

# **Fixed Term Parliaments**

**Professor Robert Hazell**  
**The Constitution Unit, University College London**

**August 2010**



ISBN: 978-1-903903-59-9  
Published by The Constitution Unit  
Department of Political Science  
UCL (University College London)  
29-30 Tavistock Square  
London WC1H 9QU  
Tel: 020 7679 4977 Fax: 020 7679 4978  
Email: [constitution@ucl.ac.uk](mailto:constitution@ucl.ac.uk)  
Web: [www.ucl.ac.uk/constitution-unit/](http://www.ucl.ac.uk/constitution-unit/)  
© The Constitution Unit, UCL 2010

This report is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, hired out or otherwise circulated without the publisher's prior consent in any form of binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

First published August 2010

## 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 Deputy Prime Minister in a statement to the House of Commons on 5 July. On 22 July the government introduced its Fixed Term Parliaments Bill, just before the summer recess, and indicated that Second Reading should take place in mid September.

The rapid pace has allowed almost no time for public consultation or debate. There has been no Green or White Paper. The bill has not been published in draft, with time allowed for pre-legislative scrutiny. The new Political and Constitutional Reform Committee in the Commons will hold some quick evidence sessions in September; and the Constitution Committee in the Lords is to conduct an inquiry into fixed term parliaments in the autumn. This briefing is being submitted as evidence to both Select Committees. It is also being published to facilitate a wider debate, and to put into the public domain evidence about the experience of fixed term parliaments in other countries.

The Unit's work on this subject started in 2006, when one of our summer interns, Claude Willan, did a lot of research and left us a draft briefing. This was revised and updated by two more interns, Ceri Lloyd-Hughes and Ruchi Parekh, with further help from Jessica Carter. I am grateful to all of them for their excellent research and support for this project. Without our interns we would not be able to produce nearly as many reports, nor such high quality work as we manage to do.

Robert Hazell  
August 2010.

## **Table of Contents**

<b>Summary of Key Points.....</b>	<b>5</b>
<b>1 The current system in the UK.....</b>	<b>6</b>
<b>2 The coalition government's proposals.....</b>	<b>8</b>
<b>3 Arguments for and against fixed terms.....</b>	<b>10</b>
<b>4 The length of the fixed term.....</b>	<b>12</b>
<b>5 Comparative experience from other countries.....</b>	<b>16</b>
<b>6 Recent reform proposals at Westminster.....</b>	<b>22</b>
<b>7 Mid term dissolution.....</b>	<b>25</b>
<b>8 The Royal Prerogative.....</b>	<b>34</b>
<b>9 Entrenchment and justiciability.....</b>	<b>37</b>
<b>10 Role of the House of Lords.....</b>	<b>39</b>
<b>Bibliography.....</b>	<b>41</b>

## 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.

### 1.2.3 The Royal Prerogative

Dissolution of parliament is the Crown's prerogative. Theoretically, the Monarch can exercise discretion over whether to grant a request for dissolution by the Prime Minister. The Lascelles principle provided that the Crown may justifiably refuse a request for dissolution where:

(1) the existing Parliament was still vital, viable, and capable of doing its job; (2) a General Election would be detrimental to the national economy; [and] (3) he could rely on finding another Prime Minister who could carry on his Government, for a reasonable period, with a working majority in the House of Commons.<sup>2</sup>

A modern formulation of the circumstances in which the Monarch might refuse a dissolution is in the draft Cabinet Manual: see section 1.3.1 below.

### 1.2.4 Announcing the dissolution

Since 1945, the Prime Minister has made the announcement of dissolution to the press rather than to parliament. Parliament does not need to be sitting. The interval between the announcement and the dissolution itself has become shorter. From 1945 to 1970, there was an average interval of 16 days.<sup>3</sup> But in February 1974 Harold Wilson gave only

---

<sup>1</sup> Representation of the People Act 1983, Schedule 1, §2(1)(a)

<sup>2</sup> 'Dissolution of Parliament: Factors in Crown's Choice', *The Times*, 2 May 1950, p.5

<sup>3</sup> For a table of dates relating to general elections since 1918, see: House of Commons Library Research Paper 09/44, *Election Timetables*, 13 May 2009

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.

---

<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 proposal

'The date of the next general election will be 7 May 2015. This is a hugely significant constitutional innovation. It is simply not right that general elections can be called according to a Prime Minister's whims, so this Prime Minister will be the first Prime Minister to give up that right.' Nick Clegg MP in the House of Commons, 5 July 2010<sup>9</sup>

The 20 May 2010 Programme for Government set out the government's initial commitment on fixed term parliaments:

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.<sup>10</sup>

On 25 May 2010, the first adjournment debate of the new Parliament considered dissolution of parliament and fixed terms. There was considerable uncertainty about the proposals, as well as some resistance from backbenchers and opposition MPs. Much criticism focused on the 55 per cent threshold.

Much of the same ground was covered in the House of Commons debate on the Address on 7 June 2010. Calls for active discussion and pre-legislative scrutiny of any proposals for fixed terms continued, as did confusion and distrust over the difference between a no confidence motion and a dissolution motion.<sup>11</sup> Similar concerns were raised in the House of Lords.<sup>12</sup>

Following criticism of the measures as originally proposed, Nick Clegg announced on 5 July that the coalition government had revised and clarified their proposals:

- A majority of two thirds would be needed to dissolve parliament, as opposed to the 55% first suggested
- Votes of no confidence would still require only a simple majority.<sup>13</sup>

On 22 July 2010 the government published its Fixed Term Parliaments Bill, with the following provisions:

- A fixed term of five years, with the next election scheduled for 7 May 2015
- The Prime Minister can move the election date forward or back by up to two months, by Order subject to affirmative resolution

---

<sup>9</sup> HC Deb 5 Jul 2010 col.23

<sup>10</sup> The Coalition: Programme for Government, p.26, available at <http://programmeforgovernment.hmg.gov.uk/files/2010/05/coalition-programme.pdf>

<sup>11</sup> E.g. Jack Straw MP, HC Deb 7 Jun 2010 col.25

<sup>12</sup> HL Deb 27 May 2010 cols.136-244

<sup>13</sup> HC Deb 5 Jul 2010 col.23. For the full quote from Nick Clegg see chapter 6.1



- 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**

The Fixed Term Parliaments Bill was prepared on an extraordinarily rushed timetable. It was introduced with no prior consultation, no Green or White Paper. Nor has time been allowed for pre-legislative scrutiny of a draft bill. The new government felt that fixed term legislation was essential to ensure the stability of the coalition. But the coalition will survive if it is effective; not because it has legislated that the Parliament must last for five years.

