

# Fixed Term Parliaments

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## **Foreword**

The new Conservative-Liberal Democrat coalition government has an ambitious and wide ranging agenda for political and constitutional reform. One of the main items, on which it is proceeding apace, is the proposal for fixed term parliaments. This featured in the Programme for Government, published on 20 May; with further detail given by the

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## Summary of Key Points

Fixed term parliaments remove the Prime Minister's power to decide the date of the next election. They should create greater electoral fairness and more efficient electoral administration, and enable better long term planning in government. Their potential disadvantage is a loss of flexibility and accountability.

Fixed term parliaments are a big constitutional change. Yet the government's Bill has been introduced with no public consultation, no Green or White Paper, no draft bill. The legislation should not be rushed. It could still be passed with all party support: the Labour party also had a manifesto commitment to fixed term parliaments.

The key issues to decide are: the length of the fixed term; how to allow for mid term dissolution; how to reform the prerogative powers of dissolution and proclamation.

The fixed term should be four years, not five. The norm in other Westminster parliaments with fixed terms is four years; as it is in Europe. To avoid clashes with devolved or European elections, general elections should be held in October, with the next one scheduled for October 2014.

The two thirds majority for mid term dissolution is aimed mainly at majority governments. It should make it impossible for them to call an early election without significant cross-party support. Even if it is sometimes circumvented by engineered no confidence motions, it should help to establish a new norm.

If the new parliament served only the remainder of the previous term that would also be a disincentive to mid term dissolutions.

No confidence motions will continue to come in different forms. If government or opposition have declared an issue to be one of confidence, the Speaker should indicate at the beginning of the debate whether the motion is a confidence motion.

Dissolution rules need not be too elaborate, or restrictive. Political incentives should also prove a force for stability. Political parties do not like frequent elections; nor do the electorate, who may punish a party which forces an unnecessary election.

Investiture votes are a more direct way of establishing who can command confidence, at the beginning of a parliament, and after successful no confidence motions.

The power of proclamation should be reformed so that the Electoral Commission is put in charge of the election timetable, and the date for first meeting of the new parliament is set by the outgoing Speaker.

It is very difficult to entrench the Fixed Term Parliaments Act. A future government and parliament can always amend or repeal it. It will create a norm, not a rigid constitutional rule.

One way of entrenching the Act could be to give the Lords an absolute veto over any amendment under the terms of the Parliament Act 1911. The Wakeham Commission recommended against extending the veto powers of the Lords.

# **1 The Current system in the UK**

## **1.1 Length of parliamentary terms**

The electoral timetable in Britain has grown out of several pieces of legislation. The Meeting of Parliament Act of 1694 (also known as the Triennial Act) provided that a UK parliamentary general election must be held every three years. This was amended by the Septennial Act of 1715 which extended the parliamentary term to a maximum of seven years. The Parliament Act of 1911 amended this to provide for the current five year maximum term.

## **1.2 Dissolution of parliament**

### **1.2.1 The procedure**

The decision to call a general election is made by the Prime Minister, who asks the Monarch to dissolve parliament. This is done by a Royal Proclamation requiring the writs to summon a new parliament to be sent out. The general election timetable then comes into effect, running for eighteen days excluding weekends and bank holidays.<sup>1</sup>

### **1.2.2 The Prime Minister's role**

Parliament is dissolved by the Crown on the advice of the Prime Minister. The Prime Minister makes his or her choice independently of parliament, government, and often even their closest colleagues in the Cabinet.

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one day's notice. Since then, the interval between announcement and dissolution has rarely been more than seven days,<sup>4</sup> maximising the advantage the government holds over the opposition.

### 1.3 Extraordinary dissolutions

Early dissolutions may take place if the government loses the confidence of the House or decides to resign.

#### 1.3.1 Constitutional rules governing issues of confidence

It is a cornerstone of the British constitution that the government must have the confidence of the House of Commons.

Chapter 6 of the draft Cabinet Manual says:

A Government or Prime Minister who cannot command the confidence of the House of Commons is required by constitutional convention to resign or, where it is appropriate to do so instead, may seek a dissolution of Parliament.<sup>5</sup>

Should the government resign, rather than seek dissolution, it is for the Monarch to invite the person who appears most likely to be able to command the confidence of the Commons to serve as Prime Minister and to form a government. However, it is the responsibility of the parties and politicians to determine and communicate clearly who that person should be.<sup>6</sup>

The draft Cabinet Manual states the following with regard to the choice between dissolution and resignation:

A Prime Minister may request that the Monarch dissolves Parliament and hold a further election. The Monarch is not bound to accept such a request, especially when such a request is made soon after a previous dissolution. In those circumstances, the Monarch would normally wish the parties to ascertain that there was no potential government that could command the confidence of the House of Commons before granting a dissolution.<sup>7</sup>

#### 1.3.2 Extraordinary dissolutions in practice

There have only been three successful votes of no confidence since the start of the 20<sup>th</sup> century. On the last two occasions, the government announced the dissolution of Parliament on the following day (October 1924 and March 1979). Following the January 1924 defeat on the Queen's Speech, however, the Prime Minister Stanley Baldwin resigned rather than dissolve Parliament. Parliament need not be dissolved in the case of the resignation or death of the Prime Minister, as made clear by practice and the draft Cabinet Manual.<sup>8</sup> However, the government may choose to call an election in such a case.

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<sup>4</sup> Ibid.

<sup>5</sup> Draft Cabinet Manual Chapter 6 (Feb 2010): Election and Government Formation, para.14

<sup>6</sup> Ibid.

