

DISSOLUTION AND CALLING OF PARLIAMENT BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Dissolution and Calling of Parliament Bill [HL] as introduced in the House of Lords on 14 September 2021 (HL Bill 51).

- These Explanatory Notes 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.
- 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.

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Overview of the Bill

- 1 The Bill repeals the Fixed-term Parliaments Act 2011 (the “2011 Act”). In doing so, the Bill makes express provision to make the prerogative powers to dissolve Parliament and to call a new Parliament exercisable again, as if the 2011 Act had never been enacted. As a result, a future Parliament will be dissolved by the Sovereign, on the request of the Prime Minister, as it was prior to the enactment of the 2011 Act.
- 2 Following the publication of a draft Bill on 1 December 2020¹, pre-legislative scrutiny has taken place and the Joint Committee on the Fixed-term Parliaments Act reported on 24 March 2021.²

Policy background

- 3 In its 2019 General Election manifesto, the Government committed to repealing the 2011 Act. The Bill gives effect to that commitment. By making express provision to make the prerogative power to dissolve Parliament exercisable again, as if the 2011 Act had never been enacted, Parliament will once more be dissolved by the Sovereign, on the request of the Prime Minister and Governments will be able to call a general election at the time of their choosing within the life of a Parliament.
- 4 It is settled law that the dissolution of Parliament (and any decisions relating to the dissolution of Parliament) is not reviewable by the Courts. 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.
- 5 The Bill also provides that Parliament shall sit for a maximum term of five years.

Legal background

- 6 Prior to the 2011 Act, either Parliaments were dissolved 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, they were dissolved by the Sovereign under the Royal prerogative. The exercise of the prerogative was, in practice, subject to constitutional conventions. For example, the Sovereign dissolved Parliament only when requested to do so by the Prime Minister, and in certain exceptional circumstances, the Sovereign could refuse to grant a dissolution.
- 7 A new Parliament was summoned by Proclamation issued by the Sovereign on the advice of the Privy Council. That Proclamation triggered 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 full 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.
- 8 The long-standing position prior to the 2011 Act was that the exercise of the prerogative powers to dissolve one Parliament and call another was not reviewable by the courts. In

¹ Draft Fixed-term Parliaments Act 2011 (Repeal) Bill, 1 December 2020.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940027/Draft-Fixed-term-Parliaments-Act-Repeal-Bill.pdf

² [Joint Committee on the Fixed-Term Parliaments Act Report](#), 24 March 2021.

Council of Civil Service Unions v Minister of State for Civil Service [1985] AC 374 (“the CCSU case”), Lord Roskill included the dissolution of Parliament in a list of examples of prerogative powers that in his view were not susceptible to judicial review because their nature and subject matter meant they were not amenable to the judicial process. He considered that the courts were not the place to determine whether Parliament should be dissolved on one date rather than another.³ Following the CCSU case, in *R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Everett* [1989] 1 QB 811, Lord Justice Taylor noted dissolving Parliament (among other examples) was not justiciable as it was “a matter of high policy” “at the top of the scale of executive functions” and therefore was not justiciable.⁴

- 9 Some prerogative powers have been held by the courts to be reviewable, both in the CCSU case and in subsequent cases.⁵ It is generally accepted and understood that, before the commencement of the 2011 Act, the dissolution of one Parliament and calling of another were not susceptible to judicial review: see for example the Independent Review of Administrative Law, March 2021.⁶
- 10 The 2011 Act 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 2011 Act also makes provision to enable the holding of early parliamentary general elections. Under the 2011 Act the Sovereign did not retain any residual power to dissolve Parliament.
- 11 In 2017 an early parliamentary general election was called under section 2(1) of the 2011 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 2011 Act could not be secured in the House of Commons.
- 12 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.

³ Paragraph 418.

⁴ Lord Roskill, paragraph 418; see also *R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Everett* [1989] 1 QB 811, Lord Justice Taylor, paragraph 820. See also *R v Secretary of State for the Home Department, ex parte Bentley* [1994] QB 349, page 363; *R (Abbasi) v Secretary of State for Foreign & Commonwealth Affairs & Secretary of State for the Home Department* [2002] EWCA Civ 1598, paragraphs 83 to 85 and *R(Bancoult) v Secretary of State for Foreign & Commonwealth Affairs (No 2)* [2008] QB 365.

⁵ For example, *R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Everett* (power to grant passports) and *R v Secretary of State for the Home Department, ex parte Bentley* (power to grant pardons). See also *Miller v The Prime Minister, Cherry and Others v The Advocate General for Scotland* [2019] UKSC 41 (regarding the power to prorogue Parliament).