A rapid timetable was necessary for the legislation to reduce the size of the House of Commons, because of the need to start the wholesale boundary reviews which are required. But the Fixed Term Parliaments Bill does not need to be rushed. The Labour party also had a commitment to introduce fixed term parliaments. The legislation could still be introduced with cross-party support, if the government is willing to take it slowly. That is what the government is seeking to do with reform of the House of Lords. It should adopt the same approach with this bill.

---

<sup>14</sup> Nick Clegg MP, HC Deb 5 Jul 2010 col.29; David Howarth MP, HC Deb 25 May 2010 col.146-7

<sup>15</sup> Agreement for Stability and Reform 21 May 2010, Introduction; <http://www.cabinetoffice.gov.uk/media/409174/stabilityreformmay2010.pdf>. Confirmed by David Heath MP, HC Deb 25 May 2010 col.147

### **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 famously compared to an athlete arriving at the track already in running shoes and being allowed to fire the starting pistol.<sup>16</sup>

Professor Blackburn describes this unfair advantage:

...[A] Prime Minister sets an election date at the time when he thinks he is most likely to win it. Conversely, he will avoid such times as he is likely to lose it. The anachronistic state of the law on electoral timing adversely affects the fairness of the election process as a whole. It gives the party in government a tremendous tactical advantage over the opposition parties, and of all the possible flaws to be found in our electoral law and administration, this perhaps above all other matters does most harm to the integrity of the electioneering contest.<sup>17</sup>

##### **3.1.2 Reduction of Prime Ministerial power**

The power to determine the date of the election is a source of additional power for the Prime Minister over his colleagues. It enables him to bring into line his ministers and backbenchers. If they threaten to rebel he can in turn threaten them with an early election. John Major as Prime Minister was able to threaten the Maastricht rebels with an early election if they did not fall into line. With fixed term parliaments a Prime Minister could no longer threaten a snap election in this way.

##### **3.1.3 Better electoral administration**

The Electoral Commission has long had an interest in fixed term parliaments, which would enable electoral administrators to be better prepared because the election date would be known in advance. It has also argued for a longer general election timetable, to bring it into line with the 25 day local election timetable. There are three main problems: organising simultaneous elections on different timetables; the heavy workload associated with postal and proxy votes; and problems for voters in the short deadline for registering to vote, and organising a postal vote.<sup>18</sup>

The Electoral Commission reported on the 2010 general election:

Returning Officers have – as in previous elections – expressed concerns about the statutory timetable for UK general elections, and in particular the challenges of key deadlines within the timetable...<sup>19</sup>

---

<sup>16</sup> Lord Holme, HL Deb 22 May 1991 col.245. See also Lord Jenkins quoted in section 5.1.

<sup>17</sup> Robert Blackburn, Memorandum on Electoral Law and Administration, Appendices to Minutes of Evidence, Select Committee on Home Affairs, May 1998

<sup>18</sup> Electoral Commission, *Election Timetables in the UK* June 2003 p 3. Electoral Commission, *Securing the Vote*, 2005, p 53.

<sup>19</sup> Electoral Commission. *Report on the administration of the 2010 general election*. July 2010

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 parliaments create an expectation that the parliament will run for the whole term, which could reduce short termism. This is particularly important when there is a minority or coalition government, or when the government's majority is narrow. Fixed terms should give the government reasonable time to develop and implement their legislative agenda or programme.

There should be no need for a wash up, because with good planning all bills should have been passed. Ill timed measures could be avoided, such as outlining a budget just before an election, as happened in 1992. The increased certainty will enable greater confidence in the government's ability to tackle economic issues on a medium to long term basis.

#### **3.1.5 Protection of the Crown**

By minimising or regulating the discretionary use of prerogative powers, constitutional crises as have occurred in some Commonwealth countries could be avoided. The King-Byng affair in Canada in 1926 and the Australian constitutional crisis of 1975 demonstrate the difficulties for the Crown when faced with requests for early dissolution.

### **3.2 Arguments against fixed terms**

#### **3.2.1 Loss of flexibility and reduced accountability**

Fixing terms could prevent a general election from taking place when it may otherwise be seen as appropriate. For example, Anthony Eden's decision to call a premature election in April 1955 can be justified on a mandate basis: he had only taken over as PM nine days earlier after the resignation of Winston Churchill. Fixed terms will remove or at least limit the government's capacity for testing electoral opinion on a major public issue where it might be in the country's interest to do so.

There is a risk that rigidity could lead to 'lame duck' governments, lacking the full confidence of the House of Commons but not capable of being brought down. This concern has been strongly expressed in New South Wales, where a deeply unpopular government cannot be removed (see section 5.3).

#### **3.2.2 Ineffective**

Experience of fixed term parliaments in other jurisdictions show that governments have been able to circumvent the fixed term requirement and call elections according to their convenience. The 2008 election in Canada is a recent example, when the government ignored its fixed term legislation, passed only the previous year (see section 5.2.1). In Germany, Chancellors Helmut Kohl in 1982 and Gerhard Schröder in 2005 engineered to lose a vote of confidence in order to dissolve parliament mid term. These examples suggest that a government desperate to call an election will find a way, regardless of the safeguards in place.