<sup>7</sup> Ibid. para.18

<sup>8</sup> Ibid. para.21

## **2 The coalition government's proposals**

### **2.1 The coalition government's p**



Parliament can be dissolved early of its own motion, or following a vote of no confidence

A motion to dissolve must be passed by a two thirds majority, but a no confidence motion by a simple majority

A no confidence motion will lead to dissolution if no alternative government is formed within 14 days

Parliament cannot otherwise be dissolved. The prerogative power of dissolution is abolished, but not the power of prorogation

A mid term dissolution resets the clock, so that the next election follows five years later

The Queen by proclamation appoints the day for the first meeting of the new parliament

The committee stage of the bill will be taken on the floor of the House of Commons, as a constitutional measure.<sup>14</sup> Under the Coalition Agreement, the Bill will be whipped through both Houses.<sup>15</sup>

## **2.2 Timetable for coalition government's bill**

### **3 Arguments for and against fixed terms**

#### **3.1 Arguments in favour of fixed terms**

##### **3.1.1 Electoral fairness**

The advantage an incumbent government has in calling the election when it chooses has been famous

The report urges the government to use the fixed term parliament legislation to address the issue of lengthening the election timetable.

#### 3.1.4 Better governmental planning

Fixed term p

## **4 Length of fixed term**

### **4.1 Four years or five**

The coalition government proposes a five year fixed term for Westminster, with the date for the next general election set for 7 May 2015. This is long by comparison with most other parliamentary systems. In the Westminster world, Australia and New Zealand have three-year maximum terms. The legislatures of Canada and many of its provinces have four year fixed terms, as do most Australian states. The devolved legislatures in Scotland, Wales and Northern Ireland all have four year fixed terms. Ireland's lower house has a five year maximum, as in the UK.

In continental Europe most countries have four year fixed terms, and only three (France, Italy, Luxembourg) have five years. The length of parliamentary terms in other Westminster parliaments and in Europe is shown in Figure 4.1.

Figure 4.1 Fixed terms in Europe, and other Westminster countries

with an average term length of 4.4 years since October 1974. The length of each parliament since 1945 is set out in Figure 4.2. Analysis of those parliaments which ran for a full term records seven parliaments which lasted around four years (1951, 1966, 1970, 1979, 1983, 1997, 2001); three which lasted four and a half years (1945, 1955, 1974); and four parliaments which ran for five (1959, 1987, 1992, 2005).

The balance between four and five years is more even than folk memory might suggest. But those parliaments which lasted for five years did so because the government had become unpopular and did not want to hold an earlier election. The Prime Minister stayed on hoping that his or her party's luck might change. It did not, save for the case of John Major, who scraped through with a narrow majority in 1992.

Figure 4.2 Length of post war parliaments at Westminster





Second chamber elections are likely to be for one third of the House each time. They could be held at the same time as elections to the Commons; or if they were to be staggered between general elections, they could be held at the same time as European Parliament elections (five year intervals, 15 year terms), or devolved assembly elections (four year intervals, 12 year terms).

If the government wished to avoid any clash between UK general and other elections, the simplest solution might be to move the date of general elections to October, and provide for the next UK general election to be held in October 2014. That would allow the Conservative-Lib Dem coalition a term of four and a half years, but provide for four year terms thereafter. To enable the electoral register to be as up to date as possible, the annual canvass forms would need to be sent out in the spring or the summer, instead of in the autumn as at present.

### **4.3 Time of year, and day of the week**

Although in the last 30 years general elections have been held in April, May or June, four post war elections have been held in October: in 1951, 1959, 1964 and 1974 (see Figure 4.2). Elections have traditionally been held on Thursdays, but in 2007 the Electoral Commission issued a consultation paper on moving general, and potentially local, elections to weekends. The findings of the public consultation show that 53 per cent of those who participated favoured retaining polling on a weekday.<sup>22</sup> This lack of consensus combined with thin evidence that weekend voting would increase voter participation led to the conclusion that ‘the government do not propose to move forward with weekend voting at this time.’<sup>23</sup> Further, the estimated costs of changing to voting across Saturday and Sunday was £105 million.<sup>24</sup>

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<sup>22</sup> <http://www.justice.gov.uk/consultations/docs/election-day-weekend-voting.pdf> p6

<sup>23</sup> Minister of State, Ministry of Justice (Michael Wills) Hansard: 22 March 2010  
<http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100322-wms0002.htm>

<sup>24</sup> <http://www.justice.gov.uk/consultations/docs/election-day-weekend-voting.pdf> p40

## **5 Comparative experience from other countries**

Fixed term parliaments are reasonably common in other countries, with one 2005 study categorising three quarters of the 41 democracies analysed as having fixed terms.<sup>25</sup> But within that universe there is a wide variation of practice, ranging from completely fixed terms with no provision for early dissolution, to more flexible systems which allow the legislature to be dissolved before the scheduled date. This range is illustrated in Figure 5.1 (at the end of this chapter).

Almost all parliaments with fixed terms have a safety valve of some kind to allow premature dissolution, though Norway is a notable exception. There is also variation in the term length, the timing of elections after a premature dissolution, and the mechanism for varying the election day.

### **5.1 Devolved institutions of the UK**

The devolved legislatures of Scotland, Wales and Northern Ireland all have fixed terms with provisions for extraordinary dissolution. Their elections are scheduled for the first Thursday in May every four years.<sup>26</sup> The date may be varied by up to one month either way by the Monarch on the proposal of the Speaker.

