

FIXED-TERM PARLIAMENTS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Fixed-term Parliaments Bill as brought from the House of Commons on 19th January 2011. They have been prepared by the Cabinet Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Fixed-term Parliaments Bill provides for fixed days for polls for parliamentary general elections. The polling day for elections would ordinarily be the first Thursday in May every five years. The first such polling day would be on 7th May 2015. The Prime Minister will be able to alter, by statutory instrument, the polling day for such parliamentary general elections to a day not more than two months earlier or later than the scheduled polling day.

4. The Bill also makes provision to enable the holding of early parliamentary general elections. The trigger for such general elections would be either a vote of no confidence in the Government following which the House of Commons did not endorse a new Government within 14 days, or a vote by at least two-thirds of all MPs in favour of an early election. Where such an election occurs, the next scheduled election after that will be five years from the previous first Thursday in May.

5. The Queen does not retain any residual power to dissolve Parliament, which will occur automatically under the provisions in the Bill.

BACKGROUND

6. The provisions contained within the Fixed-term Parliaments Bill stem from the Government's publication *The Coalition: our programme for government*, which included the following commitment:

We will establish five-year fixed-term Parliaments. We will put a binding motion before the House of Commons stating that the next general election will be held on the first Thursday of May 2015. Following this motion, we will legislate to make provision for fixed-term Parliaments of five years. This legislation will also provide for dissolution if 55% or more of the House votes in favour.

This document can be found on the Cabinet Office's website:

<http://www.cabinetoffice.gov.uk/news/coalition-documents>

7. At present, the maximum duration of a UK Parliament is five years, as dictated by the Septennial Act 1715 (as amended by the Parliament Act 1911). Under that Act if a Parliament is not dissolved in the period up to five years after the day on which it was summoned to meet, it automatically expires. The prerogative power to dissolve Parliament before the maximum five-year period is exercised by Her Majesty, conventionally on the advice of the Prime Minister.

8. A new Parliament is summoned by proclamation issued by the Queen on the advice of the Privy Council. That proclamation orders the issuing of the writs for parliamentary elections and appoints a day and place for the meeting of the new Parliament. In practice, the proclamation dissolving the previous Parliament summons the new one.

9. The proclamation which summons a new Parliament triggers a general election. The law governing the proceedings at a parliamentary election is set out principally in the Representation of the People Act 1983. In particular, 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.

10. Rule 1 of the Parliamentary Elections Rules provides that the proceedings at an election must occur on the basis of the timetable set out there. In particular:

- the writs for parliamentary elections must be issued as soon as practicable after the issue of the proclamation summoning the new Parliament;
- nomination papers must be delivered, not later than 4 pm on the sixth day after the date of the proclamation summoning the new Parliament;

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- the poll takes place on the eleventh day after the last day for delivery of nomination papers.

11. Rule 2 provides that the following days are disregarded in computing any time period in the timetable: Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, bank holidays and any day appointed for public thanksgiving or mourning.

TERRITORIAL EXTENT

12. The Fixed-term Parliaments Bill generally extends to the United Kingdom, except that any amendments or repeals made by the Bill have the same extent as the provision which is being amended or repealed. Because this Bill concerns the UK Parliament and elections to the UK Parliament, the subject matter of this Bill is reserved for the purpose of the Scotland Act 1998, non-devolved for the purpose of the Government of Wales Act 2006 and excepted for the purpose of the Northern Ireland Act 1998.

COMMENTARY ON CLAUSES

Clause 1: Polling days for parliamentary general elections

13. Clause 1 states that the polling day for the next parliamentary general election is to be 7th May 2015. *Subsection (3)* sets out that the polling day for each subsequent parliamentary general election is to be the first Thursday in May in the fifth year after the year of the preceding general election. Where an early general election takes place under clause 2 of the Bill, the next general election will generally take place on the first Thursday in May in the fifth calendar year following that in which the early general election took place. However, if the early election is held before the first Thursday in May in the year of that election, the next general election will be held on the first Thursday in May four years later. The effect of this is that when an early general election is held, the election day of the first Thursday in May is restored at the next election, and that the duration of the Parliament resulting from the early election will normally not be more than five years in length.