## 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

Country	Length of Fixed term	Maximum Term
Austria	4	
Belgium	4	
Denmark	4	
Finland	4	
France	5	
Germany	4	
Greece	4	
Iceland	4	
Ireland		5
Italy	5	
Luxembourg	5	
Netherlands	4	
Norway	4	
Portugal	4	
Spain	4	
Sweden	4	
Switzerland	4	
Australia		3
Canada	4	
India		5
Ireland		5
New Zealand		3
South Africa	5	
Northern Ireland	4	
Scotland	4	
Wales	4	

Five years is also long by comparison with Westminster's recent experience. The average term since 1945 has been 3.7 years, although discounting the three occasions on which parliaments lasted less than two years, this rises to 4.3 years. This has remained stable,

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**

Year	Month	Length (years.months)
1945	July	
1950	February	4.7
1951	October	1.8
1955	May	3.7
1959	October	4.4
1964	October	5.0
1966	March	1.6
1970	June	4.3
1974	February	3.8
1974	October	0.7
1979	May	4.6
1983	June	4.1
1987	June	4.0
1992	April	4.9
1997	May	5.0
2001	June	4.1
2005	May	3.11
2010	May	5.0

Politicians and academics who have addressed the issue support parliaments running for four years rather than five. During the debates on the Parliament Act 1911, which reduced the maximum term from seven to five years, Prime Minister Asquith said:

In the first place we propose to shorten the legal duration of Parliament from seven years to five years, which will probably amount in practice to an actual legislative working term of four years. That will secure that your House of Commons for the time being, is always either fresh from the polls which gave it authority, or – and this is an equally effective check upon acting in defiance of the popular will – it is looking forward to the polls at which it will have to render an account of its stewardship.<sup>20</sup>

Professor Blackburn has also argued for a four year term:

---

<sup>20</sup> HC Deb 21 February 1911 c1749

In the UK, there can be little doubt that the period between general elections should be four years. The proposal for fixed term Parliament as a whole should fit as closely as possible into existing constitutional expectations, and the idea that four years is about the right length of time between elections is very prevalent. It was the period expressly approved of as being normal in practice, when the Parliament Act set the period of five years as a maximum. In an ideal democracy it may be that there should be elections as frequently as possible – even annually as supported by the Chartists in the eighteenth century – but a government must be allowed a sufficient period of time in which to put its programme of public policies into effect before submitting its record of achievement, or otherwise, to the voters. Three full legislative sessions, and certainly four, is sufficient for this purpose.<sup>21</sup>

Recent reform proposals by the political parties have all supported a four year term. This can be found in the Labour party's 1992 report *Meet the Challenge, Make the Change*; in the 1993 report of the Labour party's Plant Commission; in the 1992 and 1997 Liberal Democrat manifestos; and in the Liberal Democrat policy papers *Real Democracy for Britain* (2006), and *For the People, By the People* (2007). The three Private Member's Bills introduced in the last ten years, by the Labour MPs Jeff Rooker and Tony Wright, and the Lib Dem David Howarth MP all supported four year terms (see chapter 6). Indeed, none of the proponents of fixed term parliaments have advocated a term of five years.

## 4.2 Fitting around other electoral cycles

Thought also needs to be given to how Westminster's fixed terms will fit with the electoral cycles for the devolved assemblies, the European Parliament and elections to the second chamber. The table below sets out the electoral cycle for future elections to the European Parliament and the devolved assemblies, with separate columns for a four and a five year cycle for the House of Commons. Dates in italics indicate a combination of a UK general election and European Parliamentary election on the same date; dates in bold indicate a clash between a general election and devolved assembly elections.

**Figure 4.3 Electoral cycle for UK general elections and other elections**

European elections	Devolved elections	UK elections 4 yrs	UK elections 5 yrs
<b>2014</b>	<b>2015</b>	<b>2014</b>	<b>2015</b>
2019	2019	2018	2020
2024	2023	2022	2025
2029	2027	2026	2030
<b>2034</b>	2031	2030	<b>2035</b>
2039	<b>2035</b>	<b>2034</b>	2040

<sup>21</sup> Robert Blackburn, Memorandum on Electoral Law and Administration, Appendices to Minutes of Evidence, Select Committee on Home Affairs, May 1998

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>

---

<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 Presiding Officer.

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> However, the Bill provided that the prerogative power of the Governor General to dissolve parliament was not affected.<sup>28</sup> The reason for this was that altering the powers of the Crown would have required a constitutional amendment, which in Canada is a difficult procedure involving all the provinces.

---

<sup>25</sup> Henry Milner, 'Fixing Canada's Unfixed Election Dates: A "Political Season" to Reduce the Democratic Deficit', *Institute for Research on Public Policy: Policy Matters*, December 2005, p.18 Available at <http://www.irpp.org/pm/archive/pmvol6no6.pdf>

<sup>26</sup> *Scotland Act 1998* s.1(2); *Government of Wales Act 2006* s.3(1); *Northern Ireland Act 1998* s.31(1)

<sup>27</sup> *Canada Elections Act 2000* s.56.1(2)

<sup>28</sup> *Ibid.*, s.56.1(1)



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

<i>Powers of Governor General preserved</i>	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.
<i>Election dates</i>	(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 predictability, and that the practice concerning confidence would remain unchanged.<sup>30</sup> This statement was echoed during the Bill's passage through Parliament.<sup>31</sup> This Bill followed several Private Members' Bills tabled since 1970 proposing fixed term parliaments, including one in April 2004 by then Leader of the Opposition Stephen Harper.<sup>32</sup>

However, the change in the law has not made much difference in practice. In September 2008, Stephen Harper requested a dissolution from Governor General Michaëlle Jean a year early. Harper argued that Parliament was becoming increasingly dysfunctional, and that in light of the economic crisis he needed a renewed mandate. The Governor General granted the request, relying on her prerogative powers as preserved by the Bill to do so. Harper headed a minority government which was struggling to get its legislation passed. His request came after repeated confidence votes proposed by the government, challenging the opposition parties to defeat it and trigger an election. The Liberals repeatedly spoke against government bills but then abstained to avoid an election. When Harper said that virtually every government bill would be a confidence vote, the Liberals abstained from voting even more. The dissolution allowed Harper to take advantage of a rise in his party's poll numbers, so that his party increased their number of seats at the ensuing general election, but still failed to gain a majority.

This episode shows that simply fixing election dates through legislation is not enough if the prerogative power of dissolution remains unaffected. But if the prerogative power of dissolution is retained as a safety valve, it needs to be protected from manipulation. The Governor General was put on the spot by Harper's request for an early dissolution, and the Crown drawn into political controversy.

