



**Government response to the report of the
House of Lords Constitution Committee on the
Fixed-term Parliaments Bill**

Presented to Parliament by the Minister for Political
and Constitutional Reform
by Command of Her Majesty
February 2011

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Introduction

The Government is grateful to the Constitution Committee for carrying out this in-depth examination of the Fixed-term Parliaments Bill. We believe that the Committee's report will aid the debates on the Bill during its passage through the House of Lords.

The Government believes that fixed-term Parliaments will have a positive impact on our country's political system; providing stability, discouraging short-termism, and preventing the manipulation of election dates for political advantage.

The Government was pleased to note therefore the Committee's endorsement of significant elements of the Government's proposals, specifically in relation to 'resetting the clock' to allow a government a full term after an early general election; the two mechanisms in Clause 2 which provide for an early general election to be held; and the 14-day period for government formation following a defeat on a vote of no confidence.

In addition, the Government was pleased to note that the Committee shares our assessment of the Bill's interaction with parliamentary privilege.

The Government's response to the Committee's report addresses conclusions and recommendations point-by-point.

Response to conclusions and recommendations

Introduction

1. **We take the view that the origins and content of this Bill owe more to short-term considerations than to a mature assessment of enduring constitutional principles or sustained public demand. We acknowledge the political imperative behind the coalition Government's wish to state in advance its intent to govern for the full five year term, but this could have been achieved under the current constitutional conventions. (Paragraph 20)**
2. The Government does not accept this description of its proposals. The Government's proposals are concerned with establishing the principle that, save in exceptional circumstances, this and future Parliaments will last for a five-year term. As the Government has pointed out, this would engender a more long-term policy-making approach and lead to a more stable and predictable political cycle.
3. The Government also does not accept the accusation that there has not been a mature assessment of the constitutional principles relating to fixed-term Parliaments. As the Committee has heard in evidence from constitutional experts, the concept of fixed-term Parliaments has been considered and debated by politicians and academics for many years and in great detail. The manifestos of two of the three main parties at the 2010 election contained commitments to establish fixed-term Parliaments.
4. It is also wrong to say that there is not public support for the principles of fixed-term Parliaments. There was a very strong demonstration at the 2010 general election that political reform was a high priority for the electorate. In the past, many Prime Ministers have gambled on calling early general elections to try and maximise their party's advantage at a general election and gain a further term in office. That is the kind of political opportunism of which the public had grown tired. Fixed-term Parliaments are one way in which the Government is addressing the public's desire for political reform.

The principle of fixed-term Parliaments

5. **The Bill establishes a semi-fixed arrangement and reduces the level of flexibility which exists in the current system. (Paragraph 25)**
6. The Government notes the Committee's conclusion that "completely fixed" arrangements under which there is no provision for calling an early election are very rare internationally. The Government agrees that the Bill does not fall into that category.
7. By their very nature even semi-fixed-term Parliaments will be less flexible than the present system in which a Prime Minister may unilaterally decide upon the date of a general election. Transferring to the House of Commons the Prime Minister's power used for the benefit of the incumbent Government is a key benefit of the system the Government is proposing.

8. **We recognise that, in promoting this Bill, the Prime Minister is prepared to relinquish an important prerogative power. This is a significant aspect of the Government's stated aim of reducing executive power. However, the balance of the evidence we heard does not convince most of us that a strong enough case has yet been made for overturning an established constitutional practice and moving to fixed-term Parliaments. (Paragraph 46)**
9. The Government believes that establishment of fixed-term parliaments will provide stability and brings benefits for Parliament, the electorate, and for the country as a whole. The Government welcomes the Committee's recognition that this is a significant contribution to reducing executive power.
10. For the first time, Prime Ministers will not be able to call a General Election whenever they want. Fixed-terms will mean that governments can no longer decide the timing of elections in order to suit their own political ends. In addition, the knowledge that general elections will take place, other than in exceptional circumstances, every five years on the first Thursday in May, will create a stable political cycle and avoid the destabilising speculation caused by the anticipation of snap general elections.

