

Draft Fixed-term Parliaments Act 2011 (Repeal) Bill

December 2020

CP 322



Draft Fixed-term Parliaments Act 2011 (Repeal) Bill

Presented to the House of Commons by the Chancellor of the
Duchy of Lancaster and Minister for the Cabinet Office, and the
Minister for the Constitution and Devolution
Presented to the House of Lords by the Minister of State for the
Cabinet Office
by Command of Her Majesty

December 2020



© Crown copyright 2020

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/official-documents.

Any enquiries regarding this publication from members of the House of Commons or members of the House of Lords should be sent to us at pschloesmith@cabinetoffice.gov.uk and pslordtrue@cabinetoffice.gov.uk respectively

ISBN 978-1-5286-2275-2

CCS1120559048 11/20

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

Foreword

The Fixed-term Parliaments Act 2011 was a departure from the long-term constitutional norm, whereby the Prime Minister could seek an early dissolution of Parliament. It was passed with limited scrutiny, and created parliamentary paralysis at a critical time for our country.

The overriding principle of our constitution should be that the Government of the day has the confidence of the House of Commons. The Act's codification of confidence motions and its regime of fixed five year Parliaments, undermines this democratic necessity, both hindering the function of representative democracy by making it harder to have necessary elections.

The 2011 Act was passed by the Coalition in unique circumstances, and since 2015 has not had its intended effect. Neither the 2015 Parliament nor the 2017 Parliament lasted for a full-five year term. The fact that Parliament had to introduce bespoke primary legislation in 2019 to allow for an early general election shows that the 2011 Act has not worked efficiently or effectively. Flexibility is an essential part of the parliamentary system. The 2011 Act also created uncertainty as to what happens when a no-confidence vote is passed under the Act and how it might operate in practice.

The Government committed in its manifesto to repealing the 2011 Act and putting in place arrangements that deliver the legal, constitutional and political certainty around the process for dissolving Parliament.

The draft Fixed-term Parliaments Act 2011 (Repeal) Bill delivers on this commitment. In doing so, the Bill makes express provision to revive the prerogative power to dissolve Parliament. This means once more Parliament will be dissolved by the Sovereign, on the advice of the Prime Minister. This will enable Governments, within the life of a Parliament, to call a general election at the time of their choosing.

The long standing position is that dissolution is not reviewable by the Courts and judgement on the Government's actions in such matters should be left to the electorate at the polling booth or, in extremely exceptional circumstances, to the Sovereign. In light of this, to ensure maximum certainty on the timing of a Parliamentary election, the Bill contains an ouster clause to make clear that the exercise of the prerogative powers to dissolve Parliament, and the extent of those powers is non-justiciable.

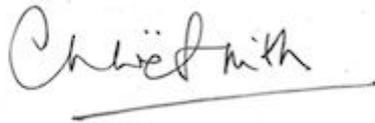
The Bill retains certain aspects of the 2011 Act to ensure the continued operability of our electoral system. The Bill does not change the 25 working day period between dissolution and polling day. The Bill also contains provision to fix the maximum length of a Parliament at five years, thereby returning to the position prior to the 2011 Act.

Under the Act, the Prime Minister must make arrangements before the end of November 2020 for a committee to undertake a review of the operation of the Act and if appropriate, make recommendations for its amendment or repeal. To ensure the Bill receives a greater level of Parliamentary scrutiny than the 2011 Act did the Government is committed to ensuring Parliament is properly consulted on the policy proposals and is presenting its draft Bill for pre-legislative scrutiny by this committee.

Alongside the draft Bill, the Government is publishing a draft statement of the non-legislative constitutional principles that underpin the exercise of the prerogative powers to dissolve Parliament, and would welcome the committee and other parliamentary select committees giving them further consideration. We welcome the forthcoming Parliamentary scrutiny to ensure that the draft Bill achieves the aim of having legal, constitutional and political certainty around the process for dissolving Parliament.

A handwritten signature in black ink that reads "Michael Gove". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

The Rt Hon Michael Gove MP
Chancellor of the Duchy of Lancaster
Minister for the Cabinet Office

A handwritten signature in black ink that reads "Chloe Smith". The signature is written in a cursive style and is underlined with a single horizontal line.