They can be dissolved prematurely if the legislature so resolves (with at least two-thirds of members voting in favour), or if the legislature fails to nominate a First Minister within 28 days of an election. There are thus two routes to dissolution. Either the parliament resolves to dissolve itself by a two thirds majority, or a dissolution may result if a government is defeated on a confidence motion (on a simple majority), if no First Minister is nominated to replace the defeated government.

A new parliament elected mid term serves only for the remainder of that term. But if an extraordinary election is held in the six months before the date of the next scheduled election, that election is vacated: so that the next term runs for slightly longer than four years.

### **5.2 Canada**

#### **5.2.1 At the federal level: the Canadian House of Commons**

Canada introduced fixed parliamentary terms at the federal level in 2006, under Bill C-16 (An Act to Amend the Canada Elections Act). This set elections for the third Monday in October of the fourth calendar year after the previous poll, starting with 19 October 2009.<sup>27</sup>



The Bill became law in May 2007, adding the following section to the Canada Elections Act 2000<sup>29</sup>:

Powers of Governor General preserved	56.1 (1) Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General's discretion.
Election dates	(2) Subject to subsection (1), each general election must be held on the third Monday of October in the fourth calendar year following polling day for the last general election, with the first general election after this section comes into force being held on Monday, October 19, 2009.

A governmental press release on the day the Bill was introduced stated that the fixed election dates were intended to improve fairness and improve transparency and

### 5.2.2 Canadian provincial legislatures

British Columbia was the first Canadian province to introduce fixed parliamentary terms, which it did in 2001. The Constitution (Fixed Election Dates) Amendment Act 2001 amended the Constitution Act 1996 to put in place four year parliamentary terms by setting the date for the next election and subsequent elections on the second Tuesday in May every fourth year after that.<sup>33</sup> The Act explicitly retains the prerogative powers of the Lieutenant Governor to prorogue or dissolve parliament at his or her discretion.<sup>34</sup> The Act was not intended to alter the practice concerning confidence. The election schedule has so far been followed, with elections taking place as planned in 2005 and 2009.

Ontario followed suit and passed the Election Statute Law Amendment Act 2005, amending the Election Act 1990 to require elections to be held on the first Thursday in October every four years, from 2007.<sup>35</sup> Again, the prerogative powers of the Lieutenant Governor, including to dissolve parliament as he or she sees fit, are retained.<sup>36</sup> The legislation allows for the day of the election to be moved to any of the seven following days on the recommendation of the Chief Electoral Officer to the Lieutenant Governor in the case of a clash with a religiously or culturally significant day.<sup>37</sup> This mechanism was used to move the election by six days in 2007 to avoid a Jewish holiday.

Most other Canadian provincial legislatures have followed suit and adopted similar mechanisms to implement fixed four year parliamentary terms, including Manitoba,<sup>38</sup> New Brunswick,<sup>39</sup> Newfoundland and Labrador,<sup>40</sup> the Northwest Territories,<sup>41</sup> Prince Edward Island<sup>42</sup> and Saskatchewan<sup>43</sup>. This means that a total of eight out of the thirteen provinces and territories have implemented fixed terms, with moves to introduce fixed terms for the remaining legislative assemblies.

### 5.3 Australia

Australia does not have fixed terms at the federal level, imposing only a three year maximum. However, most of the legislatures of the Australian states have fixed terms of four years with provision for extraordinary dissolutions. For example, election dates have been fixed in Victoria since 2003<sup>44</sup>. Mid term elections can still be called if the government should lose a confidence vote with no reversal within eight days,<sup>45</sup> or if the Premier should request a dissolution in case of a failed dispute resolution procedure following a deadlocked bill between the upper and lower houses.<sup>46</sup> The Australian Capital Territory, New South Wales, the Northern Territory, South Australia and

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<sup>33</sup> Constitution Act 1996 s.23(2)

<sup>34</sup> *Ibid.*, s.23(1)

<sup>35</sup> Election Act 1990, s.9(2)

<sup>36</sup> *Ibid.*, s9(1)

<sup>37</sup> *Ibid.*, ss.9.1(6)-(7)

<sup>38</sup> Elections Act, s.49.1(2)

<sup>39</sup> Legislative Assembly Act, s.2

<sup>40</sup> Hous Assembly Act 1990 , ss3-3.1

<sup>41</sup> Elections and Plebiscites Act 2006, s.39(5)

<sup>42</sup> Election Act 1988, s.4.1

<sup>43</sup> Legislative Assembly and Executive Council Act, s.8.1

<sup>44</sup> Constitution Act 1975, ss.38-38A, as amended by the Constitution (Parliamentary Reform) Act 2003, No.2/2003

<sup>45</sup> *Ibid.*, s.8A

<sup>46</sup> *Ibid.*, s.65C(2)

Tasmania also have flexible four year fixed terms along similar lines, with mid term dissolution only allowed to resolve a serious deadlock or in the case of a loss of confidence. Some states have restricted dissolution so that parliament may only be dissolved in the final year of the four year term.

In New South Wales fixed term parliaments have been called into question since the election of the current Labor government, which quickly became deeply unpopular. Pinning the problem on the fixed term is more psychological than rational. The NSW Labor government would be hanging on even with flexible terms, because if they called an early election they would lose. However, under flexible terms there was always the possibility that the election would be earlier. The perceived problem with a fixed term is that the election date is far away. So the angry public have started demanding more radical action to force an election. The Governor has received petitions asking her to dismiss the government. The Leader of the Opposition is demanding a right of recall. What is really being sought is not so much a right of individual recall, but a right for voters to petition for an early election.

