

# **FIXED-TERM PARLIAMENTS ACT 2011**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Fixed-term Parliaments Act 2011 which received Royal Assent on 15 September 2011. They have been prepared by the Cabinet Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **OVERVIEW**

3. The Fixed-term Parliaments Act 2011 has 7 sections and 1 Schedule. A background summary of the Act as a whole is provided below. Commentary is then provided on individual sections and the Schedule.

### **SUMMARY**

4. The Fixed-term Parliaments Act 2011 provides for fixed days for polls for parliamentary general elections. The polling day for elections will ordinarily be the first Thursday in May every five years. The first such polling day will be on 7 May 2015. The Prime Minister will be able to defer, by statutory instrument, the polling day for such parliamentary general elections to a day not more than two months later than the scheduled polling day.
5. The Act also makes provision to enable the holding of early parliamentary general elections. The trigger for such general elections would be either a vote of no confidence in the Government, following which the House of Commons did not pass a motion of confidence in a Government within 14 days, or a vote by at least two-thirds of all MPs in favour of an early election.
6. The Queen does not retain any residual power to dissolve Parliament, which will occur automatically under the provisions in the Act.

### **BACKGROUND**

7. The provisions contained within the Fixed-term Parliaments Act 2011 stem from the Government's publication *The Coalition: our programme for government*, which included the following commitment:  

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

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[http://www.cabinetoffice.gov.uk/media/409088/pfg\\_coalition.pdf](http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf)

9. The Fixed-term Parliaments Bill was introduced to the House of Commons on 22nd July 2010 and received Royal Assent on 15th September 2011.
10. The Bill was the subject of a report by the Political and Constitutional Reform Committee, published on 16th September 2010 (2nd Report of Session 2010-11) a copy of which can be found at:  
<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpolcon/436/436.pdf>
11. The Government response to this Report was published as a command paper (Cm 7951) on 8th November 2010. This is available at:  
<http://www.official-documents.gov.uk/document/cm79/7951/7951.pdf>
12. The House of Lords Constitution Committee published their Report on the Bill on 16th December 2010 (8th Report HL Paper 69) a copy of which can be found at:  
<http://www.publications.parliament.uk/pa/ld201011/ldselect/ldconst/69/69.pdf>
13. The Government response to this report was published as a Command Paper (Cm 8011) on 28th February 2011. This is available at:  
<http://www.official-documents.gov.uk/document/cm80/8011/8011.pdf>
14. The Delegated Powers and Regulatory Reform Committee published its recommendations on the Bill on 10th February 2011 (10th Report of Session 2010-2011). This is available at:  
<http://www.publications.parliament.uk/pa/ld201011/ldselect/lddelreg/100/100.pdf>
15. The Government replied to the Committee's findings on 8th March 2011 and a copy can be found here:  
<http://www.parliament.uk/deposits/depositedpapers/2011/DEP2011-0402.pdf>
16. Prior to the commencement of this Act, the maximum duration of a UK Parliament was five years, as dictated by the Septennial Act 1715 (as amended by the Parliament Act 1911). Under that Act if a Parliament was not dissolved in the period up to five years after the day on which it was summoned to meet, it automatically expired. The prerogative power to dissolve Parliament before the maximum five-year period was exercised by Her Majesty, conventionally on the advice of the Prime Minister. This prerogative power was abolished by this Act.
17. A new Parliament was summoned by proclamation issued by the Queen on the advice of the Privy Council. That proclamation ordered the issuing of the writs for parliamentary elections and appointed a day and place for the meeting of the new Parliament. In practice, the proclamation dissolving the previous Parliament summoned the new one, triggering a general election.
18. The law governing the proceedings at a parliamentary election is set out principally in the Representation of the People Act 1983. In particular, section 23(1) of that Act provides that such proceedings are to be conducted in accordance with Schedule 1 to the Act which sets out the Parliamentary Elections Rules.
19. Rule 1 of the Parliamentary Elections Rules provides that the proceedings at an election must occur on the basis of the timetable set out there. In particular:
  - the writs for parliamentary elections must be issued as soon as practicable after the issue of the proclamation summoning the new Parliament;