Chloe Smith MP
Minister for the Constitution and Devolution

A handwritten signature in black ink that reads "Nicholas True". The signature is written in a cursive style.

Lord True
Minister of State, Cabinet Office

Fixed-term Parliaments Act 2011 (Repeal) Bill

CONTENTS

- 1 Repeal of the Fixed-term Parliaments Act 2011
- 2 Revival of prerogative powers to dissolve Parliament and to call a new Parliament
- 3 Non-justiciability of revived prerogative powers
- 4 Automatic dissolution of Parliament after five years
- 5 Minor and consequential amendments and savings
- 6 Extent, commencement and short title

Schedule – Minor and consequential amendments

A

B I L L

TO

Make provision to repeal the Fixed-term Parliaments Act 2011; to revive the prerogative powers to dissolve Parliament and to call a new Parliament; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Repeal of the Fixed-term Parliaments Act 2011

The Fixed-term Parliaments Act 2011 is repealed.

2 Revival of prerogative powers to dissolve Parliament and to call a new Parliament

- (1) The powers relating to the dissolution of Parliament and the calling of a new Parliament that were exercisable by virtue of Her Majesty's prerogative immediately before the commencement of the Fixed-term Parliaments Act 2011 are exercisable again, as if the Fixed-term Parliaments Act 2011 had never been enacted.
- (2) For the purposes of subsection (1), the powers relating to the calling of a new Parliament include powers to order the issue of—
 - (a) writs of summons to attend the House of Lords, and
 - (b) writs for parliamentary elections (see rule 3 in Schedule 1 to the Representation of the People Act 1983).

3 Non-justiciability of revived prerogative powers

A court of law may not question—

- (a) the exercise or purported exercise of the powers referred to in section 2,
- (b) any decision or purported decision relating to those powers, or
- (c) the limits or extent of those powers.

4 Automatic dissolution of Parliament after five years

If it has not been dissolved earlier, a Parliament dissolves at the beginning of the day that is the fifth anniversary of the day on which it first met.

5 Minor and consequential amendments and savings

- (1) The Schedule contains minor and consequential amendments.
- (2) The Schedule to the Fixed-term Parliaments Act 2011 (consequential amendments), and sections 6(3) and 7(3) of that Act so far as they relate to it, continue to have effect despite the repeal of that Act by section 1.
(But see the amendments to that Schedule in paragraph 21 of the Schedule to this Act.)

6 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject to subsection (2).
- (2) An amendment or repeal made by this Act has the same extent as the provision amended or repealed.
- (3) This Act comes into force on the day on which it is passed.
- (4) This Act may be cited as the Fixed-term Parliaments Act 2011 (Repeal) Act 2021.

SCHEDULE

Section 5

MINOR AND CONSEQUENTIAL AMENDMENTS

Succession to the Crown Act 1707 (c. 41)

- 1 In section 7 of the Succession to the Crown Act 1707 (preservation of prerogative powers), after “prorogue” insert “or dissolve”.

Representation of the People Act 1867 (c. 102)

- 2 In section 51 of the Representation of the People Act 1867 (continuation of Parliament on demise of the Crown), after “prorogued” insert “or dissolved”.

Regency Act 1937 (c. 16)

- 3 In section 6 of the Regency Act 1937 (power to delegate royal functions to Counsellors of State), in subsection (1), after “power” insert “to dissolve Parliament otherwise than on the express instructions of the Sovereign, or”.

Representation of the People Act 1983 (c. 2)

- 4 The Representation of the People Act 1983 is amended as follows.
- 5 In section 28 (discharge of returning officer’s functions in England and Wales), after subsection (3) insert—
 - “(3A) For the purposes of subsection (3), the writ is to be taken to have been received—
 - (a) in the case of a general election, on the day after the date of the proclamation summoning the new Parliament, and
 - (b) in the case of a by-election, on the day after the date of the warrant for the writ.”
- 6 In section 76ZA (limitation of pre-candidacy election expenses for certain general elections), in subsection (3)(a), omit “or after”.
- 7 In section 95 (schools and rooms for parliamentary election meetings), after subsection (1) insert—
 - “(1A) For the purposes of subsection (1), the writ is to be taken to have been received—
 - (a) in the case of a general election, on the day after the date of the proclamation summoning the new Parliament, and
 - (b) in the case of a by-election, on the day after the date of the warrant for the writ.”
- 8 (1) Schedule 1 (Parliamentary elections rules) is amended as follows.
 - (2) In rule 1, in the election timetable—
 - (a) in the entry relating to “Issue of writ”, in the second column, for “dissolution of Parliament by section 3(1) of the Fixed-term