#### **5.4 South Africa**

South Africa's lower house, the National Assembly, has semi-fixed parliamentary terms of five years.<sup>47</sup> The South African model for early dissolution provides a useful example of some imposed stability. Although it could be argued that it is over-flexible and prone to majority party manipulation, all parliaments since 1994 have lasted for five years. Section 50 of the Constitution of 1996 provides:

50. Dissolution of National Assembly before expiry of its term

- (1) The President must dissolve the National Assembly if –
  - (a) the Assembly has adopted a resolution to dissolve with a supporting vote of a majority of its members; and
  - (b) three years have passed since the Assembly was elected.
- (2) The Acting President must dissolve the National Assembly if –
  - (a) there is a vacancy in the office of President; and
  - (b) the Assembly fails to elect a new President within 30 days after the vacancy occurred.

#### **5.5 Europe**

Many parliaments in European countries have fixed terms, flexible to a greater or lesser

dissolved by relying on a declaration to amend the Constitution, which results in the dissolution of both chambers; the mechanism for institutional reform has been used instead of the mechanism to resolve political crises.

In Germany, confidence votes have been manipulated by the government to engineer an early dissolution, as happened in 1982 and 2005.<sup>48</sup> However, on both occasions all the main parties were in favour of an early election. In 2005 in particular, the Chancellor was faced with serious difficulties including intra-party splits and numerous election losses at the regional level.<sup>49</sup> The early dissolution can be justified by the government's need for support for its reform policies.

In France, the President has the power to dissolve parliament upon consultation with the Prime Minister and the Presidents of the two houses.<sup>50</sup> It was originally intended either as a way of resolving a serious crisis by testing the opinion of the people, or as a way of deciding a disagreement with the lower house, but dissolution has only been used twice for such reasons (1962 and 1968). On other occasions it has been used by the President to increase his support in parliament. In 1981 and 1988 dissolution was declared by the President at the beginning of his term so that he would have a majority in the lower house to support his policies, and in 1997 to bring forward an election to a time considered more advantageous. As a result, the French parliamentary terms appear to be only nominally fixed.

In Italy, there is theoretically a semi fixed term of five years, but in practice this seldom holds; the Italian legislature has been dissolved early eight times in the last 40 years. This is done by the President, upon consultation with the Speakers of both houses, but without formal involvement of the Prime Minister. The example of Italy shows how flexible and uncertain a supposedly fixed term can be.

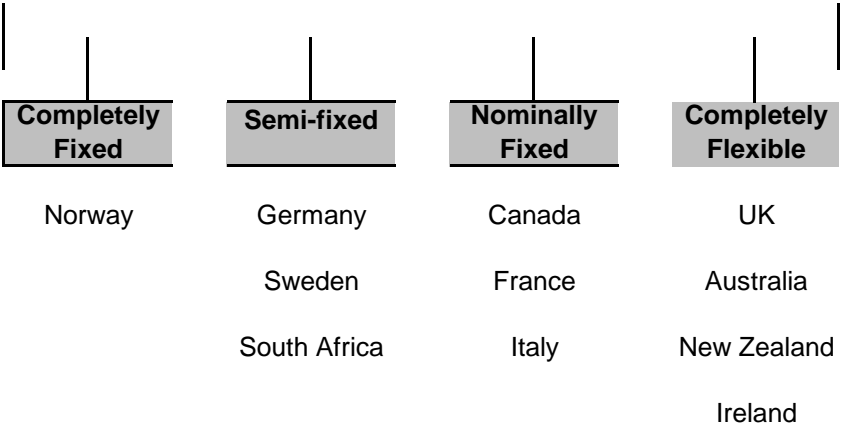
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<sup>48</sup> REM Irving and WE Paterson, 'The Machtwechsel of 1982-83: A Significant Landmark in the Political and Constitutional History of West Germany', *Parliam Aff* (1983) 36: 417-435

<sup>49</sup> Miskimmon, Paterson and Sloam, 'Germany's Gathering Crisis', (2005) Palgrave Macmillan

<sup>50</sup> Const-3.e 121.53 15.3J ET

Fig 5.1 Continuum of Fixed Term Experience



## 6 Recent reform proposals at Westminster

Fixed term parliaments have been the subject of reform proposals since at least 1991. Three private member's bills have been introduced, in 1994, 2001 and 2007; and Labour and the Liberal Democrats have supported fixed term parliaments. This chapter will discuss these and other proposals, as well as the plans set out by the coalition government in 2010.

### 6.1 Reform proposals in the 1990s

Fixed term parliaments have frequented opposition party discourse. It was a prominent pledge for Labour in 1992 in the wake of the uncertainty on the timing of that election, and fixed term parliaments also featured in the Liberal Democrat manifesto for 1992 and 1997.

In September 1991 the Institute for Public Policy Research issued *Fixed Term Parliaments*, recommending the adoption of four year parliaments. On 10 March 1992, Tony Banks MP presented a Bill to make statutory provision for fixed term parliaments. The following day, Lord Jenkins of Hillhead also proposed fixed terms. He said:

To give the pistol in a race to one of the competitors and encourage him to fire it whenever he thinks that the others are least ready – when they are tying up their shoelaces or something of that kind – is not in accordance with the best athletic practice.