⁶ The Independent Review of Administrative Law, published in March 2021, paragraph 2.84 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970797/IRAL-report.pdf. See also R. Blackburn “The Prerogative Power of the Dissolution of Parliament: Law, Practice and Reform” (P.L. 2009, Oct, 766-789, 768). On the summoning of Parliament, see Bradley, Ewing and Knight *Constitutional & Administrative Law* (Pearson, 17th Edition), page 265.

Territorial extent and application

- 13 *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. The Schedule to the Bill makes a number of minor and consequential amendments to other legislation. While most of that legislation extends (and applies) to the whole of the UK, some has more limited extent (or application). *Clause 6(2)* therefore provides that amendments, repeals and revocations made by the Schedule have the same extent as the provision amended, repealed or revoked.
- 14 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru 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, Senedd Cymru or the Northern Ireland Assembly. There are a few provisions in the Schedule which amend legislation relating to elections and referendums in Scotland and Wales. These amendments are purely consequential upon the provision made by the clauses. Therefore, no Legislative Consent Motion is being sought in relation to any provision of the Bill.
- 15 If amendments are made to the Bill during its passage through Parliament which relate to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 16 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 Bill

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

17 *Clause 1* repeals the 2011 Act.

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

- 18 *Subsection (1)* makes express provision to make the prerogative powers relating to the dissolution of Parliament and the calling of a new Parliament exercisable again, as if the 2011 Act had never been enacted. This means that, as was the case prior to the 2011 Act, Parliament will be dissolved by the Sovereign, exercising the revived prerogative power, on the request of the Prime Minister.
- 19 *Subsection (2)* confirms that powers relating to the calling of a new Parliament include powers relating to the issue of writs of summons to the House of Lords and writs for parliamentary elections.
- 20 *Clause 2* will allow for a return to the practice described in paragraph 7 whereby the Proclamation summoning the new Parliament also dissolves the previous Parliament, unless the Parliament has reached its full term (in which case Parliament will dissolve automatically under clause 4).

Clause 3: Non-justiciability of revived prerogative powers of law

- 21 *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 and cannot be reviewed by a court or tribunal. This is to codify the long standing and generally accepted position that existed prior to the 2011 Act (referred to in paragraphs 8 and 9 above).⁷ This provision is included for the avoidance of any doubt that may arise and to preserve the long standing and generally accepted position.
- 22 *Clause 3* covers any decisions (or purported decisions) relating to the powers to dissolve one Parliament and call another. This is to ensure that any preliminary steps leading to the exercise of these powers – including any request to the Sovereign to dissolve Parliament and any related advice – are non-justiciable and cannot be reviewed by a court or tribunal.
- 23 *Clause 3* further provides that a court or tribunal 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 the dissolution of one Parliament and the calling of another.

Clause 4: Automatic dissolution of Parliament after five years

- 24 *Clause 4* provides that Parliament will automatically dissolve five years after it has first met. By making express provision for a maximum parliamentary term of five years, this is broadly a return to the position prior to the 2011 Act under the Septennial Act 1715 (as amended by the Parliament Act 1911). However, for the purposes of simplicity the start of the five-year term will now be the date on which Parliament actually first meets rather than the date on which the Parliament was summoned to meet, as it was under the 1715 Act. In practice those

⁷ See the Independent Review of Administrative Law, paragraph 2.84.

dates were the same, except in 1919 and again in 1924, when the date of Parliament's first meeting was postponed by a few weeks.

Clause 5: Minor and consequential amendments and savings

- 25 *Subsection (1)* introduces the Schedule to the Bill, which contains minor and consequential amendments.
- 26 *Subsection (2)* saves the amendments and repeals of other Acts of Parliament which were made by the Schedule to the 2011 Act and need to remain on the statute book.

Clause 6: Extent, commencement and short title

- 27 *Subsection (1)* provides that the Bill extends to England and Wales, Scotland and Northern Ireland.
- 28 *Subsection (3)* provides that the Bill comes into force on Royal Assent.
- 29 *Subsection (4)* establishes the short title as the Dissolution and Calling of Parliament Act 2021.