The length of the parliamentary term and election timing

11. **Whilst acknowledging the case made by the Deputy Prime Minister for a five year term, nonetheless the majority of the Committee consider that a four year term should be adopted for any fixed-term parliamentary arrangement at Westminster. In the view of the majority, the shift from a five year maximum to a five year norm would be inconsistent with the Government's stated aim of making the legislature more accountable, inconsistent with existing constitutional practice and inconsistent with the practice of the devolved institutions and the clear majority of international legislatures. (Paragraph 62)**
12. The Government has listened to many arguments with regard to the length of the fixed-term. In the Government's view, the reference to four-year terms as the norm for the UK Parliament overlooks the fact that in the majority of cases where an early general election was called, it was because the incumbent Government hoped to benefit from calling the election at a time of their own choosing. The theory that Parliaments closer to four years are the norm is based on a norm skewed by political opportunism. As such, if this is in any way to be considered a norm, then it is one which the Government believes needs to be reformed.
13. It is not the case that the clear majority of international legislatures have a four-year term. In fact, 44 countries out of 77 in the InterParliamentary Union have five year terms for their lower House of Parliament, with only 26 having four year terms, while 53 out of 111 unicameral parliaments also have five year terms, compared to 49 with four year terms.
14. Any Government under the constitutional arrangements which have existed since the passing of the Parliament Act 1911 has been able – where that Government has maintained the confidence of the House – to stay in office for a full five-year term. We do not propose to curtail that entitlement for future Governments.

15. As the Committee notes, the Bill contains mechanisms that would, where the circumstances require it, allow for an early general election to take place. The Government is not persuaded, therefore, that the five-year term proposed in the Bill should change.
- 16. We agree that there is a case to be made for resetting the clock. Whatever the maximum term, we accept that an elected government should have a full term in which to develop their policies and take their legislative programme through Parliament. (Paragraph 74)**
17. The Government is grateful for the Committee's endorsement of this proposal. In addition to the points made in evidence to the Committee; as the above recommendation highlights, not to allow an incoming Government to serve a full term would lead to a system with potentially two types of Government: those entitled to a full term to implement their policies, and those who would have to make do with the time left to them before the next scheduled election.
- 18. A potential date clash with elections to the devolved institutions in May 2015 and every twenty years thereafter could occur if the Government's proposals are adopted. Ideally, this should be avoided in order to protect the integrity and separate identity of Westminster and devolved elections. We await the outcome of the Government's consultations with the devolved institutions, and stress the importance of ensuring that any proposed solution is broadly acceptable to all concerned. (Paragraph 80)**
- 19. It is regrettable that the Government did not seek to engage with the devolved institutions in order to find a satisfactory solution to the consequences of their proposals before the Bill was introduced. (Paragraph 81)**
20. The Government recognises that there are concerns over the potential clash with devolved elections in 2015. We have listened to those concerns and are engaged in an ongoing consultation. We are confident that the process of consultation will result in a satisfactory settlement. The Government would point out, however, that the possibility of the coincidence of elections in 2015 existed already under the existing law. The proposals in the Bill provide advance warning of the issue and time to plan for the consequences.
- 21. The Government's proposal to extend the current session until spring 2012 may increase the power of the House of Lords to delay legislation but it also affords the Government more time to get its legislative programme through both Houses, thus potentially increasing the power of the executive in relation to Parliament. This appears to be inconsistent with the Government's stated aim of reducing the power of the executive. (Paragraph 87)**

22. The Government remains unconvinced by the argument that the length of the current session of Parliament in any way increases the power of the executive. The advantages for future Parliaments in harmonising parliamentary sessions with the dates of elections far outweigh any theoretical advantages to either Parliament or the executive in this one-off process. The majority of Government Bills would in any event have completed their passage within a normal time frame, being introduced significantly in advance of prorogation. The small number of Bills which might otherwise have run into the end of a session in the autumn could have been made subject to the carry-over procedure. Any effect on the balance of parliamentary/executive power is therefore negligible. The session would in any case conventionally have lasted until the autumn of 2011. Future sessions will last for only 12 months; this was a one-off extension of 6 months to the conventional length of a session after an election to enable the sessional timetable to be reset.
23. As noted by the Political and Constitutional Reform Committee of the House of Commons, the certainty that the Bill provides will allow for better planning and in turn facilitate better scrutiny of the Government's legislative programme.