---

<sup>29</sup> S.C. 2000, c.9

<sup>30</sup> Government of Canada Privy Council Office, 'Canada's New Government Proposes Fixed Election Dates', 30 May 2006. Available at <http://news.gc.ca/web/article-eng.do?crtr.sj1D=&mthd=advSrch&crtr.mnthndVl=6&nid=216599&crtr.dpt1D=&crtr.tp1D=&crtr.lc1D=&crtr.yrStrtVl=2006&crtr.kw=&crtr.dyStrtVl=29&crtr.aud1D=&crtr.mnthStrtVl=5&crtr.yrndVl=2006&crtr.dyndVl=1>

<sup>31</sup> E.g. at second reading, Rob Nicolson MP, HC Deb 18 Sep 2006 col.2876

<sup>32</sup> *Bill C-512: An Act to provide fixed dates for the election of members to the House of Commons and to amend the Constitution Act, 1867* (1 April 2004)

### 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

---

<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.*, s.9(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> *House of Assembly Act 1990*, ss.3-3.1

<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 extent and with differing safety valves for extraordinary dissolution. Most have four year terms, though a few have five year terms. However, some of those with five year terms, such as France and Italy, tend to have more flexible election dates in practice.

Norway is notable as the only parliamentary system with fixed term parliaments that has no safety valve. There have been numerous debates about reconsidering this, with provision for early dissolution being suggested several times, but they have never managed to obtain the necessary two thirds majority in parliament that is required for a constitutional amendment.

Some European systems demonstrate the importance of practice even in cases where the term is theoretically fixed. In Belgium in recent years, the parliament has repeatedly been

---

<sup>47</sup> *Constitution of 1996* s.49(1)

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> This power 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.

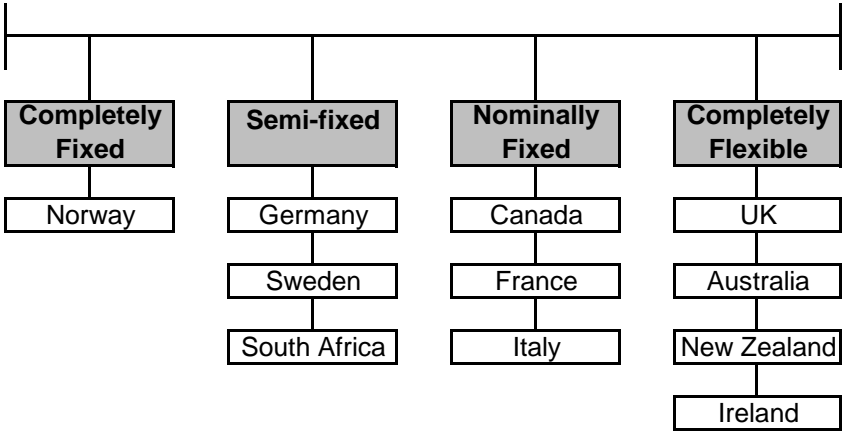
---

<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> *Constitution of October 4, 1958* art.12

Fig 5.1      Continuum of Fixed Term Experience



Completely Fixed: No provision for calling an election before the scheduled date  
Semi-fixed: Mechanisms in place to allow for dissolution before the scheduled election date  
Nominally Fixed: Safety valves being used in practice to undermine fixed term  
Completely Flexible: Length of term decided at the discretion of the executive

## 6 Recent reform proposals at Westminster

Fixed term parliaments have been the subject of reform proposals since at least 1991. Three private members' 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 manifestos for 1992 and 1997.

In September 1991 the Institute for Public Policy Research issued *The Constitution of the United Kingdom*, 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* 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:

---

<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 *Election 2001: The Official Results*, 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 elections held in the UK the Commission plans to look further at the case for adopting fixed term Parliamentary terms for Westminster.<sup>58</sup>

The intention to examine fixed term parliaments at length was reiterated in the Electoral Commission's report on election timetables in June 2003;<sup>59</sup> but no such report has been produced.

A Ten Minute Rule Bill on fixed term parliaments was introduced by Labour MP Dr. Tony Wright on 1 March 2001. Wright's key proposals were as follows:

- To introduce four year terms.
- For parliament to consider itself automatically dissolved 28 days before the fourth anniversary of the previous general election.
- Whenever the House of Commons expresses no confidence in the government, parliament should be dissolved on the seventh day following that resolution.

---

<sup>55</sup> Scotland Act 1998 s.3

<sup>56</sup> Northern Ireland Act 1998 s.31

<sup>57</sup> Government of Wales Act 1998 s.3

<sup>58</sup> P.29

<sup>59</sup> P.7, *Election Timetables in the UK: Report and Recommendations*, The Electoral Commission, June 2003, available at [http://www.electoralcommission.org.uk/\\_\\_data/assets/electoral\\_commission\\_pdf\\_file/0016/16054/Timetables\\_10051-7977\\_\\_E\\_\\_N\\_\\_S\\_\\_W\\_\\_.pdf](http://www.electoralcommission.org.uk/__data/assets/electoral_commission_pdf_file/0016/16054/Timetables_10051-7977__E__N__S__W__.pdf)

- Whenever the House of Commons expresses no confidence in a Prime Minister and fails to express confidence in the same or another minister in 28 days, parliament should stand dissolved.
- Should such extraordinary dissolutions occur more than six months before the previous term was due to expire, the poll date would remain unchanged despite any change of government.
- Should such extraordinary dissolutions occur less than six months before the term was due to expire, then the next election would occur on the fourth anniversary of that expiry date.
- The Electoral Commission should decide on the dates for issue of the writs, polling and the meeting of the new parliaments but allowing:
  - Three to five weeks between dissolution and election.
  - Parliament to reconvene between one and two weeks following the election.

Interest in fixing parliamentary terms began to pick up in the second half of the 2000s. David Cameron reportedly began to consider the idea of fixed term parliaments from 2006.<sup>60</sup> However, this was tempered by his calls that a general election should be required if there was a new PM, in the light of Gordon Brown taking over as Prime Minister.<sup>61</sup>

The Liberal Democrats revived their interest in fixed term parliaments, for example in their papers *Real Democracy for Britain* (2006) and *For the People, by the People* (2007). The Liberal Democrat MP David Howarth's *Fixed Term Parliaments Bill 2007-8* had its second reading on 16 May 2008. It provided for four year fixed parliamentary terms, with elections to be held on the first Thursday in May. Dissolution was to take place 30 days before the scheduled election. Dissolution could only take place on those dates, with no provision for a safety valve.

