent UK general election as Thursday 7 May 2015 (following the general election on 6 May 2010). Thereafter, polling days would be on the first Thursday in May in the fifth calendar year.

There is provision for the Prime Minister to make an order to extend this date for a maximum of two months to deal with unexpected developments. He/she must set out the reasons for the delay, and such an order must be approved by both Houses of Parliament before it can be made. One precedent is the foot and mouth disease outbreak in 2001 which delayed local elections by one month. (In 2001, the general election was held on the same day as the delayed local elections.)

There is also provision for early general elections to take place (see below). Where an early election has taken place, the next election will generally take place on the first Thursday in May in the fifth calendar year afterwards. The only exception is where an early election is held before the first Thursday in May in an election year, in these circumstances, the next general election will be held on the first Thursday in May in the fourth year from the previous election. This means that Parliaments cannot extend beyond five years and that the normal cycle is restored to five years.

Following the early election, in December 2019, the next election is scheduled to take place on 2 May 2024. Parliament will be dissolved on 26 March 2024.

2.2 Early elections

Section 2 of the Act provides for early general elections when either of the following conditions is met:

- if a motion for an early general election is agreed either by at least two-thirds of the whole House of Commons (including vacant seats), i.e. 434 Members out of 650, or without division; or
- if a motion of no confidence is passed and no alternative government is confirmed by the Commons within 14 days by means of a confidence motion.

There were detailed discussions about the constitutional implications of these triggers during the passage of the Bill. Some commentators and Members of both Houses questioned whether both options were necessary, and argued that the legislation would allow for constructive votes of no confidence (where an incumbent government triggers an early election through tabling a motion of no confidence in itself).⁶

⁶ These points are explored in the relevant Library briefings: House of Commons Research Paper, [Fixed Term Parliaments Bill: Commons stages](#), RP 11/09 and House of Commons Library Standard Note [Fixed Term Parliaments Bill - Lords Stages](#), SN05932

No confidence motions

Initially, the Bill provided for no confidence motions to be certified as such by the Speaker, given that there was no set formula for confidence motions. This provision was removed, following concerns that the legislation would make the Speaker's consideration of confidence motions and the practices of the House questions for the courts, which could be drawn into matters of acute political controversy. Instead, the Act now provides for a set formula to be used. Firstly, the form of the motion would be:

“That this House has no confidence in Her Majesty's Government”.

If this motion is carried, there is a 14 calendar day period in which to form a new Government, confirmed in office by a resolution as follows:

“That this House has confidence in Her Majesty's Government”

If a new Government cannot be formed within this time period, then dissolution is triggered. There is no provision for an extension of the 14-day period. Dissolution need not follow immediately on a triggering event, as section 2(7) allows for the Prime Minister to recommend a suitable polling day to the Crown. A proclamation for a new Parliament can then be issued.

On 16 January 2019, the House rejected a no confidence motion, tabled by the Leader of the Opposition, by 325 votes to 306.⁷

Prior to the Act, the debating of no confidence motions in the House of Commons was based on conventions. Although any MP could table a motion of no confidence, the Government provided time for those tabled by the Leader of the Opposition to be debated, the “convention is founded on the recognised position of the Opposition as a potential government”.⁸ For further information see the Library Briefing Paper, [Confidence motions](#) (March 2019).

Motions for an early general election

The Act also specifies the form of the motion for the purposes bringing about an early general election:

“That there shall be an early parliamentary general election”.

This procedure was used on 19 April 2017, following Prime Minister Theresa May's announcement, on 18 April 2017, that she planned to call an early election which would be held on 8 June 2017.⁹

On 25 April 2017, a proclamation was issued, announcing that the general election would take place on 8 June 2017.¹⁰ Accordingly, Parliament was dissolved on 3 May 2017.

In the autumn of 2019, three unsuccessful attempts were made to hold an early general election under the Act. Although the House of

⁷ [HC Deb 19 January 2019 cc1171-1273](#)

⁸ Erskine May, *Parliamentary Practice*, 25th edition, 2019, [para 18.44](#)

⁹ BBC News, [Theresa May to seek general election on 8 June](#), 18 April 2017; [HC Deb 19 April 2017 cc681-712](#)

¹⁰ [“Proclamations”](#), *The Gazette*, 25 April 2017

Commons agreed to all three motions, none secured the required two thirds of MPs in favour:

- on 4 September 2019, a motion was agreed to by 298 votes to 59 but without the majority required under the Act.¹¹
- on 9 September 2019, a motion was agreed by 293 votes to 46 but without the majority required under the Act.¹²
- on 28 October 2019, a motion was agreed to by 299 votes to 70 but without the majority required under the Act.¹³

Subsequently, the Government introduced the *Early Parliamentary General Election Bill 2019* in order to set the date of the next general election for 12 December 2019. The Bill was introduced on 29 October 2019 and it received Royal Assent on 31 October. It treated the election date as if it had been set in accordance with the *Fixed-term Parliaments Act 2011*, so Parliament was dissolved on 6 November 2019; and the following election is scheduled to be held on the first Thursday in May, 2024.¹⁴

2.3 Dissolution of Parliament

The *Fixed-term Parliaments Act 2011* removed the prerogative power to dissolve Parliament. The Act also prohibits the Crown from dissolving Parliament except in accordance with the legislation. In *Constitutional & Administrative Law* (7th edition), Neil Parpworth noted that “as a consequence of the *Fixed-term Parliaments Act 2011*, the power to dissolve Parliament no longer vests with the monarch”.¹⁵ Now Parliament is dissolved at the beginning of the 25th working day before polling day.¹⁶ (Parliament may be prorogued before it is dissolved, see section 4.)

In evidence to the Public Administration and Constitutional Affairs Committee (PACAC), Lord O’Donnell, a former Cabinet Secretary, Sir Stephen Laws, a former First Parliamentary Counsel, and Mark Harper, the Minister who had piloted the Bill through the House of Commons, confirmed that the intention had been to abolish the prerogative. Sir Stephen said:

Section 3(2) says: “Parliament cannot otherwise be dissolved”. That comes as close as I can see to abolishing it ...¹⁷

¹¹ [HC Deb 4 September 2019 cc291-315](#)

¹² [HC Deb 9 September 2019 cc616-639](#)

¹³ [HC Deb 28 October 2019 cc54-79](#)

¹⁴ [Early Parliamentary General Election Act 2019](#) (chapter 29)

¹⁵ Neil Parpworth, *Constitutional & Administrative Law*, 7th edition, 2012, para 4.23

¹⁶ Section 3 of the Act had provided for a 17 working day election timetable, not including the day of dissolution, but that was extended to 25 working days by section 14 of the *Electoral Registration and Administration Act 2013*. See Library Standard Note 6574, [Timetable for the UK Parliamentary general election](#) for further details

¹⁷ Public Administration and Constitutional Affairs Committee, [The Fixed-term Parliaments Act 2011 – Oral Evidence](#), 24 April 2020, Q15, see also Q14; Public Administration and Constitutional Affairs Committee, [The Fixed-term Parliaments Act 2011 – Oral Evidence](#), 21 July 2020, Q138

Before the passage of the Act, a proclamation announced the dissolution of Parliament and set the date of meeting of the new Parliament.¹⁸ The Act specifies that once Parliament has been dissolved, “Her Majesty may issue the proclamation summoning the new Parliament”. In 2015, following the dissolution of Parliament on 30 March (by Act), a Royal Proclamation was issued on 31 March calling a new Parliament to meet on 18 May 2015.¹⁹

The responsibility for sealing and issuing the writs for the election becomes a statutory responsibility of the Lord Chancellor and the Secretary of State for Northern Ireland.²⁰

Previously, following the proclamation dissolving Parliament and summoning a new Parliament, an Order in Council was made requiring the issue of writs for a parliamentary election of a new Parliament.²¹ The Parliamentary Election Rules state that “Writs for parliamentary elections shall continue to be sealed and issued in accordance with the existing practice of the office of the Clerk of the Crown”.²²

2.4 Review of the operation of the Act

Section 7 of the Act requires the Prime Minister to make arrangements between June and November 2020 for a committee to carry out a review of the operation of the Act. If appropriate, the committee is to make recommendations for the repeal or amendment of the Act, and the Prime Minister must make arrangements for the publication of the committee’s findings and recommendations. A majority of the members of the committee are to be MPs.