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- nomination papers must be delivered, not later than 4 pm on the sixth day after the date of the proclamation summoning the new Parliament;
  - the poll takes place on the eleventh day after the last day for delivery of nomination papers.
20. Rule 2 provides that the following days are disregarded in computing any time period in the timetable: Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, bank holidays and any day appointed for public thanksgiving or mourning.
21. The Government wrote to the Presiding Officers of the Scottish Parliament and the National Assembly for Wales on 17th February 2011 proposing that if the Scottish Parliament and the National Assembly for Wales passed resolutions, with the support of at least two-thirds of all members, agreeing that the 2015 Scottish Parliamentary and the National Assembly general elections should be moved a year later or earlier, the Government would then be willing to table an amendment to the Fixed-term Parliaments Bill which would, if accepted, make this change. A copy of this letter can be found at:
- <http://www.parliament.uk/deposits/depositedpapers/2011/DEP2011-0339.pdf>
22. A motion was passed in the Scottish Parliament on 3rd March 2011 calling on the UK Government to bring forward provision to defer the 2015 Scottish Parliamentary general elections until 5th May 2016 in order to avoid the two sets of elections coinciding. See section 4.
23. A similar motion was passed in the National Assembly for Wales on 16<sup>th</sup> March 2011. See section 5.

## **TERRITORIAL EXTENT**

24. The Fixed-term Parliaments Act 2011 generally extends to the United Kingdom, except that any amendments or repeals made by the Act have the same extent as the provision which is being amended or repealed. Because the subject matter of this Act is reserved for the purpose of the Scotland Act 1998, non-devolved for the purpose of the Government of Wales Act 2006 and excepted for the purpose of the Northern Ireland Act 1998.

## **COMMENTARY ON SECTIONS**

### ***Section 1: Polling days for parliamentary general elections***

25. **Section 1** states that the polling day for the next parliamentary general election is to be 7 May 2015. **Subsection (3)** sets out that the polling day for every subsequent general election is to be held on the first Thursday in May five years from the date of the last election. **Subsection (4)** provides that where an early general election takes place under section 2 of the Act, the next general election will generally take place on the first Thursday in May in the fifth year from the date of the last election. However, if the early election is held before the first Thursday in May in an election year, the next general election will be held on the first Thursday in May in the fourth year from the previous election. The effect being when an early general election is held, the election day of the first Thursday in May is restored at the next election, and the duration of the Parliament resulting from the early election will normally be no more than five years in length.
26. **Subsection (5)** provides a power for the Prime Minister to defer the date of a scheduled parliamentary general election under section 1 by a period of no more than two months. This is to accommodate short term crises or other conditions which might make it inappropriate to hold the election on the scheduled date, for example, a repeat of the foot and mouth crisis which led to the postponement of the local elections in 2001. The power to defer by up to two months would be exercisable by statutory instrument

subject to the affirmative procedure. This means that the order could not be made until it had been approved by both Houses of Parliament. *Subsection (7)* provides that any such draft order must be accompanied by a statement from the Prime Minister setting out his reasons for proposing a change to the polling day.

### ***Section 2: Early parliamentary general elections***

27. *Section 2* provides for the circumstances in which an early parliamentary general election can be held, that is, an election with a date of poll which must be earlier than the date of poll for an election under section 1. *Subsection (1)* provides for an early election if the House of Commons passes a motion that there should be such an election. It also states that where such a motion is passed on a division of the House of Commons, the number of members who voted in favour must be at least two thirds of the number of seats in the House, including any vacant seats.
28. *Subsection (3)* provides the second trigger for an early election. Where the House of Commons passes a motion of no confidence in the Government, an election must be held, unless within the period of 14 days, the House passes a motion expressing confidence in a Government. The intention is to provide an opportunity for an alternative Government to be formed without an election.
29. *Subsections (2), (4) and (5)* set out the exact form of motions for early election, votes of no confidence and of confidence in the Government respectively, which can be passed by the House of Commons in order to generate an early general election.
30. *Subsection (7)* provides that the Queen sets the date for an early election by proclamation on the recommendation of the Prime Minister. This means that, taken in conjunction with the rules in section 3, a suitable date for an election can be set. Dissolution does not follow immediately on the triggering event, but can be timed so that, for example, essential business can be completed or the date of the election can be set to fall on a Thursday.

### ***Section 3: Dissolution of Parliament***

31. *Section 3* makes the key necessary changes to elections law and the law concerning the meeting of Parliament in light of fixed days for elections. It:
  - provides that Parliament dissolves automatically 17 working days before the polling day which has been fixed for the general election under the Act (this enables Parliament to dissolve, which will begin the parliamentary elections timetable in the Parliamentary Elections Rules);
  - provides that Parliament cannot otherwise be dissolved; the Queen will not be able to dissolve Parliament in exercise of the prerogative;
  - gives the authority to the Lord Chancellor and Secretary of State for Northern Ireland to issue the writs for elections after dissolution (this is presently dealt with in the proclamation summoning the new Parliament and an associated Order in Council); and
  - specifically preserves the power to set the first day for the meeting of the new Parliament by proclamation and any other matter which was normally dealt with by the proclamation, except those matters where the Act sets out procedure.
32. *Subsection (5)* sets out the definition of “working day” for the purposes of calculating the period between dissolution and the date of the poll. This definition is the same as the definition in rule 2 of the Parliamentary Elections Rules. The definition includes as days which are not working days, bank holidays and days appointed for public thanksgiving or mourning. It is possible for such days to be fixed or appointed from time to time thereby bringing forward the day for dissolution. The effect of *subsection (6)* is that the fixing or appointment of a bank holiday or day for public thanksgiving or mourning is