David Howarth argued that the main problems with the current arrangement were: (1) the unfair advantage to the incumbent party in choosing the election date; (2) the interference with good government; (3) adding to the government's power over their back benchers; and (4) the 'macho style of politics' and 'game of political chicken' with parties trying to show they did not fear a general election.<sup>62</sup> He also pointed out that fixed terms were widespread in many other elected bodies in the UK and abroad.<sup>63</sup>

In the 2010 election manifestos, both the Liberal Democrats and Labour had pledges to introduce fixed term parliaments. The Conservatives did not, but had a more general pledge "to make the Royal Prerogative subject to greater democratic control so that Parliament is directly involved".

---

<sup>60</sup> <http://www.timesonline.co.uk/tol/news/politics/article6368275.ece>

<sup>61</sup> "David Cameron says that the Tories would prevent parties from replacing a serving Prime Minister" 24 April 2010 *Independent*

<sup>62</sup> David Howarth MP, HC Deb 16 May 2008, col.1703-1705

<sup>63</sup> David Howarth MP, HC Deb 16 May 2008, col.1706



## 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 there should be a period of up to 14 days in which the search for an alternative government can take place. If no such government can be formed, then dissolution will follow. This will deal with the theoretical possibility of a limbo in which the Government could not command the confidence of the House, but the House refused to dissolve Parliament.

*Memorandum from the Deputy Prime Minister to the House of Lords Constitution Committee, July 2010.*

Mid term dissolutions are the most crucial aspect of any fixed term parliament law. The government must always command the confidence of the House of Commons; and a government which has lost that confidence must be allowed to fall. But governments must not be allowed to fall too easily, or we might experience the volatility of parliaments in Italy, or the Fourth Republic in France; nor can they be too protected, or they will lose their accountability to parliament and the public.

Lord Fraser of Carmyllie said of early dissolution of fixed term parliaments in the House of Lords in 1999:

If there is to be a fixed period, the only real issue is the circumstances in which earlier dissolution is permissible. If the circumstances allowing for that are too restrictively stated, it is not difficult to envisage a wide variety of occasions when it could not be for the good of the country to require a Parliament and government to continue without seeking a fresh mandate from the electorate. If conditions for early dissolution are too loosely framed, the change proposed would in effect be purely cosmetic.<sup>64</sup>

Key considerations are how and by whom dissolution may be initiated, what threshold must be reached, and any limitations on the process. The government initially proposed a 55% threshold for dissolution, but that proposal was widely misunderstood to apply to no confidence motions as well. Nick Clegg set the record straight, and raised the bar for government initiated dissolutions in a debate in early July:

First, traditional powers of no confidence will be put into law, and a vote of no confidence will still require only a simple majority. Secondly, if after a vote of no confidence a government cannot be formed within 14 days, Parliament will be dissolved and a general election will be held. Let me be clear: these steps will strengthen Parliament's power over the executive. Thirdly, there will be an additional power for Parliament to vote for an early and immediate dissolution. We have decided that a majority of two thirds will be needed to carry the vote, as opposed to the 55% first suggested, as is the case in the Scottish Parliament.

---

<sup>64</sup> HL Deb 11 Mar 1999 col.1367

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 Thresholds for confidence and no confidence motions**

Country	No Confidence Threshold (Initiative rests with Parliament)	Confidence Threshold (Initiative rests with Cabinet)
<b>Austria</b>	simple majority	
<b>Belgium</b>	absolute majority (constructive)	absolute majority
<b>Denmark</b>	simple majority	
<b>Finland</b>	simple majority	
<b>France</b>	absolute majority	simple majority
<b>Germany</b>	absolute majority (constructive)	absolute majority
<b>Greece</b>	absolute majority	simple majority
<b>Iceland</b>	absolute majority	
<b>Ireland</b>	simple majority	
<b>Italy</b>	simple majority	simple majority
<b>Luxembourg</b>	simple majority	
<b>Netherlands</b>	simple majority	
<b>Norway</b>	simple majority	
<b>Portugal</b>	absolute majority	simple majority
<b>Spain</b>	absolute majority (constructive)	simple majority
<b>Sweden</b>	absolute majority	

<sup>65</sup> HC Deb 5 Jul 2010 col. 23

<sup>66</sup> The dissolution procedure in each country is too complex to summarise here. It is very ably summarised in Strom, Muller et al *Delegation and Accountability in Parliamentary Democracy*,. Oxford University Press, 2006 at Table 4.12.

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
- Requiring a 'constructive' vote of no confidence, as in Germany and Spain.

A constructive no confidence motion is one which nominates an alternative government, rather than merely seeking to remove the present government. An alternative to a constructive vote of no confidence would be to require an investiture vote for any new government formed after a successful no confidence motion. The government's bill comes close to this in cl 2(2)(b) ('any motion expressing confidence in any Government of Her Majesty'). It could specifically require the House to nominate a Prime Minister, as the Scottish Parliament is required to nominate a First Minister under section 46 of the Scotland Act.

### 7.3 Confidence motions

The legislation will give legal effect to a vote of no confidence, but will not seek to define a vote of no confidence on the face of the bill. In practice there is little doubt about what constitutes a motion of no confidence in a government, and there is no need to limit the flexibility of Parliament unnecessarily.

*Memorandum from the Deputy Prime Minister to the House of Lords Constitution Committee, July 2010.*

Not all confidence motions take the classic form, 'This House has no confidence in Her Majesty's Government'. In Canada this has recently given rise to confusion and controversy as to whether a particular motion is one of confidence or not.<sup>68</sup> Although

<sup>67</sup> HC deb 8 July 1998 at col 1353.

<sup>68</sup> Andrew Heard, 'Just What is a Vote of Confidence?'. Canadian Jnl of Pol Science, 40:2 (2007) at 395-416.

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:

- specific bills: 'That the [European Communities] Bill be now read a second time' 15 Feb 1972
- specific issues: 'That item A be reduced by £100, in respect of the salary of the Secretary of State' 21 June 1895
- or 'a Select Committee be appointed to investigate ... withdrawal of the proceedings instituted by the DPP against Mr Campbell' 8 Oct 1924
- and even purely procedural motions, eg 'That this House do now adjourn' 11 March 1976.

In such debates the main speakers are generally the Leader of the Opposition and the Prime Minister; and all MPs know the government's future is at stake.<sup>69</sup>

The government's bill provides that

- 2(2) An early parliamentary election is also to take place if the Speaker of the House of Commons issues a certificate certifying that –
- (a) on a specified day the House passed a motion of no confidence in Her Majesty's Government ...