This provision was added to the Bill at a late stage when the Lords finally agreed to Commons amendments. At Report Stage, the House of Lords had inserted “sunrise provisions” which would have required both Houses of Parliament to adopt the provisions of the Act after each election. During ping-pong, the House of Lords agreed to remove the sunrise provisions and accepted that the Act be reviewed by a committee.

In oral evidence to PACAC, Mr Harper confirmed that the scheduling of the review was intended to have allowed the committee to review the operation of the Act after two full election cycles and two five-year parliaments.²³ The early elections in 2017 and 2019 mean that the background to the statutory review is different to originally envisaged.

More information on the review can be found in section 3.

¹⁸ For example, “[Dissolution Proclamation](#)”, *The London Gazette*, Supplement No 1, 12 April 2010

¹⁹ “[Proclamation: By the Queen a Proclamation for Declaring the Calling of a New Parliament – Elizabeth R](#)”, *The Gazette*, 31 March 2015

²⁰ *Fixed-term Parliaments Act 2011* (chapter 14), section 3(3)

²¹ Justice Committee, [Constitutional processes following a general election](#), 29 March 2010, HC 396 2009-10, Ev 24 [para 7 of Chapter 6 of the Proposed Cabinet Manual]

²² *Representation of the People Act 1983* (chapter 2), Schedule 1, para 3

²³ Public Administration and Constitutional Affairs Committee, [Oral Evidence](#), 21 July 2020, Q146

3. Statutory Review of the Fixed-term Parliaments Act 2011

3.1 Role and members

By 30 November 2020, the Prime Minister had to make arrangements for a committee to review the Fixed-term Parliaments Act 2011. The Act requires:

- (4) The Prime Minister must make arrangements—
 - (a) for a committee to carry out a review of the operation of this Act and, if appropriate in consequence of its findings, to make recommendations for the repeal or amendment of this Act, and
 - (b) for the publication of the committee's findings and recommendations (if any).
- (5) A majority of the members of the committee are to be members of the House of Commons.
- (6) Arrangements under subsection (4)(a) are to be made no earlier than 1 June 2020 and no later than 30 November 2020.²⁴

In evidence to the Public Administration and Constitutional Affairs Committee, the Minister of State in the Cabinet Office, Chloe Smith, confirmed that the Government “respect the provision of the Act and will therefore make those arrangements and announce in due course”.²⁵

The Minister was asked “If it is the Government’s intention to “get rid of” the Act, what if that Committee found otherwise?” She replied that:

I do not think I am able to speculate on the hypothetical of what a future Committee might say or not say and therefore what the Government might do or not do in response, but I certainly look forward to continuing this kind of discussion about the very important issues that need to go into this repeal and doing it in a way that I hope would command consensus and produce the right kind of constitutional framework that we need to return to.²⁶

On 15 July 2020, in response to a written question, Chloe Smith had said that “Announcements about the repeal legislation will be made in due course”.²⁷

The Act stipulates that the Prime Minister has to make arrangements for the committee and that “A majority of the members of the committee are to be members of the House of Commons”.

PACAC recommended that:

the Committee believes that the review committee should be a Joint Select Committee, subject to parliamentary approval and not

²⁴ *Fixed-term Parliaments Act 2011* section 7

²⁵ Public Administration and Constitutional Affairs Committee, [Oral Evidence](#), 21 July 2020, Q173

²⁶ *Ibid*, Q176

²⁷ [PQ72145](#), 15 July 2020

an executive-appointed committee. The Joint Committee could require additional provisions to include experts to be included as Committee members.²⁸

PACAC recommended that the committee should undertake the review of the Act as set out in the legislation. Once that review was complete, the Government should produce its proposals; and those proposals should then be subject to pre-legislative scrutiny.²⁹

Appointment of the committee

On 10 November 2020, the House of Commons agreed to the Prime Minister's proposal to appoint a joint committee to undertake the statutory review of the Act. The joint committee will also be asked to report on the Government's plans to repeal the Act, which will be set out in a draft bill. The House agreed to appoint 14 MPs to the joint committee to:

- (a) carry out a review of the operation of the Fixed-term Parliaments Act 2011, pursuant to section 7 of that Act, and if appropriate in consequence of its findings, make recommendations for the repeal or amendment of that Act; and
- (b) consider, as part of its work under subparagraph (a), and report on any draft Government Bill on the repeal of the Fixed-term Parliaments Act 2011 presented to both Houses in this session.

The joint committee has to report by Friday 26 February 2021.

The Commons members of the joint committee are:

Aaron Bell, Chris Bryant, Jackie Doyle-Price, Ms Angela Eagle, Maria Eagle, Peter Gibson, Mr Robert Goodwill, David Linden, Alan Mak, Mrs Maria Miller, John Spellar, Alexander Stafford, Mr Shailesh Vara and Craig Whittaker.³⁰

On 24 November 2020, the House of Lords agreed that a joint committee should be appointed to review the Act and nominated six members to serve on it:

Lord Beith, Lord Grocott, Lord Jay of Ewelme, Baroness Lawrence of Clarendon, Lord McLoughlin and Lord Mancroft.³¹

On 26 November 2020, Lord McLoughlin was chosen by the Joint Committee to be its chair.

At that meeting, the Joint Committee issued a call for written evidence on either the operation of the Act or the draft bill. The Committee also said that it would take into account evidence that had been submitted to the inquiries undertaken by the Public Administration and Constitutional Affairs Committee and the Constitution Committee (which are discussed in section 3.3).³²

²⁸ Public Administration and Constitutional Affairs Committee, *The Fixed-term Parliaments Act 2011*, 15 September 2020, HC 167 2019-21, para 35

²⁹ *Ibid*, para 34

³⁰ HC Deb 10 November 2020 cc865-866

³¹ [HL Deb 24 November 2020 cc139-140](#)

³² Joint Committee on the Fixed-term Parliaments Act news, *Joint Committee on the Fixed-term Parliaments Act established: Lord McLoughlin elected as Chair, written evidence deadline Monday 4 January*, 27 November 2020

Evidence to the Joint Committee

The Joint Committee's call for evidence requested submissions by 4 January 2021. Before that deadline, it took oral evidence from Professor Alison Young, Sir David Williams Professor of Public Law, University of Cambridge, and Sir Stephen Laws, First Parliamentary Counsel 2006–12, Senior Fellow, Policy Exchange 2018-present, on ; and from Sir Malcolm Jack and Lord Lisvane, former Clerks of the House of Commons, on 17 December 2020.³³

3.2 Draft Bill published

The Government's *Draft Fixed-term Parliaments Act 2011 (Repeal) Bill* was published on 1 December 2020.³⁴ The draft bill provides for the repeal of the 2011 Act; confirms that the maximum term of a Parliament (rather than the period between general elections) shall be five years; and contains an express provision to restore the prerogative power to dissolve Parliament.