- Parliament Act 2011” substitute “issue of the proclamation summoning the new Parliament”;
- (b) for the entry relating to “Publication of notice of election” substitute—
- | | | |
|------------------------------------|--|--|
| “Publication of notice of election | In the case of a general election, not later than 4 in the afternoon on the second day after that on which the writ is received (and for these purposes the writ is to be taken to have been received on the day after the date of the proclamation summoning the new Parliament). | In the case of a by-election, not later than 4 in the afternoon on the second day after that on which the writ is received (and for these purposes the writ is to be taken to have been received on the day after the date of the warrant for the writ).”; |
|------------------------------------|--|--|
- (c) in the entry relating to “Delivery of nomination papers”—
- (i) in the second column, for “dissolution of Parliament by section 3(1) of the Fixed-term Parliaments Act 2011” substitute “proclamation summoning the new Parliament”;
- (ii) in the third column, at the end insert “(and for these purposes the writ is to be taken to have been received on the day after the date of the warrant for the writ)”.
- (d) in the entry relating to “Polling”, in the second column, for “day determined under section 1 of the Fixed-term Parliaments Act 2011 or appointed under section 2(7) of that Act” substitute “19th day after the last day for delivery of nomination papers”.
- (3) In rule 2 (computation of time), in paragraph (2A), for sub-paragraphs (a) and (b) substitute “the day was not fixed or appointed as such before the issue of the proclamation summoning the new Parliament.”
- (4) In the form of writ in the Appendix of Forms at the end of Schedule 1, for the words “section 3(1) of the Fixed-term Parliaments Act 2011 Parliament has dissolved” substitute “the advice of Our Council We have ordered a Parliament to be holden at Westminster on the day of next”.

Representation of the People Act 1985 (c. 50)

- 9 (1) Section 20 of the Representation of the People Act 1985 (demise of the Crown and parliamentary elections etc) is amended as follows.
- (2) In subsection (1), omit “(see section 3(4) of the Fixed-term Parliaments Act 2011)”.
- (3) In subsection (2)—
- (a) for “(6)” substitute “(6A)”;
- (b) for paragraphs (a) and (b) substitute “at any time between the issue of the proclamation summoning the new Parliament and the polling

day for the next parliamentary general election (“the current election”),”.

(4) After subsection (3) insert –

“(3A) But the Sovereign may by royal proclamation, made on the advice of the Privy Council, appoint an alternative polling day, in place of the day that would otherwise have been the polling day under subsection (3)(a) (“the subsection (3)(a) polling day”), which may be –

- (a) no earlier than the 7th day before the subsection (3)(a) polling day, and
- (b) no later than the 7th day after the subsection (3)(a) polling day.

(3B) If an alternative polling day is appointed under subsection (3A), then subsection (3) applies with the following modifications –

(a) for paragraph (a) there is substituted –

“(a) the polling day shall be the day appointed by the proclamation under subsection (3A);”;

(b) in paragraph (b) –

- (i) in a case where the alternative polling day is before the subsection (3)(a) polling day, for “13 days” there is substituted “*x* days” where *x* is 13 minus the number of days that the alternative polling day is before the subsection (3)(a) polling day;
- (ii) in a case where the alternative polling day is after the subsection (3)(a) polling day, for “13 days” there is substituted “*y* days” where *y* is 13 plus the number of days that the alternative polling day is after the subsection (3)(a) polling day.”

(5) Omit subsection (4).

(6) In subsection (6), omit “If the proclamation summoning the new Parliament after the current election was issued before the demise,”.

(7) After subsection (6) insert –

“(6A) But the Sovereign may by royal proclamation, made on the advice of the Privy Council, appoint an alternative day for the meeting of the new Parliament, in place of the day that would otherwise have been the day for the meeting of the new Parliament under subsection (6).”

(8) Omit subsection (7).