At first blush this appears to contemplate only formal confidence motions in the classic form. But the Bill goes on to provide that the Speaker's certificate is conclusive for all purposes. So the Speaker would have discretion to certify any of the motions listed above as confidence motions. If the government or the opposition have declared an issue to be one of confidence, the Speaker is likely to indicate at the beginning of the debate that the motion is a confidence motion, so that all MPs know what is at stake.

The Speaker's certificate is taken from the procedure under the Parliament Acts. It provides an impartial arbiter, and avoids the need for the Prime Minister or the Crown to get involved in deciding whether the House should be dissolved. The certificate also minimises the risk of the courts being asked to rule on whether a no confidence motion has been properly passed, or a new government properly formed. The Speaker's certificate is final, and conclusive for all purposes.

If a no confidence motion is passed, the government remains in office until a new government can be formed in which the House has confidence. It cannot immediately resign, because there must always be a government. But once it has lost confidence the government should be subject to the caretaker convention, which means it has authority only to transact essential business, and not to make new policy or major appointments or new contracts. The caretaker convention is explained in the new draft Cabinet Manual,

---

<sup>69</sup> Richard Kelly and Thomas Powell, *Confidence Motions*, HC Library Standard Note SN/PC/2873, 9 July 2010.

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.

---

<sup>70</sup> Draft Chapter 6 on Elections and Government Formation, published by the Cabinet Office in February 2010, <http://webarchive.nationalarchives.gov.uk/20100416132449/http://www.cabinetoffice.gov.uk/media/343763/election-rules-chapter6-draft.pdf>

<sup>71</sup> Erskine May, *Parliamentary Practice*, 23<sup>rd</sup> ed 2004, pp 329-330.

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

It is quite common to limit or prohibit dissolution towards the beginning or the end of a parliamentary term. The French Constitution prohibits dissolution in the twelve months following a general election,<sup>72</sup> as does the Spanish Constitution.<sup>73</sup> Other legislatures only allow dissolution in the final year of their four year term, while the South African lower house cannot move to dissolve itself in the first three years of its five year term.<sup>74</sup> At such times, there can of course still be the possibility of confidence motions.

## **7.6 Flexibility to advance or postpone election**

The bill provides that the Prime Minister may by statutory instrument provide that the polling day is moved forward or backward by not more than two months. This is to provide for emergencies like the foot and mouth crisis in 2001, which led to the local government elections scheduled for May being postponed until June. Similar provisions are found in most other countries. The statutory instrument would be subject to affirmative resolution in both Houses.

## **7.7 Remainder of the parliamentary term**

An important consideration is whether a parliament elected mid term merely serves out the remainder of that term, or whether dissolution restarts the clock and it serves a full new term. The former is a strong disincentive to a government inclined to call an early election. In Scotland only the remainder of the term is served, unless the dissolution takes place within six months of the next scheduled election. (In that event, the next scheduled election is not held; but the one after that is, to get back on schedule).

An alternative solution to prevent elections taking place too close to each other is a ban on dissolutions in the run-up to elections. Sweden and Finland are two such examples, where no premature election may take place within 75 days of the next scheduled election. As in Scotland, scheduled elections take place every four years, even if during the previous four years a premature election has taken place.

Countries where mid term dissolution restarts the clock and the new parliament serves a full term are the Canadian provinces of British Columbia and Ontario, Belgium, the Netherlands and Hungary. This is the arrangement proposed in the government's bill, which provides that a mid term dissolution initiates a new five year term. The next scheduled election will then take place five years from the previous May. But if the mid term election is held before May, the next general election will be held four years later. So if there is a mid term dissolution in October 2011, the next general election would be in May 2016; but if the mid term election is in March 2011, the next election would be in May 2015.

Which model to choose depends on how strong the disincentives should be against mid term dissolutions. These tend to be conceived primarily from the government's viewpoint. The lack of such a disincentive in Canada may have contributed to Stephen

---

<sup>72</sup> Constitution of the 4<sup>th</sup> of October 1958, art.12 al.4

<sup>73</sup> Spanish Constitution of 1978, s.115(3)

<sup>74</sup> Constitution of the Republic of South Africa, art.51(1)(b)

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 incentives and disincentives to regulate the behaviour of the parties in parliament. Running through the chapter are a whole set of possible incentives to buttress stable government, and disincentives to making it easy to obtain a mid term dissolution:

### *Procedural restrictions on dissolution or confidence motions*

- Motion to be signed by minimum number of MPs
- Motion to be signed by named office holders
- Constructive no confidence motions

### *High thresholds for the vote*

- Absolute not simple majority for no confidence
- Two thirds majority for dissolution

### *Time limits*

- Before debating a no confidence motion
- Before a further no confidence motion can be tabled
- After a no confidence motion, in which an alternative government must be formed
- No dissolution near the beginning or end of a parliament.

### *Subsequent parliamentary term*

- New parliament serves only the remainder of the previous term.

But the rules need not necessarily be too elaborate, or too restrictive. Any moves towards a mid term dissolution will be played out in an intensely political context, in which the political incentives are as important in guiding behaviour as the legal rules. The political context is not always that of a government seeking to increase its majority. Although that is the most common reason, it accounts for only about one third of early dissolutions in countries we have surveyed: see Figure 7.2. Other reasons recorded in Figure 7.2 for early dissolution are a constitutional or political crisis, major policy change, loss of a confidence motion, resignation of the Prime Minister, the collapse of a coalition or a government split.

The main question for the parties in any mid term crisis will not be whether dissolution is too easy or too difficult, but whether they stand to gain or lose by forcing a dissolution. And much of the time, the political incentives in themselves may prove a further force for stability. Political parties do not like excessively frequent elections: they are expensive for the parties, who are chronically short of money, and exhausting for the participants. And whatever the polls may say, the outcome is always slightly uncertain. In particular, a

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.

---

<sup>75</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>76</sup> Miskimmon, Paterson and Sloam, 'Germany's Gathering Crisis', (2005) Palgrave Macmillan



**Fig 7.2 Pathology of mid term dissolutions**

<b>Reason for early dissolution</b>	<b>Cases</b>	<b>Total</b>
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:

A final constitutional advantage of fixed term Parliaments would be to remove any prospect of the British monarchy becoming the subject of political controversy if some special difficulty over the legitimacy of a dissolution arises ...