14. *Subsection (5)* provides a power for the Prime Minister to vary the date of parliamentary general elections under clause 1 by up to two months earlier or later than the scheduled election. This is to accommodate short term crises or other conditions which might make it inappropriate to hold the election on the scheduled date, for example, a repeat of the foot and mouth crisis which led to the postponement of the local elections in 2001. The power to vary by up to two months either way would be exercisable by statutory instrument subject to the affirmative procedure. This means that the order could not be made until it had been approved by both Houses of Parliament.

Clause 2: Early parliamentary general elections

15. Clause 2 provides for the circumstances in which an early parliamentary general election can be held, that is, an election with a date of poll which must be earlier than the date of poll for an election under clause 1. *Subsection (1)* provides for an early election if the House of Commons passes a motion that there should be such an election. Where such a motion has been passed on a division, the number of members who voted in favour of the motion must be a number equal to or greater than two-thirds of the number of seats in the House, including any vacant seats. It is for the Speaker to certify that such a motion has been carried and whether or not it has been passed on a division of the House, and if so by the required majority.

16. Clause 2 also provides that, if the House of Commons passes a motion of no confidence in the Government, an election must be held unless within the period of 14 days the House passes a motion expressing confidence in a Government. The intention is to provide an opportunity for an alternative Government to be formed without an election. Again, it is the Speaker who will certify whether the motions in question have or have not been passed.

17. *Subsection (3)* provides that the Speaker's certificate is conclusive for all purposes.

18. *Subsection (4)* provides that the Speaker must consult the Deputy Speakers so far as practicable before issuing a certificate under subsection (1) or (2).

19. *Subsections (5) and (6)* provide that the Queen sets the date for an early election by proclamation on the recommendation of the Prime Minister. This means that, taken in conjunction with the rules in clause 3, a suitable date for an election can be set. Dissolution does not follow immediately on the triggering event, but can be timed so that, for example, essential business can be completed or the date of the election can be set to fall on a Thursday.

Clause 3: Dissolution of Parliament

20. Clause 3 makes the key necessary changes to elections law and the law concerning the meeting of Parliament in light of fixed days for elections. It:

- provides that Parliament dissolves automatically 17 working days before the polling day which has been fixed for the general election under the Bill (this enables Parliament to dissolve, which will begin the parliamentary elections timetable in the Parliamentary Elections Rules);
- provides that Parliament cannot otherwise be dissolved, which means that the Queen will not be able to dissolve Parliament in exercise of the prerogative;

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- gives the authority to the Lord Chancellor and Secretary of State for Northern Ireland to issue the writs for elections after dissolution (this is presently dealt with in the proclamation summoning the new Parliament and an associated Order in Council);
- specifically preserves the power to set the first day for the meeting of the new Parliament by proclamation and any other matter which was normally dealt with by proclamation, except those matters where the Bill itself has set out a procedure.

21. *Subsection (5)* sets out the definition of “working day” for the purposes of calculating the period between dissolution and the date of the poll. This definition is the same as the definition in rule 2 of the Parliamentary Elections Rules. The definition includes as days which are not working days bank holidays and days appointed for public thanksgiving or mourning. It is possible for such days to be fixed or appointed from time to time thereby bringing forward the day for a dissolution. The effect of *subsection (6)* is that the fixing or appointment of a bank holiday or day for public thanksgiving or mourning is to be disregarded if it would bring forward a dissolution to a day which is earlier than 30 days after the day on which the fixing or appointment occurs. The purpose of this provision is so that there is no uncertainty about the date of dissolution at a certain point in advance of dissolution.

Clause 4: Supplementary provisions

22. *Subsection (1)* preserves the Queen’s power to prorogue Parliament. *Subsection (2)* preserves the traditional way in which the sealing of a proclamation summoning a new Parliament under the Great Seal of the Realm is authorised, which is by Order in Council rather than a warrant under the Royal Sign Manual. *Subsection (3)* introduces the Schedule of consequential amendments etc to the Bill.