Scotland Act 1998 (c. 46)

10 The Scotland Act 1998 is amended as follows.

11 In section 2 (ordinary general elections), in subsection (2A)(a), omit “(other than an early parliamentary general election)”.

- 12 In section 12A (power of the Secretary of State to make provision about the combination of polls), in subsection (2), omit paragraph (a) (and the word “and” following it).

Political Parties, Elections and Referendums Act 2000 (c. 41)

- 13 The Political Parties, Elections and Referendums Act 2000 is amended as follows.
- 14 In section 63 (weekly donation reports during general election period), in subsection (6)(a), omit “by section 3(1) of the Fixed-term Parliaments Act 2011”.
- 15 [Section 95A (quarterly donation reports) is amended as follows...]
- 16 In Schedule 9 (limits on campaign expenditure)–
- (a) in paragraph 1(3)(a), omit “by section 3(1) of the Fixed-term Parliaments Act 2011”;
 - (b) in paragraph 9(6)(b), omit “by section 3(1) of the Fixed-term Parliaments Act 2011”.
- 17 In Schedule 10 (limits on controlled expenditure)–
- (a) in paragraph 1(2)(a), omit “by section 3(1) of the Fixed-term Parliaments Act 2011”;
 - (b) in paragraph 9(6)(b), omit “by section 3(1) of the Fixed-term Parliaments Act 2011”.

Government of Wales Act 2006 (c. 32)

- 18 The Government of Wales Act 2006 is amended as follows.
- 19 In section 3 (ordinary general elections), in subsection (1A)(a), omit “(other than an early parliamentary general election)”.
- 20 In section 13A (power of the Secretary of State to make provision about the combination of polls), in subsection (2), omit paragraph (a) (and the word “and” following it).

Fixed-term Parliaments Act 2011 (c. 14)

- 21 In the Schedule to the Fixed-term Parliaments Act 2011, omit–
- (a) paragraph 1 (amendment to section 7 of the Succession to the Crown Act 1707);
 - (b) paragraph 3 (amendment to section 51 of the Representation of the People Act 1867);
 - (c) paragraph 7 (amendment to section 76ZA(3)(a) of the Representation of the People Act 1983);
 - (d) paragraph 10 (amendments to the Timetable in rule 1 of Schedule 1 to the Representation of the People Act 1983);
 - (e) paragraph 13 (amendment to the form of writ in the Appendix of Forms at the end of Schedule 1 to the Representation of the People Act 1983).

Welfare Reform Act 2012 (c. 5)

- 22 In section 96A of the Welfare Reform Act 2012 (review of benefit cap) –
- (a) in subsection (1), for “in each Parliament” substitute “every five years”;
 - (b) omit subsection (9).

Electoral Registration and Administration Act 2013 (c. 6)

- 23 In section 14 of the Electoral Registration and Administration Act 2013 (extension of timetable for parliamentary elections), omit subsection (1) (amendment of section 3 of Fixed-term Parliaments Act 2011).

Wales Act 2014 (c. 29)

- 24 In section 1 of the Wales Act 2014 (frequency of Assembly ordinary general elections), omit subsection (2) (amendment of section 5 of Fixed-term Parliaments Act 2011).

Recall of MPs Act 2015 (c. 25)

- 25 The Recall of MPs Act 2015 is amended as follows.
- 26 (1) Section 5 (Speaker’s notice that a recall condition has been met) is amended as follows.
- (2) In subsection (2)(a), after “with the” insert “last possible”.
 - (3) After subsection (2), insert –
“(2A) For the purposes of subsection (2)(a), the last possible polling day is the day on which polling would take place, according to the election timetable in rule 1 of Schedule 1 to the Representation of the People Act 1983, if the Parliament then in existence were dissolved by virtue of section 4 of the Fixed-term Parliaments Act 2011 (Repeal) Act 2021 (automatic dissolution of Parliament after five years).”
 - (4) Omit subsection (3).
- 27 (1) Section 13 (early termination of recall petition process) is amended as follows.
- (2) In subsection (2), for paragraphs (a) and (b) substitute “Parliament is dissolved.”
 - (3) In subsection (6), after “Speaker” insert “(or, in a case where this section applies by virtue of the first condition, the person who was the Speaker immediately before Parliament was dissolved)”.
 - (4) In subsection (9), at the beginning insert “Except in a case where this section applies by virtue of the first condition (dissolution of Parliament),”.