The Bill also states that questions relating to the use of the powers, preliminary work on dissolution and the extent of the powers are non-justiciable.³⁵

The Explanatory Notes confirm that the effect of the draft bill is to "enable Governments, within the life of a Parliament, to call a general election at the time of their choosing".³⁶ It envisages that there will not be a role for Parliament.

Alongside the draft bill, the Government published a single-page "[draft statement of the non-legislative constitutional principles that apply to dissolution](#)". A fuller description of the constitutional position before the passage of the *Fixed-term Parliaments Act 2011* can be found in Chapter 6 of the *Draft Cabinet Manual*, which the Cabinet Office submitted to the Justice Committee in February 2010, in connection with its inquiry into *Constitutional process following a general election*.³⁷

On the same day, Chloe Smith issued a written statement, which outlined the provisions of the draft bill and announced the publication of the summary of dissolution principles.³⁸

3.3 Questions for the Review Committee

The 2011 Act sets the parameters of the review but does not stipulate specific questions that the review committee has to address.

In early September 2020 both the Public Administration and Constitutional Affairs Committee (PACAC) and the House of Lords

³³ Joint Committee on the Fixed-term Parliaments Act, [Events](#) [webpage]

³⁴ Cabinet Office, [Draft Fixed-term Parliaments Act 2011 \(Repeal\) Bill](#), CP 322, 1 December 2020

³⁵ *Ibid*, Explanatory Notes (paras 15-17) description of clause 3 of the draft bill

³⁶ *Ibid*, Explanatory Notes, para 2

³⁷ Justice Committee, [Constitutional processes following a general election](#), 29 March 2010, HC 396 2009-10, Ev 23ff

³⁸ [HCWS615](#), 1 December 2020

Constitution Committee issued reports on the *Fixed-term Parliaments Act 2011*.³⁹ Both committees suggested a number of issues that the statutory review committee could consider. The questions suggested by the Committees and some of the issues raised by those questions are reviewed below.

Can the Act be repealed without being replaced? Can the prerogative power of dissolution be revived?

Sir Stephen Laws, in evidence to PACAC, considered that whether or not the prerogative was abolished was a “red herring”. He argued that:

There is a lot of academic debate about whether once you have abolished it you can revive it and so on. I don't think that is relevant. Parliament is sovereign. If Parliament wants to say the law from 2020 is to be the same as it was before 2011, as if we had never had the Fixed-term Parliaments Act, that is within the power of Parliament to say.⁴⁰

However, other witnesses before PACAC considered that this was not the case. Professor Gavin Phillipson considered that the Act had “impliedly”, rather than expressly, abolished the prerogative. His view was that if a prerogative power had been abolished, it could not be revived:

My own view would be that, if it is abolished, it is no longer there and cannot be revived, and what Parliament would be seeking to do would be to create a new prerogative power, which obviously it cannot do as a matter of legal logic. Parliament is sovereign but it cannot create, for example, an international treaty. It cannot create common law by definition, and it also cannot create prerogative powers because prerogative powers are defined as those that historically belong to the Crown. If it is in a statute, it is statute law; it is not prerogative.⁴¹

Professor Alison Young, Professor of Public Law at Cambridge University, also cautioned against a simple repeal of the *Fixed-term Parliaments Act 2011*, asking:

Would the prerogative just come back or not? It is so uncertain that I think just repealing it like that creates far too many constitutional problems.⁴²

In its report, following these evidence sessions, PACAC also drew attention to the question of whether it would be politically acceptable to restore the prerogative as it would take power that the Government had ceded to Parliament back again. PACAC concluded that:

The question of whether or not the dissolution prerogative can be restored is a complex one, which involves fundamental constitutional principles. It clearly was the intention of the Government in 2011 to abolish the prerogative, but the wording of the Act is less conclusive on this point. Some also hold the view

³⁹ Public Administration and Constitutional Affairs Committee, *The Fixed-term Parliaments Act 2011*, 15 September 2020, HC 167 2019-21; Constitution Committee, *A Question of Confidence? The Fixed-term Parliaments Act 2011*, 4 September 2020, HL Paper 121 2019-21

⁴⁰ Public Administration and Constitutional Affairs Committee, *The Fixed-term Parliaments Act 2011 – Oral Evidence*, 24 April 2020, Q15

⁴¹ *Ibid*, Q76

⁴² *Ibid*, Q75

that the fact of abolition does not even matter. As all the evidence to this inquiry makes clear, this is a highly contested issue. There are also questions as to what exactly would be revived and for example what the legitimate expectations of the Sovereign as a constitutional backstop would be. This is of particular concern in light of the Supreme Court's recent decision about the prerogative power of Prorogation. *It is clear that attempting to revive the prerogative would invite the courts to make the final decision on these issues. These are core political and constitutional questions that neither Parliament nor government should abrogate to the courts. Even if there is a desire to return to the old system for dissolution and calling elections, it would be better setting these arrangements in statute rather than engaging in an unnecessary attempt to revive a prerogative which could have considerable unintended consequences and implications.*⁴³

The House of Lords Constitution Committee also received evidence arguing that the prerogative could be revived as well as evidence to the contrary. It considered that:

The balance of legal opinion, as we understand it, is that the prerogative power to dissolve Parliament would not be revived if the Fixed-term Parliaments Act was simply repealed with no further provision made.

It acknowledged the contrary view and therefore commented that "Regardless of which view is correct, there is certainly doubt and dispute as to whether a prerogative power can be revived". It continued that such doubt could open the possibility of legal challenge.⁴⁴

It concluded that:

The possibility of legal challenge to the prime minister's advice to the Monarch, or the Monarch's decision to dissolve Parliament, must be avoided. If the power to dissolve Parliament were to be returned to the Prime Minister, it must be done in such a way that a legal challenge to its use is put beyond doubt. We suggest that this is more likely to be achieved by creating a new statutory power rather than attempting to revive the prerogative.⁴⁵

The Constitution Committee also concluded that the simple repeal of the Act would leave no mechanism to bring a parliament to an end:

A straight repeal of the Fixed-term Parliaments Act 2011 is not feasible. The Act repealed the Septennial Act 1715, which set the maximum length of a parliament. Repealing the FTPA without any replacement would mean that the current parliament could never end.⁴⁶

PACAC also considered whether a decision to dissolve Parliament in accordance with legislation that revived a prerogative would be justiciable. It was suggested to the Committee that to overcome this, either the statute expressly excludes the court from considering dissolution or Parliament is given a role, and thereby the decision could

⁴³ Public Administration and Constitutional Affairs Committee, [The Fixed-term Parliaments Act 2011](#), 15 September 2020, HC 167 2019-21, para 50

⁴⁴ Constitution Committee, [A Question of Confidence? The Fixed-term Parliaments Act 2011](#), 4 September 2020, HL Paper 121 2019-21, paras 37-38

⁴⁵ *Ibid*, para 39

⁴⁶ *Ibid*, para 152

not be questioned by the courts because of Article 9 of the Bill of Rights.⁴⁷

Should the length of parliaments be fixed absolutely or should mechanisms allow for early general elections? What should be the length of a parliament?