to be disregarded if it would bring forward dissolution to a day which is earlier than 30 days after the day on which the fixing or appointment occurs. The purpose of this provision is so that there is no uncertainty about the date of dissolution at a certain point in advance of dissolution.

***Section 4: General election for Scottish Parliament not to fall on same date as parliamentary general election under section 1(2)***

33. **Section 4** provides that the general elections for the Scottish Parliament which were scheduled to take place on 7 May 2015 will instead be scheduled to take place on 5 May 2016. Subsequent ordinary general elections will be scheduled to be held on the first Thursday in May in the fourth calendar year after the May 2016 general elections.
34. The provisions under the Scotland Act 1998 which relate to setting and varying the date of ordinary and extraordinary general elections still apply.

***Section 5: General election for National Assembly for Wales not to fall on same date as parliamentary general election under section 1(2)***

35. **Section 5** provides that the general elections for the National Assembly for Wales which are scheduled to take place on 7 May 2015 will instead take place on 5 May 2016. Subsequent ordinary general elections will be scheduled to be held on the first Thursday in May in the fourth calendar year after the May 2016 general elections.
36. The provisions under the Government of Wales Act 2006 which relate to setting and varying the date of ordinary and extraordinary general elections still apply.

***Section 6: Supplementary provisions***

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

***Section 7: Final provisions***

38. **Subsection (1)** contains the short title of the Act, and **subsection (2)** provides that the Act comes into force on Royal Assent.
39. **Subsections (4)-(6)** provide that the Prime Minister is to make arrangements in 2020 for a committee to carry out a review of the operation of the Act. If appropriate, the committee is to make recommendations for the repeal or amendment of the Act, and the Prime Minister must make arrangements for the publication of the committee's findings and recommendations. A majority of the members of the committee are to be MPs.

***Schedule***

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

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

## COMMENCEMENT

41. The Act came into force upon Royal Assent.

## HANSARD

42. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
<b>House of Commons</b>		
Introduction	22 <sup>nd</sup> July 2010	Vol. 514 Col. 594
Second Reading	13 <sup>th</sup> September 2010	Vol. 515 Cols. 621-710
Committee	16 <sup>th</sup> November 2010	Vol. 518 Cols. 770-856
	24 <sup>th</sup> November 2010	Vol. 519 Cols. 294-372
	1 <sup>st</sup> December 2010	Vol. 519 Cols. 825-88
Report	18 <sup>th</sup> January 2011	Vol. 521 Cols. 707-93
Third Reading	18 <sup>th</sup> January 2011	Vol. 521 Cols. 793-811
<b>House of Lords</b>		
Introduction	19 <sup>th</sup> January 2011	Vol. 724 Col. 366
Second Reading	1 <sup>st</sup> March 2011	Vol. 725 Cols. 929-75, 995-1048
Committee	15 <sup>th</sup> March 2011	Vol. 726 Cols. 159-204, 218-30
	21 <sup>st</sup> March 2011	Vol. 726 Cols. 475-527, 547-88
	29 <sup>th</sup> March 2011	Vol. 726 Cols. 1086-1105, 1114-53, 1168-1238
Report	10 <sup>th</sup> May 2011	Vol. 727 Cols. 777-847, 868-84
	16 <sup>th</sup> May 2011	Vol. 727 Cols. 1146-79, 1191-1210
Third Reading	24 <sup>th</sup> May 2011	Vol. 727 Cols. 1693-4
<b>House of Commons</b>		
Commons Consideration	13 <sup>th</sup> July 2011	Vol. 531 Cols. 359-89
<b>House of Lords</b>		
Lords Consideration	18 <sup>th</sup> July 2011	Vol. 729 Cols. 1074-106

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<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
<b>House of Commons</b>		
Commons Consideration	8 <sup>th</sup> September 2011	Vol. 532 Cols. 581-99
<b>House of Lords</b>		
Lords Consideration	14 <sup>th</sup> September 2011	Vol. 730 Cols. 806-25
Royal Assent	Lords Hansard: Vol. 730 Col. 892	
	Commons Hansard: Vol. 532 Col. 1207	