Any monarch who allowed him/herself to be persuaded to go ahead and reject the advice of a Prime Minister ... would be tempting political suicide. ... It is very much therefore in the monarchy's own interests to avoid such a situation. Until the law is modernised within a framework of a fixed term Parliament, the Palace's wisest course of action ... will be always to follow Prime Ministerial advice.

[Fixed term parliaments] would remove any question of the personal discretion of the monarch ... Far from diminishing the role of the Crown within the constitution, its future would be better protected.<sup>77</sup>

This view is echoed by the coalition government:

...[It] instead removes a difficult dilemma for the monarch, who is bound under the current conventions to take the advice of the Prime Minister seeking the dissolution. That puts the monarch in an invidious position if that advice is not consistent with the political situation that, it might be suspected, is present in the House. By removing the prerogative exercised by the Prime Minister, the monarch is in the stronger position of not being put in the embarrassing position of having to divine by means that are not clear the intentions of the House.<sup>78</sup>

The prerogative power to dissolve parliament, and in exceptional cases to refuse a dissolution, has long been regarded as an important constitutional long stop. It is a big step to remove a constitutional reserve power. In other Westminster systems such as Australia, Canada and New Zealand the Crown retains the power to dissolve parliament, and to refuse a dissolution. In most western European countries the head of state retains a discretionary power to dissolve parliament.<sup>79</sup> So it is tempting to retain the

---

<sup>77</sup> Robert Blackburn, *The Electoral System in Britain*, London: Blackburn, 1995, p. 61

<sup>78</sup> David Heath MP, HC Deb 25 May 2010 col.149

<sup>79</sup> Strøm, Müller and Bergman, *Delegation and Accountability in Parliamentary Democracy*, Oxford University Press, 2006 pp 163-4 and Table 4.1.2. The countries are Austria, Belgium, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Portugal.

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 Prime Minister Stephen Harper asked the Governor General for an early dissolution only a year after the Parliament had passed legislation for fixed term parliaments. The legislation had preserved the prerogative powers of the Crown, in order to avoid the need for a constitutional amendment. The Prime Minister went against the spirit of the fixed term legislation, and inevitably drew the Governor General into political controversy, whether she refused the dissolution, or granted it (in the event, she followed prime ministerial advice and granted it).

## **8.2 Power to appoint new Prime Minister**

The prerogative power to appoint a Prime Minister is unaffected by introducing fixed term parliaments. The test is who can command the confidence of the House of Commons. As the new Cabinet Manual puts it:

The Sovereign will invite the person who it appears is most likely to be able to command the confidence of the House to serve as Prime Minister and to form a government. However, it is the responsibility of those involved in the political process, and in particular the parties represented in Parliament, to seek to determine and communicate clearly who that person should be.<sup>80</sup>

The occasions when the Monarch will be required to appoint a Prime Minister will be after an election, or following the death, retirement or resignation of the incumbent Prime Minister. On each occasion the Monarch is invited to make an informed guess ('the person who it appears is most likely to be able to command confidence ...'), and that person then faces an early test of confidence in the debate on the Queen's Speech. One way of avoiding the guessing game would be for the House of Commons to hold an investiture vote, rather than leaving the test of confidence to the Queen's Speech debate. This is what happens in the Scottish Parliament, where the first business of a new parliament is to nominate a new First Minister, who is then appointed by the Queen. The switch to an investiture vote could be made by statute, or by a change to Standing Orders.

## **8.3 Power of prorogation**

The Bill does not affect the prerogative power to prorogue parliament. Prorogation has not been called into question in Britain; but it has in Canada. In December 2008 the Prime Minister Stephen Harper asked the Governor General to prorogue Parliament only days before a confidence motion which he seemed likely to lose. In January 2010 he again sought a prorogation until March, leading to allegations that he wanted to shut down a critical parliamentary inquiry. In the British context it may not be necessary to seek to regulate the power of prorogation; but to prevent prorogation being used to

---

<sup>80</sup> Draft Chapter 6 on Elections and Government Formation, published by the Cabinet Office in February 2010, <http://webarchive.nationalarchives.gov.uk/20100416132449/http://www.cabinetoffice.gov.uk/media/343763/election-rules-chapter6-draft.pdf>

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 election, to allow more time for the induction of new MPs, following a recommendation of the Modernisation Committee's 2007 report *Revitalising the Chamber*. But this incurred criticism from some Conservative MPs, who thought the outgoing government had deliberately delayed the start of the new government's programme.

It does seem odd that election writs are still issued by government ministers, and that the date of the first meeting of the new parliament is decided by the Prime Minister. The main justification for fixed term parliaments is to take power from the Prime Minister and give it to parliament. Following the same logic, consideration should be given to the Electoral Commission issuing the writs for the election; and the Speaker deciding the date of the first meeting. In Tony Wright's Fixed Term Parliaments Bill 2001 the power to decide the dates for issue of the writs, polling day, and the meeting of the new parliament was conferred on the Electoral Commission (see section 6.2). That seems right in terms of who should control issue of the writs and polling day. But parliament should decide the date of its first meeting, with the decision being made by the Speaker of the outgoing parliament.

## 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  $x$  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.

---

<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.

This is a hypothetical issue, which would only come alive politically if the Bill is rejected by the House of Lords, and then reintroduced in the next session with a view to passing the Bill without the consent of the House of Lords under the Parliament Acts. It seems unlikely that it is a bill over which the Lords would have an absolute veto; but equally fanciful arguments were advanced in *Jackson v AG*.<sup>84</sup>

### 10.2 The Lords as constitutional guardian

The Wakeham Royal Commission on reform of the House of Lords recommended that the Lords should play a vital role as one of the main checks and balances within the British constitution. One of its most important functions was to act as a ‘constitutional long stop’. This is reflected in its existing veto power over any attempt to extend the life of a parliament beyond five years, and its veto powers over the dismissal of key office holders, such as senior judges and the Auditor General. But although the Commission were invited to extend the veto powers of the second chamber to other constitutional legislation, they declined to do so:

Our fundamental concern about any such proposal is that it would alter the current balance of power between the two chambers and could be exploited to bring the two chambers into conflict. It would be inconsistent with the requirement in our terms of reference “to maintain the position of the House of Commons as the pre-eminent chamber of Parliament” and with our view of the overall role that the second chamber should play.<sup>85</sup>

### 10.2 Giving the Lords a veto

Notwithstanding the views of the Wakeham Commission, the House of Lords could be given a special power of veto in relation to certain aspects of the operation of the Fixed Term Parliaments Act, or any attempt to amend it. Under the bill the Lords will already have a power to veto any proposal by the Prime Minister to move the date of an election forwards or backwards by two months. The necessary statutory instrument must be approved by each House of Parliament: and the Lords can if they wish withhold their approval. The Parliament Acts do not apply to delegated legislation. Although the Lords rarely veto such legislation, they have occasionally done so. One recent occasion was in connection with an election, when the Lords vetoed the Greater London Authority

---

<sup>84</sup> 2005 UKHL 56, 2006 1 AC 262.