The House of Lords Constitution Committee identified a number of issues that followed from decisions about fixing the length of a parliament:

- “Fixing the length of parliaments could have practical benefits for Parliament. However, there is insufficient evidence from the 2010–15 parliament to draw a firm conclusion;
- Early elections “may pose a challenge for electoral administrators”;
- The timing of a general election can affect the amount of time an opposition has to discuss its plans for government with the civil service. The Committee observed that “A consequence of an early general election is that the main opposition parties do not have as much time to engage with the civil service. This may hamper the ability of the civil service to support an incoming administration”.⁴⁸

The Constitution Committee considered that the length of a parliament and what mechanisms were appropriate for bringing about an early general election were matters for Parliament to determine. It made no recommendation.⁴⁹

PACAC concluded that:

17. The Fixed-term Parliaments Act clearly achieved the purpose of removing the discretion of the Prime Minister to call an election at a time of his or her choosing. It removed the ability of the incumbent party of government to time an election to gain an advantage over its opponents. *Whatever legislation replaces the FtPA it is important that this fairness is maintained.*

18. It is clear that the Act has shifted the balance of power from the executive to the legislature. It is less clear if the right balance of power has yet been struck. *While there should not be a return to the Executive dominance of election calling, careful consideration needs to be given for how the power of early election calling is balanced between the Executive and the Legislature.*

19. The Act has clearly also altered the default expectation with regards to the timing of elections. The expectation is now that, where the Government has a working majority, a Parliament will normally last a full five-year term. Given that there are mechanisms for an early election included in the Act, the length of a Parliament is never truly a fixed term and, in this regard, the Act was misnamed. *While changes may need to be made to the current arrangements, the Committee can see no good reason for*

⁴⁷ Public Administration and Constitutional Affairs Committee, [The Fixed-term Parliaments Act 2011](#), 15 September 2020, HC 167 2019-21, paras 48-49

⁴⁸ Constitution Committee, [A Question of Confidence? The Fixed-term Parliaments Act 2011](#), 4 September 2020, HL Paper 121 2019-21, paras 44, 49, 54-55

⁴⁹ *Ibid*, para 61

*altering the default expectation that parliaments should run their full term and elections will occur at scheduled times, thereby providing certainty for those administering elections and for the public who vote in them. The only exceptions should be in circumstances where an early general election is the only means of resolving political deadlock, or if the House of Commons expresses no confidence in the Government.*⁵⁰

- **Should the House of Commons agree the date of an early election?**

The Constitution Committee recommended that the review committee should consider three related questions:

- Should the calling of an early general election require the consent of the House of Commons?
- If the consent of the Commons is required for an early general election, what threshold, if any, should be set for approving the motion?
- If the consent of the Commons is required for an early general election, should the Commons be asked to approve the date for the election?⁵¹

In the autumn of 2019, on three occasions, the House of Commons refused to support the required degree motions for an early general election. The *Early Parliamentary General Election Act 2019* set the date of the 2019 election.

PACAC commented that one explanation for the failure to endorse an election in the autumn was that “the power to specify the date of an election is left to the Prime Minister and there was a lack of trust that he would not use this power to achieve a political end”.⁵²

PACAC also noted that the provision in the Act (section 2(7)) that allows the Prime Minister to recommend the date of polling day to the Queen was described by one of its witnesses as a “flaw”. It noted that there was considerable support in the evidence it received for the House “being able to set or have a role in approving the date of an early election”. It also reported an alternative approach that was suggested to it – “an election following a no confidence vote could be required to take place either within a 40-day period”.⁵³

However, the Minister considered the House of Commons having a role in setting the date of an early election would be “detrimental to the nature of the prerogative”.⁵⁴

Should the government be able to designate a vote of confidence?

PACAC is in no doubt that “while the FtPA clearly established the route by which a no confidence vote could directly trigger an election, this did

⁵⁰ Public Administration and Constitutional Affairs Committee, *The Fixed-term Parliaments Act 2011*, 15 September 2020, HC 167 2019-21, paras 17-19

⁵¹ Constitution Committee, *A Question of Confidence? The Fixed-term Parliaments Act 2011*, 4 September 2020, HL Paper 121 2019-21, para 153

⁵² Public Administration and Constitutional Affairs Committee, *The Fixed-term Parliaments Act 2011*, 15 September 2020, HC 167 2019-21, para 64

⁵³ *Ibid*, paras 65-67

⁵⁴ *Ibid*, para 68

not replace the pre-existing conventions regarding confidence”.⁵⁵ However, the Government’s ability to attach confidence to an issue being voted on in the House of Commons and threatening to seek a dissolution if defeated is no longer directly available to the Prime Minister because dissolution can only be triggered in accordance with the Act. The Committee considered that a Prime Minister could attach confidence to an issue and threaten to follow this with a motion for an early general election.⁵⁶

The Constitution Committee considered that “Declaring a matter an issue of confidence traditionally encouraged recalcitrant backbenchers of the governing party to support the Government. Without the prerogative power of dissolution, this was not as straightforward”.⁵⁷

PACAC reported that Sir Stephen Laws felt that “back me or sack me is an essential part of any new system” replacing the FtPA; and that, in evidence, the Minister had indicated that the Government was considering making it possible for a vote to be designated as one of confidence, which if lost would trigger an election.⁵⁸ However, the Committee also reported that:

Both Professor Schleiter and Professor Cowley were clear that re-establishing the practice of a Prime Minister being able to attach confidence to substantive vote is an issue of political judgement. They argued that the removal of the Prime Minister’s ability to do this was in line with the purposes of the FtPA in removing the power of the Prime Minister to dissolve Parliament against the will of the House of Commons, and giving the House of Commons the power to decide the next steps. As such including the ability of the Prime Minister to attach the direct threat of an election to a vote on an issue, would strengthen the executive, in particular the Whips office, and weaken Parliament.⁵⁹

PACAC concluded that:

83. Changing the current arrangements to allow the Government to designate a vote a matter of confidence that if lost would trigger a general election—an established practice under the old arrangements—could be a retrograde step. If it were included in any future arrangements, it would clearly empower the Executive (via the Government Whips) and weaken the House of Commons, in particular Government backbenchers. This would be a matter of political judgment and the Committee does not advocate one way or the other at this point. *The Committee recommends that proposals to include the ability for the Government to designate a vote of confidence are included in the review committee’s terms of reference, and if this is to be taken forward, it is given proper consideration by the House.*⁶⁰

⁵⁵ *Ibid*, Summary

⁵⁶ *Ibid*, para 57. For background information on confidence motions, see the Library Briefing Paper, [Confidence motions](#) (March 2019)

⁵⁷ Constitution Committee, [A Question of Confidence? The Fixed-term Parliaments Act 2011](#), 4 September 2020, HL Paper 121 2019-21, para 79

⁵⁸ Public Administration and Constitutional Affairs Committee, [The Fixed-term Parliaments Act 2011](#), 15 September 2020, HC 167 2019-21, para 77

⁵⁹ *Ibid*, para 78

⁶⁰ *Ibid*, para 83

The Constitution Committee concluded that “It is for Parliament to decide whether the Fixed-term Parliaments Act—or any replacement legislation—should continue to make provision for confidence motions.”⁶¹

Should legislation set out what happens in the 14-day period following a vote of no confidence?

PACAC provided the following overview of the issues relating to the 14-day period but did not draw any conclusions:

74. One of the areas that has caused the most confusion has been what happens during the 14-day period following a vote of no confidence under the Act.

75. Lord O’Donnell told us that, as Cabinet Secretary at the time of passing the Act, he thought “everyone knew what the new rules of the game were”. When asked how the confidence principle should be dealt with in future he said that whether it is in convention or law, comes down to “whether you trust people to behave properly or not”. The issue of trust in the Government and the Prime Minister was clearly in question last Autumn, as the concern over the setting of the election debate set out above demonstrated. Further concern over how the Prime Minister would act if a no confidence vote was passed was also expressed in the evidence received. In August 2019, it was reported that the Prime Minister would not resign even if a no confidence vote was passed and another person could command the confidence of the House.