Early parliamentary general elections

- 24. We conclude that it is sensible for the Bill to contain some form of safety valve which would allow for an early election in circumstances such as the government losing the confidence of the Commons or where a political or economic crisis has affected the country. Such circumstances cannot be identified nor listed in advance and so the safety valve(s) chosen must be sufficiently flexible to deal with the various situations which might arise. (Paragraph 94)**
- 25. We conclude that it is appropriate for the Bill to contain two different safety mechanisms as long as each one is workable and fulfils its purpose. (Paragraph 98)**
- 26. In the light of our conclusion at paragraph 94 [191] that there needs to be a safety valve mechanism in order to deal with possibly unforeseeable circumstances, we consider that the best way to do this is to enable Parliament to dissolve itself when there is a cross-party majority that an election should be called. Although it is not possible to determine the relative majority which might be held by governments in the future, a requirement of two-thirds of MPs voting in favour of a dissolution motion would most likely necessitate the agreement of cross-party MPs. We therefore conclude that this safety valve is appropriate. (Paragraph 102)**
27. The Government is grateful for the Committee's endorsement of its proposals for the mechanisms to trigger an early general election. We believe that the dual mechanisms which give statutory effect to a vote of no confidence on a simple majority; and allow for an early general election to be triggered by a two-thirds majority, strike the right balance between ensuring that there will be an expectation that Parliaments will last for a five years, and allowing for an early general election to take place when it is right to do so.

28. **The Bill as drafted does not explicitly cover all motions of confidence (including defeats on key confidence issues such as the Queen’s Speech or the Budget), nor situations where the government lose a vote. Nor does it distinguish between votes of confidence and no confidence. The Government should bring forward amendments to clarify its precise scope. (Paragraph 114)**
29. **Greater clarity on the definition of a vote of no confidence, as recommended by paragraph 114, would reduce the potential for the Speaker to be drawn into political controversy. The questions of from whom, if anyone, the Speaker should take direction and of whether and when the Speaker should state his view on the effect of a particular vote should be procedural matters for the House of Commons to determine. (Paragraph 119)**
30. Historically, motions of no confidence have taken different forms. But this diversity reflects the fact that the form of no confidence motions largely turned on issues of convention. In particular, the Government of the day would from time to time designate a vote on a particular matter as a vote relating to confidence. On some occasions, this designation appears to have arisen from the Government’s desire to bolster support within its own party concerning a particular vote.
31. Leaving matters to the Government interpreting convention is satisfactory when both of the possible responses to a no confidence motion – resignation or dissolution – are within the gift of the Government. However, this is no longer satisfactory where no confidence motions may have legal effect and where the policy of the Bill is to reduce the power of the Government in relation to Parliament.
32. The mechanism the Bill adopts is clear, has some level of flexibility and accords with the overall policy of the Bill by leaving the resolution of doubtful cases to Parliament itself through the Speaker rather than the Government. It achieves this through the mechanism of the Speaker’s certificate which will confirm that the House has passed a no-confidence motion. For example, a motion in the form “that this House has no confidence in Her Majesty’s Government” will clearly be certifiable. This is the form of the resolution passed in March 1979, the only example in the post-war era of the House resolving that it had no confidence in the then Government.
33. Where there is doubt about whether a motion is a no-confidence motion, we would expect the Speaker to inform Members before they vote on it whether, were it to be passed, he would certify it as a no-confidence motion.
34. We do not believe that this will in any way risk bringing the Speaker into political controversy. As the Member who presides over the business of House of Commons, it is perfectly proper for the Speaker to advise those tabling motions whether they are fit for their intended purpose, particularly if that purpose is to express that the House has no confidence in the Government of the day.