...On the whole I believe that a fixed four year term would certainly be more rational, somewhat fairer and maybe militate against both the economic uncertainty and the awful cacophony which has been the too long-drawn-out overture to this election.<sup>51</sup>

In 1993 the Labour Party commissioned *The Report of the Working Party on Electoral Systems 1993* led by Professor Raymond Plant. Section 2 of the Report on voter participation made 37 recommendations to improve voter participation in elections, including the introduction of fixed four year parliamentary terms.<sup>52</sup> The relevant recommendation reads:

The current system, which allows the Prime Minister to call an election at the most advantageous time to the party in office, gives the government of the day too much power.<sup>53</sup>

Labour MP Jeff Rooker's *Parliamentary Elections (No. 2) Bill* received its first reading on the 20 May 1994. This sought to implement all 37 of the Plant Report's recommendations on voter participation of the year before.<sup>54</sup> Clauses 1 and 2 stipulated that:

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<sup>51</sup> Lord Jenkins, HL Deb 11 March 1992 vol.536 col.1333

<sup>52</sup> Recommendations 15 and 16

<sup>53</sup> *The Report of the Working Party on Electoral Systems 1993*, Professor Raymond Plant, Labour Party: 1993, Section II, 2 (i)

<sup>54</sup> 'The *Parliamentary Elections (No. 2) Bill* is designed exclusively to put into legislative form all the recommendations in Section 2 of the 1993 Plant report. ... The *Parliamentary Elections (No. 2) Bill*, therefore, does not cover any issue which is outside of those 37 specific issues.' Jeff Rooker, Introduction to *Notes on Clauses*, May 1994.

The Septennial Act 1715 would be repealed.

The Secretary of State would by regulations specify the regular weekend dates every fourth year upon which general elections would be held.

Parliament would automatically be dissolved 28 days before the election date.

Notwithstanding ordinary dissolutions, if the government were subject to a vote of no confidence in the House of Commons then Her Majesty should dissolve parliament by proclamation.

A parliament meeting following an extraordinary general election should be dissolved on the same date under such calculations as would the previous parliament.

The Labour government in 1998 introduced fixed terms for the Scottish Parliament,<sup>55</sup> the Northern Ireland Assembly<sup>56</sup> and the Welsh Assembly,<sup>57</sup> each of four years.

## **6.2 Reform proposals in the 2000s**

In the early 2000s, interest in fixed term parliaments continued, but in a low key way.

In its report \_\_\_\_\_, the Electoral Commission commented:

Because of the administrative benefits of fixed term Parliaments, and the anomalous position of Westminster elections in comparison with all other





## **7 Mid term dissolution**

### **7.1 Restrictions on mid term dissolution**

There must be a mechanism to deal with the situation where the government has lost the confidence of the House of Commons and no alternative government can be found. Having to engineer a declaration of no confidence in order to agree to a dissolution everyone wants would simply bring the system into disrepute. We are proposing that

These changes will make it impossible for any government to force a dissolution for their own purposes.<sup>65</sup>

## 7.2 Thresholds

Clause 2 of the government's Fixed Term Parliaments Bill envisages two routes to dissolution:

‘a motion that there should be an early parliamentary general election’; or

‘a motion that there should be no confidence in Her Majesty's Government’.

A motion for dissolution would require a two-thirds majority of all MPs (not just all MPs voting); while a no confidence motion could be passed by simple majority.

No confidence could still lead to dissolution, but only if an alternative government cannot be formed. The justification for a higher threshold for government-initiated dissolution is twofold. First, it is aimed mainly at majority governments. It should make it impossible for them to call an early election without significant cross-party support. Second, immediate dissolution is a more drastic change. A no confidence motion seeks a change of driver; a dissolution motion seeks a change of car.

But such a dual threshold is rare in other parliaments. Figure 7.1 sets out the threshold requirements for confidence motions elsewhere in Europe. In all cases the threshold for a no confidence motion is a simple or absolute majority (an absolute majority being of the total number of MPs, rather than of those voting). In those cases where dissolution can be triggered by a parliamentary vote, the threshold is the same.<sup>66</sup>

Figure 7.1

The precedent the government points to for a dual threshold is the devolution legislation of 1998, which also requires a two thirds parliamentary vote for dissolution. Those provisions so far remain untested, and it is not known how they would operate under fire. But it is instructive to read the parliamentary debates on the Scotland Bill, where an amendment was moved to replace the two thirds requirement with a simple majority. The Lords were reminded that high thresholds had been circumvented in other countries. In reply Lord Sewel recognised that risk, but nevertheless felt it was justifiable to raise the bar:

I accept that one cannot guarantee in all circumstances that the way in which something is intended to happen will in reality happen. We can try to make it that little bit more difficult. That is what these provisions seek to do.<sup>67</sup>

There are other possibilities which could be considered to restrict the use of dissolution motions:

A minimum number of MPs to be signatories of the motion. In the parliaments of Sweden, Spain and Italy such a motion must be signed by 10 per cent of the members.

A requirement that the motion be signed by the Prime Minister and Leader of the Opposition, or the leaders of the three largest parties, in order to ensure that the motion has cross-party support.

There are also other ways of restricting the use of no confidence motions:

Requiring an absolute, not a simple majority

motions in the House of Commons at Westminster have been equally varied, there has been little doubt when an issue has been one of confidence.

In particular, any issue which is made one of confidence by the government becomes a motion of confidence in the government. Motions of confidence in specific policies ('this House has no confidence in HM Government's management of the economy' 19 Nov 1973) are confidence motions. But in addition governments have treated as issues of confidence motions about:

but it has not yet been extended to mid term resignations or dissolutions.<sup>70</sup> It needs to be.