76. The ambiguity and uncertainty as to how conventions were followed and enforced is not new to the FtPA. The Institute for Government reflected:

There was ambiguity over confidence conventions in the old system just as in the new—in particular, over whether a Prime Minister was obliged to resign following a vote of no confidence. There was also some ambiguity over the circumstances in which the Monarch could, and should, refuse a Prime Minister’s request for a dissolution. In our view, any attempt to remove those ambiguities in the repealing legislation is likely to end in tears.⁶²

Should the power to prorogue remain a prerogative power?

The decision of the Supreme Court to quash the prorogation order of August 2019 led both PACAC and the Constitution Committee to recommend that the review committee should consider prorogation.

Different views were presented to the two Committees, ranging from the judgment meant that there was no need to alter the current arrangements to the need to either put prorogation on a statutory footing or require the Government to obtain approval of the House of Commons before Parliament could be prorogued.

⁶¹ Constitution Committee, *A Question of Confidence? The Fixed-term Parliaments Act 2011*, 4 September 2020, HL Paper 121 2019-21, para 88

⁶² Public Administration and Constitutional Affairs Committee, *The Fixed-term Parliaments Act 2011*, 15 September 2020, HC 167 2019-21, paras 74-76

Both Committees expressed concern that putting prorogation on a statutory footing could have unforeseen consequences.⁶³ Two Library briefing papers consider prorogation:

- [Prorogation of Parliament](#) (June 2019); and
- [The Prorogation Dispute of 2019: one year on](#) (September 2020).

3.4 Government Responses to the Reports and reactions to the draft bill

Both the Constitution Committee and the PACAC published responses from the Government to their reports on 8 and 9 December 2020, respectively.⁶⁴

In both responses, the Government reiterated its intention, set out in the draft bill, published on 1 December 2020, to “return to the tried and tested system (where the PM is able to seek a dissolution from the Sovereign at the time of the Prime Minister’s choosing)”.⁶⁵

The Government told the Constitution Committee that it recognised that there was a debate about whether the dissolution prerogative could be revived without specific legislation to do so, and whether it could be revived in such a way that placed it beyond the purview of the courts. The Government explained to the Committee that:

To provide for legal, constitutional and political certainty around the process for dissolving Parliament and to remove any doubt about the underlying intention, the draft Bill makes express provision that the prerogative powers relating to the dissolution of Parliament (and the calling of a new Parliament) that existed before the FTPA are exercisable again “as if the FTPA had never been enacted.”⁶⁶

In its responses to the two reports, the Government noted that both the 2015 and 2017 Parliaments were dissolved early and argued that “Since 2015 the Fixed-term Parliaments Act has not had its intended effect”.⁶⁷ However, Thomas Fleming and Petra Schleiter, academics who commented on the draft bill, argued that “the Act was intended to ensure that early elections required the approval of parliament, not to make them impossible”.⁶⁸ Professor Robert Hazell, in a Constitution Unit Blog, observed that when the 2011 legislation was debated, Ministers “emphasised three explicit objectives”:

⁶³ Constitution Committee, [A Question of Confidence? The Fixed-term Parliaments Act 2011](#), 4 September 2020, HL Paper 121 2019-21, paras 133-144; Public Administration and Constitutional Affairs Committee, [The Fixed-term Parliaments Act 2011](#), 15 September 2020, HC 167 2019-21, paras 84-94

⁶⁴ Constitution Committee, [Government Response to the Lord’s Constitution Committee report - A Question of Confidence? The Fixed-term Parliaments Act 2011 \(Twelfth Report of Session 2019-21\)](#), 8 December 2020; and Public Administration and Constitutional Affairs Committee, [The Fixed-term Parliaments Act 2011: Government’s response to the Committee’s Sixth report of Session 2019-21](#), 9 December 2020, HC 1082 2019-21

⁶⁵ Constitution Committee, p1; PACAC, p2

⁶⁶ Constitution Committee, pp2-3

⁶⁷ Constitution Committee, p3; PACAC, p4

⁶⁸ Thomas Fleming and Petra Schleiter, [‘How could the Fixed-term parliaments Act 2011 be improved?’](#), *The Constitution Society Blog*, 1 December 2020

- To limit the power of the executive, which was too dominant in relation to the legislature
- To remove the right of a Prime Minister to choose the date of the next election for partisan advantage
- To increase certainty, and end debilitating speculation about the date of the next election.⁶⁹

The Government's view that the provisions in the draft bill will "revive the prerogative powers relating to the dissolution of Parliament (and the calling of a new Parliament) that existed before the FTPA"⁷⁰ is contested. Mark Elliott observed that:

... If the Government really did intend to restore the pre-FTPA position, this would not result in the Prime Minister acquiring an entirely unilateral power to call elections at will. That is so because, under the pre-FTPA arrangements, the [Lascelles Principles](#) recognised that the Monarch could refuse to dissolve Parliament in certain circumstances — a point that was also acknowledged in the [partial draft of the Cabinet Manual](#) that was published before the 2010 election.

However, the statement of principles accompanying the Bill appears to presume that the Queen will dissolve Parliament as a matter of course when the Prime Minister so requests, thus implying an intention, on the part of the Government, not to restore the pre-FTPA position but to usher in a regime under which its latitude is greater than before.⁷¹

In her blog, Alison Young, Sir David Williams Professor of Public Law, University of Cambridge, argued that "the Draft Bill is attempting to revise history. It is choosing to tip the balance of power even more in favour of the Government than was the case immediately prior to the enactment of the Fixed-term Parliaments Act 2011".⁷²

⁶⁹ Robert Hazell, ['The Fixed-term Parliaments Act: should it be amended or repealed?'](#), *Constitution Unit Blog*, 11 December 2020

⁷⁰ PACAC, p3

⁷¹ Mark Elliott, ['Repealing the Fixed-term Parliaments Act'](#), *Public Law for Everyone*, 2 December 2020

⁷² Alison Young, ['The Draft Fixed-term Parliaments Act 2011 \(Repeal\) Bill: Turning Back the Clock?'](#), *UK Constitutional Law Blog*, 4 December 2020

4. End of a parliamentary term

Wash-up

Until the passage of this Act, the date of dissolution of a Parliament was uncertain, as the calling of a general election and the election date were the decision of the Prime Minister. Therefore, at the end of each Parliament there have been a few days between the announcement of the election and dissolution. This allowed time, known as ‘wash-up’, when the passage of Bills was expedited by agreement of the usual channels.⁷³ Some legislation has therefore received Royal Assent only with the agreement of the front benches, but some legislation has had a truncated passage, inhibiting wider scrutiny.⁷⁴ In a fixed-term Parliament, the end date will be known, and there may be more certainty in the planning of the Government’s legislative programme.

Prorogation and dissolution

There is no requirement to prorogue Parliament before dissolution, although between 1992 and 2010, it was usually the practice,⁷⁵ with a ceremony in the House of Lords. In 2015, Parliament was prorogued on 26 March 2015 and dissolved (by Act) on 30 March 2015.