35. One effect of the Bill may be that future Speakers may well prefer that the House puts motions of no confidence in a form which includes the words “that this House has no confidence in Her Majesty’s Government”. The Government however does not see why this would be an unwelcome development given that motions in such form would be clear. In reality, it is unthinkable that the Speaker – or indeed those tabling a motion - would allow the House to debate a motion which might subsequently and unexpectedly be declared to have been a motion of no confidence.
36. The Government has not been persuaded that the alternatives put forward in debate have been improvements. An amendment to specify in the Bill the wording that motions of no confidence were to consist of specific words only was tabled during and debated by the Committee of the Whole House in the House of Commons. The Government resisted this motion on the grounds that it would have needlessly interfered in the House of Commons’s internal arrangements. The amendment was negated on division.
37. Equally, the Political and Constitutional Reform Committee of the House of Commons made no recommendations for specific amendments on this point to the Bill. The Government has concluded, therefore, that there is not sufficient support amongst MPs – to whom the responsibility for tabling such a motion would fall - to make an amendment relating to the form of no confidence motions in the Bill.
- 38. We recognise that the 14 day period for formation of a new government may result in a period of uncertainty. However, it is not possible to determine in advance the many different circumstances under which a vote of no confidence may be passed. We therefore conclude that 14 days is an appropriate period to allow for formation of a new government. (Paragraph 125)**
39. The Government is pleased to note the Committee’s support for the 14-day period. This proposal was also widely supported in the House of Commons, where an amendment to leave out this provision received the support of only six MPs¹.
- 40. The Government should bring forward an amendment to clarify whether clause 2(2)(b) is intended to apply to a government which has already been formally constituted by Her Majesty or whether it may apply to a government not yet so constituted. (Paragraph 127)**
- 41. We conclude that the Bill is intended to allow a government which has lost a confidence motion to reconstitute itself within the 14 day period. However, since this does not necessarily follow from the wording of clause 2(2)(b), we recommend that the Government bring forward an amendment to clarify this provision. (Paragraph 130)**

¹ HC Deb 01 December 2010 col 835

42. The Government is grateful to the Committee for the above recommendations. We do not believe, however, that there is any ambiguity in the drafting of Clause 2(2)(b) as it presently stands. The clause states that the House of Commons may express confidence in *any* Government of Her Majesty. This would clearly allow for confidence to be expressed in a government which had previously been defeated on a motion of no confidence, regardless of whether that government was in a reconstituted or in identical form.
43. Equally, in describing a government as being one of Her Majesty, Clause 2(2)(b) makes it clear that to prevent a dissolution occurring at the conclusion of the 14-day period, the House of Commons must express confidence in a Government that has been so appointed by Her Majesty. Otherwise clause 2(2)(b) would provide that a confidence motion could be expressed in a Government that may be appointed by Her Majesty.
44. It should be noted that this does not preclude the House of Commons expressing its view as to the form of Government it would be inclined to support were such a Government to be subsequently appointed by Her Majesty.
- 45. We conclude that, if the Bill is passed, it would not be possible to prevent a government using a vote of no confidence to bring about an early election. To do so would be seen by many as an abuse of the Act's provisions and would undermine the fixed-term principle. (Paragraph 135)**
46. The Government accepts that the scenario described would be possible however, as the Committee points out, this would be a clear abuse of the Act's provisions. In reality, we do not believe that this outcome is a likely one. The potential impact on public support for a Government which had both clearly subverted the purpose of a piece of constitutional legislation for its own gain, and which had also been seen to be expressing no confidence in itself, would be so negative that it would not be an appealing option to a Prime Minister.
47. In other countries with fixed or semi-fixed arrangement, such a practice has not become an established norm. Indeed, the two examples which have been cited during scrutiny of the Bill relating to the German experience were in fact instances of where it was perfectly proper that an election should have been called, but where that country's constitutional arrangements did not make provision for such an election to take place. The Fixed-term Parliaments Bill caters for a scenario where there may be a clear and agreed need to hold an early general election by including an alternative procedure for the dissolution of the House following a vote for an early general election passed by a majority of two-thirds of the House of Commons. This is a new power for the House of Commons.
- 48. We believe that if a government were to resign in order to force a parliamentary vote for an early dissolution under clause 2(1), such manipulation would be an abuse of the Act's provisions. (Paragraph 138)**