Clause 5: Final provisions

23. Clause 5 contains the short title of the Bill and provides that the Bill will come into force on Royal Assent.

Schedule

24. The Schedule contains amendments of Acts of Parliament. The key amendments are:

- The Septennial Act 1715 (which sets the current five year term for a Parliament) is repealed. It will be superseded by the provisions of the Bill.
- The Regency Act 1937 presently provides that Counsellors of State (certain members of the Royal family to whom the Sovereign’s royal functions may be delegated) may not exercise the power to dissolve Parliament otherwise than on the express instructions of the Sovereign. This limitation on Counsellors of State is no longer relevant because the Sovereign will not retain a power to dissolve Parliament and is therefore repealed.

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- There are other consequential changes to the parliamentary elections timetable, to the procedure which applies to that timetable in the event of the demise of the Crown, to the regulated periods for party funding and the spending by people who become candidates at a parliamentary general election. There are also amendments to deal with combination of polls in Northern Ireland where parliamentary general elections and/or other elections take place on the same day as elections to the Northern Ireland Assembly.

FINANCIAL EFFECTS

25. It is considered that the provisions contained within the Fixed-term Parliaments Bill will have no substantial effect on public expenditure.

PUBLIC SERVICE MANPOWER

26. The provisions contained within the Fixed-term Parliaments Bill have no substantial effect on public service manpower.

IMPACT ASSESSMENT

27. The provisions contained within the Fixed-term Parliaments Bill do not require an Impact Assessment.

EUROPEAN CONVENTION ON HUMAN RIGHTS

28. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).

29. The Lord Wallace of Tankerness, the Advocate-General for Scotland, has made the following statement of compatibility in accordance with section 19:

“In my view the provisions of the Fixed-term Parliaments Bill are compatible with the Convention rights.”

30. The Bill may engage Article 3 of Protocol 1 (“Article 3”) by affecting the intervals at which elections to the UK Parliament are held. Article 3 provides that:

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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.

Article 3 is concerned with elections to legislatures. The UK Parliament is a legislature for the purpose of Article 3. Article 3 contains a range of guarantees including that elections be held at reasonable intervals.

31. The Bill would require elections ordinarily to be held at intervals of five years. The Government considers that this is clearly a reasonable interval on the grounds that it provides sufficient time for a parliament and the government to develop and implement a legislative programme while avoiding the legislature becoming unrepresentative of the electorate. In particular, it reflects the current maximum length of the UK Parliament. In forming this view, the Government has had regard to the case of *Timke v Germany*, where the European Commission of Human Rights concluded that an interval of five years between elections to the Diet of the Land Niedersachsen was compatible with Article 3.¹

32. Elections which follow early elections may take place between four and five years after the date of poll for the early general election and so elections after early elections would also occur within a reasonable interval. In one instance, general elections may occur at intervals of slightly longer than five years. The Prime Minister may alter the date of poll for a parliamentary general election by a maximum of two months before or after the scheduled date of poll. In the Government's view, the extension of the period between elections is justified. This is because the extension may be necessary because of some sort of short term contingency. The extension would thus facilitate the smooth running of the election.

33. The Bill would make a minor consequential amendment to the rules on spending by those who become candidates at a general election. It would provide that the current period regulated by section 76ZA of the Representation of the People Act 1983 (the period between 55 and 60 months after the first meeting of a Parliament) may extend beyond the 60th month on account of the fact that parliaments, under this Bill, may extend a short period beyond five years. Regulation of candidate spending may engage Article 3 by affecting the way in which those participating in the election express their opinions. It may also engage Article 10 of the ECHR which deals with freedom of expression. In the Government's view, there is no doubt that the Bill is compatible with these Articles. The amendments relating to pre-candidacy spending are consequential on the provisions in the Bill. The limits pursue the legitimate aim of securing equality between candidates. The pre-candidacy limits remain the same as the present limits for a period which would usually correspond to the period under the current provisions. Where there is an additional period between the end of the 60th month of a Parliament and dissolution of that Parliament, it would not be lengthy.

¹ *Timke v Germany* (1995) 20 EHRR CD133.

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COMMENCEMENT

34. The Bill will come into force upon Royal Assent.

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