At the end of the 2015 Parliament, Parliament was prorogued on 27 April 2017 and dissolved on 3 May.⁷⁶

At the end of the 2017 Parliament, Parliament was not prorogued. The two Houses adjourned at the end of their sittings on 5 November 2019. Parliament was dissolved on 6 November 2019.⁷⁷

Valedictory debates

At the end of the 2010 Parliament, the Backbench Business Committee allocated time for a Valedictory Debate. In the debate, on 26 March 2015, 29 retiring Members, including the Leader of the House, William Hague, spoke in the debate.⁷⁸

At the end of the 2015 Parliament, in April 2017, no time was available to arrange a Valedictory Debate. However, the Speaker allowed additional time for Prime Minister’s Questions on 26 April 2017 (the day before Parliament was prorogued) and called a number of Members who had announced that they were standing down.⁷⁹

At the end of the 2017 Parliament, the Leader of the House announced that on the final sitting day of the short 2019 session, there would be

⁷³ For background, see House of Commons Library Research Paper, [Wash-Up 2010](#), RP 11/18, 11 February 2011

⁷⁴ For example, Public Administration Select Committee, [Government by Inquiry](#), 3 February 2005, HC 51-I 2004-05 considered that the *Inquiries Bill 2004-05* required amendment, but Royal Assent was received before a Government response to their report

⁷⁵ House of Commons Library Research Paper, [Election Timetables](#), RP 15/11, 4 March 2015, p12

⁷⁶ House of Commons, [Votes and Proceedings](#), 27 April 2017; [Votes and Proceedings](#), 3 May 2017

⁷⁷ Houses of Parliament news, [Dissolution of Parliament](#), 6 November 2019

⁷⁸ HC Deb 26 March 2015 cc1634-1681

⁷⁹ [HC Deb 26 April 2017 c1100-1114](#)

“An opportunity for Members to make short valedictory speeches and to debate matters to be raised before the forthcoming Dissolution”.⁸⁰ In that debate, Valerie Vaz reported that 62 MPs had announced they were standing down at the election. A total of 25 backbench MPs made speeches in the debate and one minister who was standing down made an intervention and another one made a point of order.⁸¹

⁸⁰ [HC Deb 30 October 2019 c458](#)

⁸¹ [HC Deb 5 November 2019 cc684-727](#) and [cc728-747](#)

5. Impact of the Act on other legislation

5.1 Election expenses

The *Political Parties and Elections Act 2009* amended the *Representation of the People Act 1983* and introduced limits on constituency campaign expenditure if “a Parliament is not dissolved until after the period of 55 months beginning with the day on which that Parliament first met”.⁸²

When the 2009 legislation was enacted, it was envisaged that these limits would be needed only exceptionally. The introduction of fixed-term Parliaments has made these a normal feature of election expenditure and will regulate the expenditure of candidates in the six months before the election. The 2010 Parliament first met on 18 May 2010, the 56th month of its lifetime began on 19 December 2014. From that point onwards pre-candidacy election expense limits applied.

For the general election, scheduled for May 2024, pre-candidacy election expense limits will not apply, as the current Parliament first met on 17 December 2019.

5.2 Boundary changes

The *Parliamentary Voting Systems and Constituencies Act 2011* (PVSC Act) provided for a review of constituency boundaries to take place by October 2013, and every five years thereafter. The number of MPs was due to be reduced to and fixed at 600 under this Act but the review was halted in 2013 after the *Electoral Registration and Administration Act 2013* received Royal Assent. That Act states that the review had to be completed by October 2018.⁸³ That review has been completed but the Government do not plan to implement it. The Government has introduced the *Parliamentary Constituencies Bill 2019-21*, which intends to fix the size of the House of Commons at 650 and require boundary reviews to be conducted every eight years. The recommendations of the first review under these new rules are due before 1 July 2023.⁸⁴

One aspect which was the subject of debate during the passage of both the PVSC and the *Fixed-term Parliaments Bill 2010-12* was the potential interaction between boundary changes and election dates. With both elections and boundary reviews on five-year cycles, the PVSC Act provided for the boundary reviews to be completed approximately 18 months before general elections.

This timetable allowed political parties’ constituency organisations to be re-organised; adopt candidates and so on before the scheduled election. Whether there is a five-year or eight-year boundary review cycle, there

⁸² *Political Parties and Elections Act 2009*, section 21

⁸³ House of Commons Library Standard Note, [Constituency boundary reviews and the number of MPs](#), SN05929, gives more details

⁸⁴ For background to and details of the Government’s plans, see: House of Commons Library Briefing Paper, [The Parliamentary Constituencies Bill 2019-21](#), CBP 8921

could be some practical issues for parties if there was an early general election and this cycle was disrupted.

5.3 No confidence and confidence motions

The Act sets out the form in which no confidence and confidence motions would be valid for the purposes of an early general election or confirmation by the Commons of the formation of a new government. This would not appear to prevent other types of motions of censure from being debated or passed.

Although the Act requires a new Government to be confirmed by the House of Commons if one is formed after the passing of a motion of no confidence, there is no requirement to confirm a government following a general election. Following elections to the Parliaments in both Scotland and Wales, they are required to nominate one of their members to be First Ministers of their respective administrations.⁸⁵

The Act is silent on the process of government formation in the 14-day period, following a vote of no confidence. PACAC said that the question of what should happen in that period had caused confusion.⁸⁶ In his evidence to the Committee, Sir Stephen Laws, described the period as “essentially ... a time for a political negotiation”.⁸⁷ The Committee considered that, in relation to the question of confidence as its widest, “It is clear that some mix of statute and convention is the best way for this area to be governed, but this requires the actors involved to act in ways which engender trust”.⁸⁸

5.4 Demise of the Crown

The Act creates a new section 20 of the *Representation of the People Act 1985*. This section deals with the position following the demise of the Crown (the end of reign by a King or Queen) in the days before polling day. Where a demise occurs seven days or fewer prior to dissolution or once Parliament has been dissolved, the election will be delayed by 14 days (or to the next working day thereafter if the 14th day is not a working day).

5.5 Combined elections in May

The *Fixed-term Parliaments Act 2011* sets the first Thursday in May as the date for general elections to Westminster. Local elections take place on that first Thursday, although the local election cycle can vary. The need for combined elections has implications for the workload of electoral administrators. The extension of the parliamentary timetable to

⁸⁵ *Scotland Act 1998* (chapter 46), section 48; *Government of Wales Act 2006* (chapter 32), section 47

⁸⁶ Public Administration and Constitutional Affairs Committee, [The Fixed-term Parliaments Act 2011](#), 15 September 2020, HC 167 2019-21, para 74

⁸⁷ Public Administration and Constitutional Affairs Committee, [Oral Evidence](#), 24 April 2020, Q28

⁸⁸ Public Administration and Constitutional Affairs Committee, [The Fixed-term Parliaments Act 2011](#), 15 September 2020, HC 167 2019-21, para 80

25 days may assist, since the local and parliamentary election timetables will now be aligned.

There is normally a period of restrictions on the use of public resources and activities of civil servants to be observed by central Government before local elections, as well as for general elections. The Cabinet Office guidance advises that particular care should be taken over official support, and the use of public resources, including publicity, for Ministerial announcements which could have a bearing on matters relevant to the devolved or local elections.⁸⁹

5.6 Prorogation

The prerogative power of prorogation (the ending of a parliamentary session) is not affected by the Act.

However, as noted above, the decision of the Supreme Court to quash the prorogation order of August 2019 led both PACAC and the Constitution Committee to recommend that the review committee should consider prorogation.

5.7 Length of a Parliament

The Schedule repeals a number of earlier provisions, such as the *Septennial Act 1715* and the amendment to it in the *Parliament Act 1911*, which limited the maximum duration of a Parliament to five years.

If the *Fixed-term Parliaments Act 2011* were repealed and nothing put in its place, there would be no limit on the length of a Parliament. The Constitution Committee observed that:

A straight repeal of the Fixed-term Parliaments Act 2011 is not feasible. The Act repealed the Septennial Act 1715, which set the maximum length of a parliament. Repealing the FTPA without any replacement would mean that the current parliament could never end.⁹⁰

⁸⁹ See House of Commons Library Standard Note, [‘Pre-election period of sensitivity’](#), SN05262 for more details

⁹⁰ Constitution Committee, [‘A Question of Confidence? The Fixed-term Parliaments Act 2011’](#), 4 September 2020, HL Paper 121 2019-21, para 152

6. Calls to repeal the Fixed-term Parliaments Act 2011

Late in the 2010 Parliament, calls were made for the *Fixed-term Parliaments Act 2010* to be repealed. A debate was held in Backbench Business time and private Members' bills were introduced in both Houses.