#### 7.4 Time limits and cooling off periods

A motion of confidence or dissolution should take precedence over other motions. But a period of reflection may be helpful to allow the motion to be properly considered, debated and voted upon. The German Basic Law states that 48 hours must elapse between a motion of confidence and the vote (Articles 67(2) and 68(2)). The Spanish Constitution of 1978 requires five days (Section 113(3)). The Australian state of Victoria requires three clear days' notice (Constitution Act 1975 s.8A(2)).

Erskine May states that

In allotting a day for this purpose the government is entitled to have regard to the exigencies of its own business, but a reasonably early day is invariably found ... the government has everything to gain by meeting such a direct challenge to its authority at the earliest possible moment.<sup>71</sup>

The latter argument may be unduly sanguine. In Canada in December 2008 when the government were facing a no confidence motion which they were widely expected to lose, the Prime Minister chose instead to invite the Governor General to prorogue Parliament (see section 8.3). If the UK wanted to guard against this we could consider time limits; and provide in the Cabinet Manual that parliament cannot be prorogued while a confidence motion is pending.

Time limits also apply after a confidence motion. The most important are the time limits on the period in which a new government can be formed, failing which parliament will be dissolved and fresh elections held. In Belgium a new Prime Minister must be nominated within three days of a successful no confidence motion, or parliament stands dissolved. In New South Wales eight days must pass before parliament may be dissolved (Constitution Act 1902, s 24B(2)(b)). In Germany the period is 21 days, and in Scotland 28 days. Many Westminster countries do not have automatic dissolution after a set period, including Australia, Canada, Ireland and New Zealand.

The government's bill proposes 14 days for Westminster, which seems a sufficient period in which the parties can try to form an alternative government, and test whether it has confidence. Given the two thirds threshold for a dissolution motion, it is important to have a trigger for automatic dissolution. Otherwise there is a risk of limbo, as there might be a simple majority to vote out the government, but not a sufficient majority to dissolve.

If a no confidence motion is unsuccessful, some systems also use time limits to restrict further confidence motions until the time has elapsed. So in Spain, the movers of an unsuccessful no confidence motion cannot move another until a new session of parliament.

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<sup>70</sup> Draft Chapter 6 on Elections and Government Formation, published by the Cabinet Office in February 2010, [http://m1.8\(n\)190.972.0\(a\)1.8\(a\)1.8\(r2\(n\)1.809\(e\)\)TJa\)-87.2\(E\)-7.6\(l\)5.1\(e\)1.8\(c\)-5.9\(ti\)1](http://m1.8(n)190.972.0(a)1.8(a)1.8(r2(n)1.809(e))TJa)-87.2(E)-7.6(l)5.1(e)1.8(c)-5.9(ti)1)

## **7.5 Time limits on dissolving near beginning or end of parliamentary term**

It is quite common to limit or prohibit dissolution towards the beg26 758.i8o.0(be)-2.p2

Harper's decision to call an early election following the rise in his party's poll ratings in fall 2008. He stood to gain a further four years in office, rather than the one year he still had to serve. But it may also serve as a disincentive to opposition parties tempted to force a mid term dissolution, if the only prize is the remainder of the term. This need not prevent opposition parties putting down confidence motions leading to a change of government; but it might give them greater pause before seeking a mid term dissolution.

## **7.8 Political incentives and disincentives**

This chapter began by explaining the need to balance government stability against democratic accountability. The rules for mid term dissolution can be seen as a set of

party which forces an unnecessary election risks being punished by the electorate, who also dislike frequent elections.

The political incentives can be seen at work in Scotland and in Canada, where the opposition parties have been harassing a minority government, but have not had the courage to combine to force an election for fear of the electoral consequences. In Scotland the opposition parties voted down the SNP budget in March 2009; but when Alex Salmond threatened to resign to force an early election, they backed off and voted the budget through. In Canada Stephen Harper's minority government would have welcomed an early election in 2007-08, but whenever they came close to a substantive confidence motion the opposition parties abstained. They did not want to be held responsible for forcing the third election in four years, nor to face the electorate when their poll ratings were low.

What Canada shows is that a minority government cannot force a mid term dissolution through losing a confidence motion if the opposition parties will not play along. The same is not necessarily true of a majority government. In Germany the Chancellor has twice engineered a vote of no confidence in order to force an early election. The first occasion was in 1982, when the SDP/FDP coalition split, and the FDP joined a new coalition led by the CDU leader Helmut Kohl.<sup>75</sup> To force an election in which he hoped to obtain a stronger majority, Kohl tabled a confidence motion in which the governing parties then abstained. In 2005 the Chancellor Gerhard Schröder followed a similar tactic, following his party's dramatic defeats at the regional level as well as intra-party splits. In both cases the early election was supported by all the main parties.<sup>76</sup>

Germany offers a reminder that no confidence motions can be manipulated to force an early dissolution. The experience in 1982 also shows that a party forcing an early election will not necessarily pay an electoral price, since Kohl increased his majority following the dissolution. On the other hand, the 2005 episode brought the opposition (Angela Merkel) into power. This was not surprising given that at the time early dissolution was contemplated, the CDU-CSU coalition was ahead in all polls.

It is difficult to devise a set of rules robust enough to withstand the wishes of a parliamentary majority. But that does not undermine the case for trying to construct a set of rules in the first place. Rules in politics are occasionally circumvented; but if they succeed in creating a new norm, obeyed by most of the parties most of the time, that can be a net gain.