Small Business, Enterprise and Employment Act 2015 (c. 26)

- 28 The Small Business, Enterprise and Employment Act 2015 is amended as follows.
- 29 In section 21 (duty on Secretary of State to publish business impact target etc)–
- (a) omit subsection (8);
 - (b) in subsection (10), for the words from “an early” to “2011” substitute “a parliamentary general election is to take place”.
- 30 In section 23 (duty of Secretary of State to publish reports)–
- (a) in subsection (8), for the words from “an early” to “2011” substitute “a parliamentary general election is to take place”;
 - (b) in subsection (10)(b), for “before the dissolution of Parliament” substitute “no later than three months after the commencement of the new Parliament”;
 - (c) omit subsection (11).
- 31 In section 24A (duty on relevant regulators to assess economic impact etc), in subsection (4) for paragraphs (a) and (b) substitute “they must be published no later than two months after the commencement of the new Parliament.”
- 32 In section 25 (appointment of body to verify assessments and lists in reports), omit subsection (7).

Early Parliamentary General Election Act 2019 (c. 29)

- 33 The Early Parliamentary General Election Act 2019 is repealed.

Referendums (Scotland) Act 2020 (asp 2)

- 34 In section 3 of Referendums (Scotland) Act 2020–
- (a) in subsection (2), after “UK” insert “parliamentary general”;
 - (b) in subsection (7), omit the definition of “date of a UK election”.

FIXED-TERM PARLIAMENTS ACT 2011 (REPEAL) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Fixed-term Parliaments Act 2011 (Repeal) Bill published in draft on 1 December 2022 (322).

- These Explanatory Notes have been prepared by the Cabinet Office in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill/Act	3
Policy background	3
Legal background	3
Territorial extent and application	5
Commentary on provisions of the Bill	6
Commencement	9
Financial implications of the Bill	9
Compatibility with the European Convention on Human Rights	9
Related documents	10
Annex A - Territorial extent and application in the United Kingdom	11

Overview of the Bill/Act

- 1 The Bill repeals the Fixed-term Parliaments Act 2011 (“FTPA”). In doing so, the Bill makes express provision to revive the prerogative powers to dissolve Parliament and to call a new Parliament. As a result, in future Parliament will be dissolved by the Sovereign, on the advice of the Prime Minister, as it was prior to the enactment of the FTPA.

Policy background

- 2 In its 2019 General Election manifesto, the Government committed to repealing the FTPA. The Bill gives effect to that commitment. In doing so, the Bill provides that Parliament shall sit for a maximum term of five years. The Bill also makes express provision to revive the prerogative power to dissolve Parliament, meaning that once more Parliament will be dissolved by the Sovereign, on the advice of the Prime Minister. This will enable Governments, within the life of a Parliament, to call a general election at the time of their choosing.
- 3 It is settled law that the dissolution of Parliament (and any decisions relating to the dissolution of Parliament) is not reviewable by the Courts. However, in order to ensure that this position is preserved, and to ensure maximum certainty on the timing of a Parliamentary election, the Bill makes explicit provision to this effect.

Legal background

- 4 Prior to the FTPA, Parliaments were dissolved either when they reached the end of their five year terms under the Septennial Act 1715 (as amended by the Parliament Act 1911) or, more usually, were dissolved by the Queen under the Royal prerogative. The exercise of the prerogative was, in practice, subject to constitutional conventions. For example, the Queen acted on the advice of the Prime Minister and only dissolved Parliament when she was requested to do so.
- 5 A new Parliament was summoned by Proclamation issued by the Queen on the advice of the Privy Council. That Proclamation ordered the issuing of the writs for parliamentary elections and writs of summons to attend the House of Lords and appointed a day and place for the meeting of the new Parliament. In practice, if the Parliament had not reached its term, the Proclamation summoning the new Parliament also dissolved the previous Parliament. At the same time as the Proclamation an Order in Council was made requiring the issue of these writs.
- 6 The FTPA provides for fixed days for polls for parliamentary general elections. The Act provides that the polling day for parliamentary general elections will ordinarily be the first Thursday in May every five years. The FTPA also makes provision to enable the holding of early parliamentary general elections. Under the FTPA the Sovereign did not retain any residual power to dissolve Parliament.
- 7 In 2017 an early parliamentary general election was called under section 2(1) of the Fixed-term

Parliaments Act. For the early parliamentary election in 2019, bespoke primary legislation - the Early Parliamentary General Election Act 2019 - was needed because the two thirds majority required by the Fixed-term Parliaments Act could not be secured in the House of Commons.