Further private Members' bills to repeal the *Fixed-term Parliaments Act 2011* were introduced in the House of Lords in the 2016-17 and the 2019 sessions.

In its manifesto for the 2017 general election, the Conservative Party pledged to "repeal the Fixed-term Parliaments Act".⁹¹

As already noted, in their 2019 manifestos, both main parties called for the repeal of the Act.⁹²

The following sections outline some of the issues that were considered in previous debates on repealing the Act.

6.1 Backbench Business Debate

The Backbench Business Committee determined that a debate proposed by Richard Drax and Sir Edward Leigh should take place on 23 October 2014, on the motion:

That this House believes that the Government should bring forward proposals to repeal the Fixed-term Parliaments Act 2011.⁹³

In an earlier application for a debate on this subject, in February 2014, Sir Edward Leigh told the Backbench Business Committee that:

I would like to add that I think this is of great constitutional interest and importance. Traditionally, unlike with written constitutions, we have never had fixed-term Parliaments. We have always had Parliaments at the discretion of the Prime Minister. We voted on it in the early flush of this Parliament, in the heady days of the coalition, when there were a very large number of new Members. I think that, over the years, all sorts of worries have arisen about what would happen in terms of certain eventualities. I suspect that the fixed-term Parliament was not thought up as a long-term constitutional debate, but that it was a device to try and maintain the coalition, and stop one part of the coalition ratting on the other. I am not sure that is a good way of writing or making any constitution. We will not always have coalitions. This is a good time, as this Parliament is nearly four years old and we have a lot of people who have acquired experience, to have an

⁹¹ Conservative and Unionist Party, *Forward, Together – Our Plan for a Stronger Britain and a Prosperous Future*, p43

⁹² "[We will get rid of the Fixed Term Parliaments Act – it has led to paralysis at a time the country needed decisive action](#)" – Conservative Party Manifesto 2019; "[A Labour government will repeal the Fixed-term Parliaments Act 2011, which has stifled democracy and propped up weak governments](#)" – Labour Party Manifesto, 2019.

⁹³ House of Commons, [Future Business](#), 15 October 2014 [for 23 October 2014]

informed debate about the future and about whether having fixed-term Parliaments is in our interest.⁹⁴

In opening the debate, Sir Edward argued that the *Fixed-term Parliaments Act 2011* should be repealed.⁹⁵

Graham Allen, the Chair of the Political and Constitutional Reform Committee, considered that “it would not be democratic to take the power away from Parliament and restore a power that allows a Prime Minister alone to decide the date of a general election”.⁹⁶ He also argued that a fixed-term Parliament brought “clarity” and practical benefits. Members, the Government and select committees could “plan our legislative programme, because we know when the beginning, middle and end are”.⁹⁷

Although Austin Mitchell supported the proposal to repeal the Act, he argued for a shorter fixed-term, preferring a three year term.⁹⁸

Sir William Cash cited Lord Norton of Louth who had argued that fixed-term parliaments limited rather than enhanced voter choice. He also contended that whips rather than voters would resolve decisions about Government formation following a vote of no confidence.⁹⁹

Stephen Twigg, speaking for the Labour Party, believed that “the Act enhances the role of the House by removing the ability to dissolve Parliament whenever a Prime Minister saw fit”. He said that the Labour Party had supported fixed-term Parliaments in its 2010 manifesto and continued to do so. He therefore opposed the motion, thinking that the review provided for in the Act should go ahead.¹⁰⁰

For the Government, the Parliamentary Secretary, Cabinet Office, Sam Gyimah said that it would be for the next Government to evaluate how the Act had worked. He considered that the Act removed power from the Prime Minister, and that “giving it to Parliament enhances the transparency of our democratic system and represents a significant surrender of political power”. He also reflected on the practical benefits of the Act.¹⁰¹

At the end of the debate, the motion was defeated by 68 votes to 21.¹⁰²

6.2 Private Members’ bills

On 12 June 2014, Lord Grocott introduced the *Fixed-term Parliaments Act 2011 (Repeal) Bill 2014-15* [[HL Bill 24 2014-15](#)] into the House of

⁹⁴ Backbench Business Committee, *Representations before the backbench Business Committee on Tuesday 25 February 2014*, Q2

⁹⁵ [HC Deb 23 October 2014 cc1069-1076](#)

⁹⁶ HC Deb 23 October 2014 c1077

⁹⁷ HC Deb 23 October 2014 c1083, c1084

⁹⁸ HC Deb 23 October 2014 c1089, c1091

⁹⁹ HC Deb 23 October 2014 cc1094-1095

¹⁰⁰ HC Deb 23 October 2014 c1105, c1108

¹⁰¹ HC Deb 23 October 2014 c1108, c1110

¹⁰² HC Deb 23 October 2014 c1112

Lords.¹⁰³ The bill provided for the repeal of the *Fixed-term Parliaments Act 2011*. It did nothing else.

In the 2015 Parliament, a similar bill – the *Fixed-term Parliaments (Repeal) Bill 2016-17* [[HL Bill 59 2016-17](#)] – introduced by Lord Desai, made no further progress.

On 19 January 2015, Sir Alan Duncan introduced the *Fixed-term Parliaments (Repeal) Bill 2014-15* [[Bill 156 of 2014-15](#)].¹⁰⁴ Sir Alan's plans and details of support he had received were reported by the *Daily Telegraph*. Sir Alan told the paper that:

"The current arrangements are for the convenience of the politicians not for the good of the people.

"In order to establish and workable rules for the future we need to repeal this Act. It could lead to constitutional gridlock, unpopularity and the formation of Governments that nobody wants."

He said the Bill would "record the fact that in this Parliament there is serious pressure to repeal this Act".¹⁰⁵

In opening the debate the second reading on 6 March 2015, Sir Alan explained that his Bill sought "to repeal the *Fixed-term Parliaments Act 2011*, with effect from 8 May [2015]". He argued that "A short-term fix can do long-term damage. So it is with the decision to introduce fixed-term five-year Parliaments. It might have been good for now, but it will turn out to be bad for the future".¹⁰⁶

He outlined the effects of the *Fixed-term Parliaments Act 2011*, the background to it and suggested that "There have been many occasions in our history when it has been best for the country to have a general election at moments that would have been nigh-on impossible had we this Act".¹⁰⁷ He said that:

The Fixed-term Parliaments Act, however, erects new hurdles that make it harder to dissolve Parliament midway through its term, and as a result, it is a recipe for political horse trading and coalition manoeuvrings, which, I maintain, will weaken, not strengthen public confidence in our politics and Parliament.¹⁰⁸

He argued that there would be "public anger if coalitions are formed, broken and reformed within the five-year term of a Parliament without any new election taking place to give them legitimacy and if the Act is used as the excuse for not going back to the people".¹⁰⁹

For the Labour Party, Andy Slaughter noted that section 7 of the *Fixed-term Parliaments Act 2011* provided for a review of the operation of the Act in 2020 and argued that:

¹⁰³ [HL Deb 12 June 2014 c507](#)

¹⁰⁴ [HC Deb 19 January 2015 c25](#)

¹⁰⁵ Christopher Hope, "[Axe 'zombie' Parliaments law, say former Cabinet ministers](#)", *Telegraph*, 16 January 2015