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<sup>75</sup> REM Irving and WE Paterson, 'The Machtwechsel of 1982-



Fig 7.2 Pathology of mid term dissolutions

Reason for early dissolution	Cases	Total
To increase a government majority	UK 1900, 1911, 1924, 1951, 1966, Oct 1974. CANADA 1958, 1965, 2000, 2008. IRELAND Sept 1927, 1938, 1944, 1951, 1954, 1965, 1981, Nov 1982, 1989. FRANCE 1981, 1997. GERMANY 1972, 1983, 2005.	24
After a constitutional crisis / major constitutional change	UK 1910 CANADA 1949 IRELAND 1948, 1961, 1977 GERMANY 1990 SWEDEN 1921, 1970	8
After losing a vote of no confidence	UK 1979 CANADA 1926, 1963, 1974, 1980, 2006 FRANCE 1962	7
After major policy change	CANADA 1911, 1965, 1974, 2000, 2008	5
Resignation of a Prime Minister, new mandate sought	UK 1906, 1923, 1955 CANADA 1957, 1968 SWEDEN March 1920, October 1920	7
Collapse of a coalition / loss of supply	UK 1922 CANADA Feb 1982, 1987, 1992, 1994	5
Post-war	IRELAND 1923	1
After political crisis/ collapse of a government	UK Feb 1974 FRANCE 1968 SWEDEN 1914, 1958	4
After a new constitution	IRELAND 1937 FRANCE 1946, 1958	3
Government split	UK 1931	1
Dissolution before a no confidence motion	IRELAND 1957	1
To form a united government (with the presidential party)	FRANCE 1988	1

## **8 The Royal Prerogative**

### **8.1 Power of dissolution**

The bill removes altogether the prerogative power of dissolution. Parliament would automatically be dissolved every five years for ordinary general elections. For extraordinary elections, parliament can only be dissolved mid term by its own resolution under clause 2. Clause 3(2) provides that 'Parliament cannot otherwise be dissolved'. So there is no residual prerogative power to dissolve.

This should help to protect the Crown from controversy. As Robert Blackburn has argued, the role of the Monarch may be protected rather than eroded by fixed term parliaments:

discretionary power as a deep reserve power, to be deployed only in an extreme political or constitutional crisis.

It is tempting, but unwise. The difficulty is that once the prerogative power is retained, politicians may be tempted to use it. This is what happened in Canada in 2008, when the

avoid a confidence motion, the Cabinet Manual could perhaps specify the circumstances in which prorogation is used, and those in which it should not be used.

#### **8.4 Power of proclamation**

The Bill retains the system of issuing writs for the election, and a proclamation to summon the new parliament and appoint the date of its first meeting. Writs for the election are issued by the Lord Chancellor and the Secretary of State for Northern Ireland (cl 3(3)). The proclamation is issued by the Queen, and the appointed day for the first meeting of the new parliament is chosen on the advice of the Prime Minister. In 2010 the date for the first meeting of the new parliament was set for 12 days after the

## 9 Entrenchment and justiciability

### 9.1 Entrenchment

This chapter addresses two questions:

Would a future government and parliament be bound to observe the new law, or to retain it?

Would the courts enforce it?

The answer to the first question is almost certainly not. Under the UK's doctrine of parliamentary sovereignty, a government can always invoke the current sovereignty of the current Parliament to repeal the legislation of a previous Parliament. So it would be difficult for the new law to be legally entrenched. A later Act of Parliament could always provide that the next general election shall be held on a date, notwithstanding the provisions of the Fixed Term Parliaments Act 2011; or simply repeal the Fixed Term Parliaments Act altogether.

The question may be raised of whether fixed term parliaments should be more strongly entrenched than this. It is not easy to entrench legislation within the British system of parliamentary sovereignty, but there are three possible mechanisms:

Requiring the consent of both Houses to any measure amending the new law, by excepting amendments to the Fixed Term Parliament Acts from the terms of the Parliament Act 1911 (so that the Lords have a veto)

Requiring special voting majorities for any amendments to the Fixed Term Parliaments Act (as New Zealand requires for amendments to provisions of their Electoral Acts)

A referendum requirement for any amendments.

In the past entrenchment has been considered difficult if not impossible, but attitudes are changing. The Fixed Term Parliaments Bill itself contains a super majority requirement. The Conservatives are proposing a form of entrenchment for another constitutional change (the requirement that future EU Treaties be subject to a referendum). If entrenchment is desired, the first mechanism above is preferable for a strong and effective form of entrenchment: and an appropriate one, since the consent of the Lords is already required to extend the term of a parliament beyond five years. Special majorities are so far unknown in the UK. A referendum seems too high a threshold for what may sometimes be minor amendment; and it is impossible in advance to distinguish a minor from a major one.

Entrenchment may prove unnecessary. What is sought is to create a new norm. In other countries which have introduced fixed term parliaments, the norm has generally been observed. The one exception is Canada, where it was not a later government which breached the norm, but the very government which had introduced it. But in all the Canadian provinces and Australian states which have introduced fixed terms, the new law so far has been observed.

## 9.2 Justiciability

A related question is whether there could be recourse to the courts to enforce the requirements of a fixed term law. The probability is that they would consider the issue to be non-justiciable; an obligation to be enforced in the political but not the legal sphere.