- 8 The law governing the proceedings at a parliamentary election is set out principally in the Representation of the People Act 1983. Section 23(1) of that Act provides that such proceedings are to be conducted in accordance with Schedule 1 to the Act which sets out the Parliamentary Elections Rules. Rules 1 and 2 concern the timetable that applies leading up to polling day.

Territorial extent and application

- 9 *Clause 6* sets out the territorial extent of the Bill. The Bill will extend and apply to the whole of the United Kingdom, including Northern Ireland. Amendments or repeals made by the Bill have the same extent as the provision amended or repealed.
- 10 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 11 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

Commentary on provisions of the Bill

Clause 1: Repeal of the Fixed-term Parliaments Act 2011

12 *Clause 1* repeals the FTPA.

Clause 2: Revival of prerogative powers to dissolve Parliament and to call a new Parliament

13 *Subsection (1)* makes express provision to revive the prerogative powers relating to the dissolution of Parliament, and the calling of a new Parliament. This means that, as was the case prior to the FTPA, Parliament will be dissolved by the Sovereign, exercising prerogative power on the advice of the Prime Minister.

14 *Subsection (2)* confirms that powers relating to the calling of a new Parliament include powers relating to the issue of writs for summoning peers to the House of Lords and writs for parliamentary elections.

Clause 3: Non-justiciability of revived prerogative powers

of law

15 *Clause 3* confirms that the exercise (or purported) exercise of powers relating to the dissolution of Parliament, and the calling of a new Parliament, is non-justiciable. The long standing position is that the exercise of the prerogative power to dissolve Parliament is not justiciable (see *Council of Civil Service Unions v Minister of State for Civil Service* [1985] AC 374, per Lord Roskill). This provision is included for the avoidance of any doubt that may arise.

16 *Clause 3* also covers the preliminary steps and any decisions (or purported decisions) leading to dissolution of Parliament. This would include advice from the Prime Minister to the Queen, as well as the exercise of the power itself.

17 *Clause 3* further provides that the courts cannot consider the limits or extent of those powers. This is to address the distinction drawn by the Supreme Court in *Miller v The Prime Minister, Cherry and Others v The Advocate General for Scotland* [2019] UKSC 41 as regards the court's role in reviewing the scope of a prerogative power, as opposed to its exercise. It seeks to clarify that neither is justiciable in the context of decisions relating to dissolution.

Clause 4: Automatic dissolution of Parliament after five years

18 *Clause 4* provides that Parliament will automatically dissolve five years after it has first met. This was the position under the Septennial Act 1715 (as amended by the Parliament Act 1911) prior to the FTPA.

Clause 5: Minor and consequential amendments and savings

Act 2011

19 *Subsection (1)* introduces the Schedule to the Bill, which contains minor and consequential

amendments.

- 20 *Subsection (2)* saves the Schedule to the FTPA, so that it is not repealed along with the rest of that Act by clause 1. The Schedule needs to be saved because it contained a number of amendments to other Acts which need to remain on the statute book. *Subsection (2)* also signposts the amendments made to that Schedule by *paragraph 21* of the Schedule to the Bill.

Clause 6: Extent, commencement and short title

- 21 *Subsection (1)* provides that the Bill extends to England and Wales, Scotland and Northern Ireland.
- 22 *Subsection (3)* provides that the Bill comes into force on Royal Assent.
- 23 *Subsection (4)* establishes the short title of the Bill as the Fixed-term Parliaments Act 2011 (Repeal) Act 2021.