49. This is an extreme example of potential mischief and, as the Committee points out, would be a clear abuse of the Act's provisions. The Government accepts that the scenario described would in theory be possible. Indeed, the only way to prevent this absolutely would be to provide for fully-fixed term Parliaments. The Bill however provides procedures which allow for an early general election where one is clearly required. The Bill clearly sets out the normal procedures for triggering an early dissolution, therefore it would be obvious if a Government had set out to subvert those procedures and we believe that they would be judged accordingly by the electorate.
- 50. Whilst the prerogative power of dissolution is an important constitutional longstop, the Canadian experience would indicate that it is necessary under a fixed-term arrangement to abolish that power. (Paragraph 143)**
51. The Government is pleased to note the Committee's concurrence with our view that the distinction between the powers to dissolve and prorogue Parliament is significant. It is pleased to note that the Committee agrees with the Government's decision to propose the abolition of the dissolution power.
- 52. We agree that the risk of abuse of the power of prorogation is very small. We therefore conclude that Her Majesty's power to prorogue Parliament should remain. (Paragraph 149)**
53. The Government agrees with the Committee's assessment that the risk of misuse of the power to prorogue Parliament is a small one, and indeed one that already exists under our present constitutional arrangements.
54. In addition, the Government has sought in this Bill to make only those changes to the constitution which are necessary to establish the principle of fixed-term Parliaments. To make changes to the powers relating to prorogation would fall wide of this intention.
- 55. We agree that it would be inappropriate to create a situation in which the courts might be called upon to assess the basis on which the Speaker had issued a certificate. (Paragraph 153)**
- 56. The risk that the courts may intervene in any early dissolution of Parliament by questioning the Speaker's certificate is very small. Although the political and constitutional consequences of any such intervention would be very significant, we do not consider the risk to be sufficient to warrant a rejection of clause 2 of the Bill. (Paragraph 157)**
- 57. We are content to accept the Minister's assurance as to the most appropriate form of words for clause 2(3). (Paragraph 158)**
58. The Government is pleased that the Committee shares its assessment that the risk of the courts questioning the validity of a Speaker's certificate issued under the Bill is so minimal as to not warrant a rejection of clause 2.
- 59. We agree that the question of whom the Speaker should consult is a matter of internal House of Commons procedure and should not be contained within the Bill's provisions. Clause 2(4) should therefore be omitted. (Paragraph 159)**

60. The Government notes the Committee's view. The requirement to consult the Deputy Speakers in Clause 2(4) is not an obligation that must be undertaken if it is impractical to do so. Even following any consultation, the Speaker remains the individual with sole responsibility for the issuing of the certificate. It is not unusual for legislation to place a requirement to consult on a Member of the House of Commons before undertaking a statutory duty. In particular, this provision mirrors a similar provision in section 1 of the Parliament Act 1911 by which the Speaker consults, if practicable, two Members appointed from the Chairmen's Panel concerning whether a Bill is a Money Bill. The Government considers that that procedure has worked well in the context of the Parliament Act 1911 and is a good model for this Bill.

The process of scrutiny

61. We accept that constitutional reform proposals will rarely, if ever, be wholly apolitical and may not always proceed by consensus. It is therefore necessary to ensure that, in relation to such proposals, constitutional principles should be constantly borne in mind and clear for all to see. (Paragraph 167)

62. We are concerned that the constitutional relationship between the provisions of this Bill and the Government's other proposals for constitutional reform have not been adequately thought through. (Paragraph 172)

63. Save where there are justifiable reasons for acting more quickly, the proper way to introduce a constitutional reform proposal is to publish a green or white paper or a draft bill, and to take the comments and concerns raised in the process of consultation and pre-legislative scrutiny into account in the legislation that follows. (Paragraph 179)

64. We agree that, as introduced in the House of Commons, the Bill could not be passed under the Parliament Acts procedure. (Paragraph 182)

65. The Government sees no inconsistency in its proposals for constitutional reform. As a package, they will provide for a fairer and more stable political structure. For example, the provisions for boundary reviews in the Parliamentary Voting System and Constituencies Bill require them to be held every five years, consistent with the five year cycle of elections set out in the Fixed-term Parliaments Bill.

66. The Government does not accept that the Bill is being rushed. The Bill was introduced in the House of Commons on 22 July 2010 and did not complete its Commons stages until 18 January 2011. To facilitate further discussion on the Bill the Government added extra time to that which had originally been allocated for the Committee stage in the House of Commons. At Report stage, all amendments which were selected for debate were in fact debated in full. This strongly indicates that the House of Commons did not require additional time to debate the Bill. The Bill has also received scrutiny, not only from this Committee, but also from the Political and Constitutional Reform Committee of the House of Commons.

67. The Government is looking forward to the further scrutiny the Bill will receive in the House of Lords.



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