¹⁰⁶ [HC Deb 6 March 2015 c1245](#)

¹⁰⁷ [HC Deb 6 March 2015 c1245](#)

¹⁰⁸ [HC Deb 6 March 2015 c1246](#)

¹⁰⁹ [HC Deb 6 March 2015 c1246](#)

I believe that, given what is in the 2011 Act, the best course of action is to wait until 2020 and see what happens, and then take a slightly more considered view than can be taken in the course of one Parliament on whether fixed-term Parliaments are working and five years is the appropriate length of time.¹¹⁰

6.3 Would repeal of the Fixed-term Parliaments Act 2011 restore the status quo ante?

In his opening comments, in the second reading debate on his private Member's Bill, Sir Alan Duncan said that "The Prime Minister's power to dissolve Parliament under the historic royal prerogative has—at least for the time being—lapsed".¹¹¹ In responding to the debate, Joseph Johnson, the Parliamentary Secretary, Cabinet Office, argued that "The *Fixed-term Parliaments Act* was introduced to remove the prerogative power of dissolution through fixing parliamentary terms for the first time in general election history".¹¹²

Before the passage of the *Fixed-term Parliaments Act 2011*, Parliament was dissolved by the monarch, using prerogative powers. Under the 2011 Act a statutory mechanism was introduced to dissolve Parliament. Opinions could vary on the consequences of repealing the statutory mechanism to dissolve Parliament. It could be argued that the prerogative power was abolished, which would mean that it could not be restored. However, it could also be argued that the prerogative power had been held in "abeyance" and that it could be capable of being exercised once again.¹¹³ In evidence to the Public Administration Select Committee's inquiry on *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, the Treasury Solicitor's Department wrote that:

It is not altogether clear what happens where a prerogative power has been superseded by statute and the statutory provision is later repealed but it is likely to be the case that the prerogative will not revive unless the repealing enactment makes specific provision to that effect.¹¹⁴

In an article in the *Daily Telegraph* in January 2015, Lord Morris of Aberavon, who served as Attorney General from 1997 to 1999 called for the *Fixed-term Parliaments Act 2011* to be "rescinded". He argued that the Act contained "wholly artificial constraints" that could prevent

¹¹⁰ [HC Deb 6 March 2015 c1249](#)

¹¹¹ [HC Deb 6 March 2015 c1245](#)

¹¹² [HC Deb 6 March 2015 c1250](#)

¹¹³ Neil Parpworth, *Constitutional & Administrative Law*, 7th edition, 2012, paras 4.17-4.23; AW Bradley and KD Ewing, *constitutional & Administrative Law*, 15th edition, 2011, p257; Peter Leyland and Gordon Anthony, *Textbook on Administrative Law*, 7th edition, 2013; Liam Laurence Smyth, "Privilege, Exclusive Cognisance and the Law", in Alexander Horne, Gavin Drewry and Dawn Oliver (eds), *Parliament and the Law*, 2013, p4; Alexander Horne and Richard Kelly, "[Prerogative Powers and the Fixed-term Parliaments Act](#)", *UK Constitutional Law Blog*, 19 November 2014

¹¹⁴ Public Administration Select Committee, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, 16 March 2004, HC 422 2003-04, Memorandum from the Treasury solicitor's Department, Ev15, para 11

rapid changes in government and prevent Prime Ministers calling elections.

He argued that “The Act suspended the use of the Royal Prerogative” and suggested that if the Act were repealed we would revert to the previous procedure for calling general elections:

If the Act were to be rescinded I believe the presumption would be that the duty to request an election would revert to the prime minister and the Royal Prerogative would once again come into play, having been in abeyance for the life of this Act.¹¹⁵

6.4 Other criticisms of the Act

Lord Norton of Louth commented on the *Fixed-term Parliaments Act 2011* in a British Politics Group blog post entitled “The Problem with Fixed Term Parliaments”.¹¹⁶

The BBC reported that Kenneth Clarke, in an interview for “What Happens When the People Say Not Sure”, commented that “with the benefit of hindsight” the *Fixed-term Parliaments Act 2011* was “obviously a mistake”. He told the programme that:

If we do have a hung parliament we now have a rather silly, really, complex process that would be necessary to bring it to an end and it would be slightly out of control.¹¹⁷

In an April 2015 Institute for Government blog post, Catherine Haddon argued that some of the crucial mechanisms required under the Act were not set out. She identified “a big ambiguity at the heart of the legislation”: who governs in the up to 14 day period between a government losing a confidence vote and a new government being confirmed by the House of Commons? She argued that the wording of the Act “requires a new government to already be in place: the wording specifically says that the motion must be ‘confidence in Her Majesty’s Government’”.

She also argued that “the operation of the Act could affect political dynamics and party bargaining”.¹¹⁸

Following the decision of the House of Commons to vote for an early general election on 19 April 2017, Robert Hazell, Professor of Government and the Constitution at the Constitution Unit, UCL, considered “Is the Fixed-term Parliaments Act a Dead Letter?”.

The summary of his blog piece provided this overview of his arguments:

The ease with which Theresa May was able to secure an early dissolution last week has led to suggestions that the Fixed-term Parliaments Act 2011 serves no useful purpose and should be scrapped. Drawing on wider evidence of how fixed-term

¹¹⁵ Lord Morris of Aberavon, “[Parliament has trussed itself up like a chicken](#)”, *Telegraph*, 26 January 2015

¹¹⁶ Lord Norton of Louth “[The Problem with Fixed Term Parliaments](#)”, *British Politics Group Blog*, 11 August 2014

¹¹⁷ BBC News, [Fixed-term parliaments were ‘a mistake’, says Ken Clarke](#), 17 March 2015

¹¹⁸ Catherine Haddon, “[The \(Not So\) Fixed-term Parliaments Act](#)”, *Institute for Government Blog*, 14 April 2015

parliaments legislation works in other countries, Robert Hazell argues that there is a danger that it is being judged prematurely, on the basis of a single episode. Future circumstances in which a Prime Minister seeks a dissolution may be different, and in these cases the Fixed-term Parliaments Act may serve as more of a constraint.¹¹⁹

¹¹⁹ Robert Hazell, "[Is the Fixed-term Parliaments Act a Dead Letter?](#)" *Constitution Unit Blog*, 25 April 2017

7. Select committee work on fixed-term Parliaments

Reports in the current Parliament

On 15 September 2020, the Public Administration and Constitutional Affairs Committee published a report on the *Fixed-term Parliaments Act 2011*:

- Public Administration and Constitutional Affairs Committee, [*The Fixed-term Parliaments Act 2011*](#), 15 September 2020, HC 167 2019-21

On 4 September 2020, the House of Lords Constitution Committee reported on the Act. The Committee had announced an inquiry before the 2019 general election:

- Constitution Committee, [*A Question of Confidence? The Fixed-term Parliaments Act 2011*](#), 4 September 2020, HL Paper 121 2017-19

2017 Parliament

- Public Administration and Constitutional Affairs Committee, [*The Role of Parliament in the UK Constitution Interim Report: The Status and Effect of Confidence Motions and the Fixed-term Parliaments Act 2011*](#), 11 December 2018, HC 1813 2017-19

2010 Parliament

The following reports were made by the Political and Constitutional Reform Committee:

- [*Fixed-term Parliaments: the final year of a Parliament*](#), 7 May 2014, HC 976 2013-14
- [*The role and powers of the Prime Minister: The impact of the Fixed-term Parliaments Act 2011 on Government*](#), 25 July 2013, HC 440 2013-14
- [*Fixed-term Parliaments Bill*](#), 10 September 2010, HC 436 2010-12

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