Schedule: Minor and consequential amendments

- 24 The Schedule contains minor and consequential amendments to Acts of Parliament. These are primarily to reverse amendments made by the FTPA or to ensure that after the repeal of the FTPA the relevant legislation still works (for example to amend provisions passed after the FTPA which were drafted on the basis of a fixed election cycle). The key amendments are:
- Section 20 of the Representation of the People Act 1985, which provides that in the event of the demise of the Crown after a Proclamation summoning a new Parliament, polling day is postponed by 14 days. *Paragraph 7* provides that the polling day may, by Proclamation on the recommendation of the Privy Council, move by up to 7 days either side of this default 14 day postponement.
 - Amendments to the Representation of the People Act 1983 to provide more certainty in the election timetable. Currently some dates in the election timetable are calculated by reference to when the writ for the election is received. But since writs are usually sent by post, this can lead to inconsistency or a lack of certainty. The amendments in *paragraphs 8(2)(b)* and *(c)(ii)* of the *Schedule* make minor amendments to the election timetable in Schedule 1 to the 1983 Act to provide that the election writ is to be taken to have been received the day after the date of the proclamation summoning the new Parliament (or in the case of a by-election, the day after the date of the warrant for the writ). The amendments in *paragraphs 5* and *7* of the *Schedule* make equivalent changes to other provisions of the 1983 Act that hang on the date of the receipt of the writ (sections 28 and 95).
 - Consequential amendments to legislation removing references to the FTPA, and to elections under the FTPA. This includes amendments to the Scotland Act 1998, the Government of Wales Act 2006 and the Referendums (Scotland) Act 2020, the latter of

which is an Act of the Scottish Parliament.

- The Recall of MPs Act 2015 is amended to remove references to fixed five year terms (and scheduled elections), and to provide that in Section 13 of the Act, a recall petition is to be terminated when Parliament is dissolved. This amendment will remove the condition that a petition is to be terminated when an early parliamentary general election is brought about under the provisions in the FTPA and scheduled within 6 months of the Speaker's notice that a recall petition must be arranged. These amendments do not change the conditions which can trigger a recall petition, do not change how a recall petition is to be conducted and do not impact what happens in the event that a recall petition meets the signing threshold and is 'successful'.

Commencement

- 25 The Bill will commence on Royal Assent.

Financial implications of the Bill

- 26 The Bill in itself will not trigger any financial expenditure.

Compatibility with the European Convention on Human Rights

- 27 The Government considers that the Bill is compatible with the European Convention on Human Rights (“ECHR”). Accordingly, the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office will make a statement under clause 19(1)(a) of the Human Rights Act 1998 to this effect.
- 28 Article 3, Protocol 1 of the ECHR concerns the right to free and fair elections and states: “*The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.*” States are afforded a wide margin of appreciation when it comes to applying electoral law (see the Council of Europe’s guide on Article 3, Protocol 1)
- 29 It is considered that the requirement to have elections at a reasonable intervals will be met as clause 4 of the Bill provides for automatic dissolution of Parliament at the beginning of the day which is the fifth anniversary of the day when that Parliament first met, if the dissolution power has not been exercised earlier. This was the position prior to the Fixed-term Parliaments Act and there has been no suggestion that this is insufficient to satisfy this requirement (in *X v United Kingdom*, Court decision of 6 October 1976, it was not disputed that UK elections were at reasonable intervals).
- 30 It is considered that the requirement for ‘conditions which will ensure the free expression of the opinion of the people in the choice of the legislature’ will be satisfied. The Bill makes consequential amendments to the rules governing the timetable for an election (in the Representation of the People Act 1983). The amended timetable will require 25 working days between the summoning of the new Parliament and polling day. The organisation of the election and the notice given to electors will be the same as required under the Fixed-term Parliaments Act and longer than required for elections prior to the Fixed Term Parliaments Act (17 working days).

Related documents

31 The following documents are relevant to the Bill and can be read at the stated locations:

- [The Fixed-term Parliaments Act 2011](#)

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 6	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

FIXED-TERM PARLIAMENTS ACT 2011 (REPEAL) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Fixed-term Parliaments Act 2011 (Repeal) Bill published on 1 December 2020

Ordered by Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, to be printed, 1 December 2020

© Parliamentary copyright 2020

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE CHANCELLOR OF THE DUCHY OF LANCASTER AND MINISTER FOR THE CABINET OFFICE

CCS1120559048

978-1-5286-2275-2