The most likely context for a legal challenge would be an attempt by a government to seek an early dissolution, as happened in Canada in 2008, and in Germany in 1982 and 2005. In the former instance, the Canadian Federal Court of Appeal dismissed the challenge on the basis that section 56.1(1) of the Canada Elections Act 2000 specifically preserved the powers of the Governor General.<sup>81</sup> By convention, this extended to the power of the Prime Minister to advise the Governor General about the dissolution of parliament.

With regards to the 1982 early dissolution in Germany, the German Constitutional Court held that in the absence of unconstitutional actions, it would be politically inexpedient to go against the judgments of the President, Chancellor and leaders of the political parties.<sup>82</sup> The Court accepted that Kohl faced general difficulties due to which he could not rely on a consistent majority in parliament. The Court responded similarly to the 2005 episode; the Chancellor's assessment as to whether continuous governance could be assured was accepted.<sup>83</sup>

The international experience demonstrates that courts are unwilling to engage with such politically sensitive decisions, and a similar response is to be expected from the British courts.

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<sup>81</sup> *Duff Conacher v PM of Canada* 2010 FCA 131

<sup>82</sup> BVerfGE 62, 1

<sup>83</sup> BVerfG, 2 BvE 4/05 of Aug. 25, 2005, available at [http://www.bverfg.de/entscheidungen/es20050825\\_2bve000405.html](http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html).

## **10 Role of the House of Lords**

### **10.1 Does the Bill come under the exception to the Parliament Acts?**

The Parliament Act 1911 states that the Parliament Acts procedure for passing legislation without the consent of the House of Lords cannot be used in the case of bills that extend the life of a parliament. It could be argued that the Fixed Term Parliaments Bill contains “any provision to extend the maximum duration of Parliament beyond five years”. It enables the Prime Minister to delay a general election by up to two months, so enabling a parliament to last for five years and two months.

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Expenses Order 2000, in order to require the provision of freepost delivery in the London mayoral elections.

If there was concern about the risk of abuse of the provisions for mid term dissolution, the Lords could also be given an absolute veto before an early general election takes place under clause 2 of the bill. There is a parallel with the Lords' existing power under the Parliament Act 1911 to veto any extension of the life of a parliament beyond five years. In this case they would also have the power to veto any attempt to reduce the term of a parliament to less than five years. But the two cases are not equivalent. In the former case the Lords has power to prevent a government postponing an election, possibly for ever; in the latter case the proposal is to bring forward the date of an election, which is much less anti-democratic. The Lords might feel uncomfortable with such a power, arguing that it was essentially for the House of Commons to decide whether it should face early dissolution.

A third role for the Lords could be to give them a special protective role in relation to the Fixed Term Parliament Act as a whole. This could be done by excepting amendments to the Fixed Term Parliament Act from the terms of the Parliament Act 1911, so that the Lords have an absolute veto in relation to any amendments to the Act. It would be a means of entrenching the Act against subsequent amendment, which is discussed in chapter 9.1.



## **Bibliography**

*To make this Bibliography more useful, we have included works not cited in our report. If you know of other literature on Fixed Term Parliaments, please inform us so that it can be included.*

Blackburn, R. (May 1998). Memorandum on Electoral Law and Administration  
*Select Committee on Home Affairs.*

Blackburn, R. (1995). *The Electoral System in Britain*

Blackburn, R. (1991). *The Meeting of Parliament*

Blackburn, R and Kennon, A. (2003). *Griffith and Ryle on Parliament: Functions, Practice and Procedures*, Second Edition, Sweet & Maxwell

Cabinet Office, (February 2010). *Draft Cabinet Manual*, chap 6. *Elections and Government Formation*

Gay, O, Miller, V, Lunn, J and Thorp, A. (2 June 2010). *Library Standard Note, Fixed Term Parliaments – Early Dissolution Arrangements*

Government of Canada Privy Council Office press notice, (30 May 2006). ‘*Canada’s New Government Proposes Fixed Election Dates*’

[http://news.gc.ca/web/article-](http://news.gc.ca/web/article-eng.do?crtr.sj1D=&mthd=advSrch&crtr.mnthndV1=6&nid=216599&crtr.dpt1D=&crtr.tp1D=&crtr.lc1D=&crtr.yrStrtV1=2006&crtr.kw=&crtr.dyStrtV1=29&crtr.aud1D=&crtr.mn)

[eng.do?crtr.sj1D=&mthd=advSrch&crtr.mnthndV1=6&nid=216599&crtr.dpt1D=&crtr.tp1D=&crtr.lc1D=&crtr.yrStrtV1=2006&crtr.kw=&crtr.dyStrtV1=29&crtr.aud1D=&crtr.mn](http://news.gc.ca/web/article-eng.do?crtr.sj1D=&mthd=advSrch&crtr.mnthndV1=6&nid=216599&crtr.dpt1D=&crtr.tp1D=&crtr.lc1D=&crtr.yrStrtV1=2006&crtr.kw=&crtr.dyStrtV1=29&crtr.aud1D=&crtr.mn)

Marshall, G. (1984). *Constitutional Conventions: The Rules and Forms of Political Accountability*, Oxford University Press

Marleau, R and Montpetit, C eds. (2000). *House of Commons: Procedure and Practice*, Ottawa, House of Commons

Milner, H. (December 2005). '*Fixing Canada's Unfixed Election Dates: A "Political Season" to Reduce the Democratic Deficit*', Institute for Research on Public Policy: Policy Matters  
<http://www.irpp.org/pm/archive/pmvol6no6.pdf>