Schedule: Minor and consequential amendments

- 30 The Schedule contains minor and consequential amendments to primary and secondary legislation. These are primarily to reverse amendments made by the 2011 Act, to remove references to the 2011 Act and to ensure that after the repeal of the 2011 Act the relevant legislation still works (for example to amend provisions passed after the 2011 Act which were drafted on the basis of a fixed election cycle). The key amendments are:
 - Rule 1 of Schedule 1 to the Representation of the People Act 1983 (which sets out the election timetable) is amended to provide that the trigger for the election process in the case of a parliamentary general election is the dissolution of Parliament (whether by exercise of the prerogative or by virtue of clause 4) (*paragraph 8(2)(a)* of the Schedule). Provision is also made, in order to give additional certainty in relation to election process, that the election writ is deemed to have been received the day after dissolution of Parliament (or in the case of a by-election, the day after the date of the warrant for the writ) (*paragraph 8(2)(b) and (c)(ii)*). Equivalent changes are made to other provisions of the 1983 Act that depend on the date of the receipt of the writ (sections 28 and 95) (*paragraphs 5 and 7* of the Schedule).
 - Section 20 of the Representation of the People Act 1985 is amended. Currently that section provides that in the event of the demise of the Crown during an election period (or up to 7 days beforehand), the polling day and the date set for the first meeting of Parliament are automatically postponed by 14 days. The amendments mean that the polling day may, by Royal Proclamation on the advice of the Privy Council, be moved by up to 7 days either side of this default 14 day postponement. The date of the first meeting of the new Parliament may also be moved by Royal Proclamation on the advice of the Privy Council (*paragraph 9* of the Schedule).
 - Section 95A of the Political Parties, Elections and Referendums Act 2000 is amended to implement a maximum 365 day reporting period for third party donations where third party donations are reported quarterly, beginning four years from the first sitting of the current Parliament (*paragraph 15* of the Schedule). This period would end on dissolution, whether by exercise of the prerogative or automatic expiry at the end of a five year term, as third-parties would begin weekly donations reporting from that point.

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- The Recall of MPs Act 2015 is amended to ensure that there continues to be provision to prevent or terminate recall petitions close to a general election to avoid redundant by-elections. The amendments mean there is no requirement to trigger a recall petition if the last possible polling day for a general election (based on Parliament running its full term) is less than six months away (*paragraph 25* of the Schedule) and a recall petition is to be terminated when Parliament is dissolved (*paragraph 26* of the Schedule). 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 successfully leads to a by-election.

Commencement

31 The Bill will commence on Royal Assent.

Financial implications of the Bill

32 The Bill in itself will not trigger any financial expenditure.

Compatibility with the European Convention on Human Rights

33 The Government considers that the Bill is compatible with the European Convention on Human Rights (“ECHR”). Accordingly, a statement has been made under section 19(1)(a) of the Human Rights Act 1998 to this effect on the introduction of this Bill to both the Commons and the Lords.

34 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 in this area (see the Council of Europe’s Guide on Article 3, Protocol 1).⁸

35 It is considered that the requirement to have elections at reasonable intervals will be met by the return to a flexible prerogative system. Any election called before the automatic expiry of Parliament will allow for the expression of the opinion of the electorate which is the fundamental aim of Article 3 Protocol 1. The longstop of a five-year parliamentary term in clause 4 of the Bill will prevent there being too long an interval between elections. This was the position prior to the 2011 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).

36 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 rule 1 of Schedule 1 to the Representation of the People Act 1983). The amended timetable will require 25 working days between the dissolution of Parliament and polling day. The time for the organisation of the election and the notice given to electors will therefore be the same as required under the 2011 Act, as amended by the Electoral Registration and Administration Act 2013 (which increased the length of the election timetable from 17 working days).

⁸ Guide on Article 3 Protocol 1 to the European Convention on Human Rights, updated on 31 December 2020
https://www.echr.coe.int/Documents/Guide_Art_3_Protocol_1_ENG.pdf

Related documents

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

- The Fixed-term Parliaments Act 2011, which can be accessed at: <https://www.legislation.gov.uk/ukpga/2011/14/contents>.
- Independent Review of Administrative Law, published in March 2021, which can be accessed at: <https://www.gov.uk/government/groups/independent-review-of-administrative-law>.
- Joint Committee on the Fixed-Term Parliaments Act's Report, published in March 2021, which can be accessed at: <https://committees.parliament.uk/committee/491/joint-committee-on-the-fixedterm-parliaments-act/>. The Joint Committee carried out a review of the operation of the 2011 Act, and it reported on a draft version of the Dissolution and Calling of Parliament Bill.

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	Yes	No	Yes	No
Clause 2	Yes	Yes	No	Yes	No	Yes	No
Clause 3	Yes	Yes	No	Yes	No	Yes	No
Clause 4	Yes	Yes	No	Yes	No	Yes	No
Clause 5	Yes	Yes	No	Yes	No	Yes	No
Clause 6	Yes	Yes	No	Yes	No	Yes	No
Schedule	In part	In part	No	In part	No	In part	No

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