<sup>85</sup> *A House for the Future*. Report of the Royal Commission on Reform of the House of Lords. Cm 4534, 2000 at para 5.4.

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*  
<http://webarchive.nationalarchives.gov.uk/20100416132449/http://www.cabinetoffice.gov.uk/media/343763/election-rules-chapter6-draft.pdf>

Cabinet Office, (21 May 2010). *Agreement for Stability and Reform*  
<http://www.cabinetoffice.gov.uk/media/409174/stabilityreformmay2010.pdf>.  
Confirmed by David Howarth MP, HC Deb 25 May 2010 col.147

Cabinet Office, (May 2010). *The Coalition: Programme for Government*  
<http://programmeforgovernment.hmg.gov.uk/files/2010/05/coalition-programme.pdf>

Conservative Party. (26 May 2009). *David Cameron: Fixing broken politics*

Conservative Party. (2010). *Invitation to join the Government of Britain*

Electoral Commission, (June 2001). *Election 2001: The Official Results*

Electoral Commission, (June 2003). *Election Timetables in the UK: Report and Recommendations*  
[http://www.electoralcommission.org.uk/\\_data/assets/electoral\\_commission\\_pdf\\_file/0016/16054/Timetables\\_10051-7977\\_E\\_N\\_S\\_W\\_.pdf](http://www.electoralcommission.org.uk/_data/assets/electoral_commission_pdf_file/0016/16054/Timetables_10051-7977_E_N_S_W_.pdf)

Electoral Commission, (May 2005). *Securing the Vote*  
[http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0006/47175/Securingthevote\\_17643-12944\\_E\\_N\\_S\\_W\\_.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/47175/Securingthevote_17643-12944_E_N_S_W_.pdf)

Electoral Commission, (July 2010). *Report on the Administration of the 2010 UK General Election*  
[http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0010/100702/Report-on-the-administration-of-the-2010-UK-general-election.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/100702/Report-on-the-administration-of-the-2010-UK-general-election.pdf)

Erskine May, (2004). *Parliamentary Practice*, 23rd edition

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-eng.do?crtr.sj1D=&mthd=advSrch&crtr.mnthndVl=6&nid=216599&crtr.dpt1D=&crtr.tp1D=&crtr.lc1D=&crtr.yrStrtVl=2006&crtr.kw=&crtr.dyStrtVl=29&crtr.aud1D=&crtr.mnthStrtVl=5&crtr.yrndVl=2006&crtr.dyndVl=1>

Hazell, R. (June 2010). *The Conservative Liberal Democrat Agenda for Constitutional and Political Reform*

Hazell, R and Paun, A eds. (2009). *Making Minority Government Work: Hung parliaments and the challenge for Westminster and Whitehall*, Institute for Government

Heard, A. (2007). ‘Just What is a Vote of Confidence?’ Canadian Jnl of Pol Science, 40:2

Hough, D. (April 2006). ‘The German Bundestag election of September 2005’, Representation, Volume 42, Number 1

House of Commons Library, (January 2000). *Research Paper 00/1 The Political Parties, Elections and Referendums Bill, Electoral Aspects Part VI*

House of Commons, (13 May 2009). *Library Research Paper 09/44, Election Timetables*

Irving, REM and Paterson, WE. (1983). *The Machtwechsel of 1982-83: A Significant Landmark in the Political and Constitutional History of West Germany*, Parliam Aff

Jenkins, (1991). R. *A Life at the Centre*, Methuen Publishing Ltd

Kelly, R & Powell, T. (9 July 2010). *Confidence Motions*, HC Library Standard Note SN/PC/2873

Labour Party. (1992). *Time to get Britain working again*,

Labour Party. (1993). *Report of the Working Party on Electoral Systems*, chair Prof R Plant.

Labour Party. (May 2010). *The Labour Party Manifesto 2010: A Future Fair for All*

Liberal Democrats. (Autumn 2007). *For the People, By the People*

Library of Parliament, (7 July 2010). *Notes of Fixed-date election legislation in Canada and Reduction of the size of legislatures in the provinces*

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>

Ministry of Justice, (July 2007). *The Governance of Britain – Constitutional Renewal*, White Paper  
<http://www.justice.gov.uk/docs/constitutional-renewal-white-paper.pdf>

Ministry of Justice, (June 2008). *Election Day: Weekend Voting*, Consultation Paper CP 13/08

Ministry of Justice, (March 2010). *Weekend voting: Summary of Responses*  
<http://www.justice.gov.uk/consultations/docs/election-day-weekend-voting.pdf>

Miskimmon, Paterson and Sloam. (2005). *Germany's Gathering Crisis*, Palgrave Macmillan

Punnett, R.M. (1973). *Front-Bench Opposition; The Role Of The Leader Of The Opposition, The Shadow Cabinet And Shadow Government In British Politics*, Heinemann

Roberts, L and Jones, B eds. (2000). *Debates in British Politics Today*, Chap Norton, P. 'Would fixed-term Parliaments enhance democracy?'

Royal Commission on Reform of the House of Lords, (2000). *A House for the Future*

Russell, M. (7 June 2010). 'Hot Topic: A fix or a fair reform', *The House Magazine*

Senex, (2 May 1950). 'Dissolution of Parliament: Factors in Crown's Choice' *The Times*

Smith, A. (2004). *Election Timing*, Cambridge University Press

Steel, D. (1989). *Against Goliath: David Steel's Story*

Strom, Muller et al. (2006). *Delegation and Accountability in Parliamentary Democracy*,. Oxford University Press

Wilson, H. (1976). *The Governance of Britain*. Weidenfeld and Nicolson