

DISSOLUTION AND CALLING OF PARLIAMENT ACT 2022

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Dissolution and Calling of Parliament Act 2022 which received Royal Assent on 24 March 2022 (c. 11).

- These Explanatory Notes 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.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 The Dissolution and Calling of Parliament Act 2022 (“the Act”) repeals the Fixed-term Parliaments Act 2011 (“the 2011 Act”). In doing so, the Act makes express provision to make the prerogative powers to dissolve Parliament and to call a new Parliament exercisable again, as if the 2011 Act had never been enacted. As a result, Parliament can be dissolved by the Sovereign, on the request of the Prime Minister, as it was prior to the enactment of the 2011 Act.

Policy background

- 2 In its 2019 General Election manifesto, the Government committed to repealing the 2011 Act. The Act gives effect to that commitment. By making express provision to make the prerogative power to dissolve Parliament exercisable again, Parliament can be dissolved by the Sovereign, on the request of the Prime Minister, as if the 2011 Act had never been enacted. This means Governments can call a general election at the time of their choosing within the life of a Parliament.
- 3 It is settled law that the dissolution of Parliament (and any decisions relating to the dissolution of Parliament) is not reviewable by the courts. In order to ensure that this position is preserved, and to ensure maximum certainty on the timing of a parliamentary election, the Act makes explicit provision to this effect.
- 4 The Act also provides that Parliament shall sit for a maximum term of five years.
- 5 The Joint Committee on the Fixed-term Parliaments Act conducted pre-legislative scrutiny on this legislation and reported on 24 March 2021.¹

Legal background

- 6 Prior to the 2011 Act, either Parliaments were dissolved when they reached the end of their five-year terms under the Septennial Act 1715 (as amended by the Parliament Act 1911) or, more usually, they were dissolved by the Sovereign under the Royal prerogative. The exercise of the prerogative was, in practice, subject to constitutional conventions. For example, the Sovereign dissolved Parliament only when requested to do so by the Prime Minister, and in certain exceptional circumstances, the Sovereign could refuse to grant a dissolution.
- 7 A new Parliament was summoned by Proclamation issued by the Sovereign on the advice of the Privy Council. That Proclamation triggered the issuing of the writs for parliamentary elections and writs of summons to attend the House of Lords, and appointed a day and place for the meeting of the new Parliament. In practice, if the Parliament had not reached its full

¹ [Joint Committee on the Fixed-Term Parliaments Act Report](#), 24 March 2021. The Committee scrutinised the Government’s draft version of the Bill, which was published as the Draft Fixed-term Parliaments Act 2011 (Repeal) Bill on 1 December 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940027/Draft-Fixed-term-Parliaments-Act-Repeal-Bill.pdf. The Government changed the name of the legislation in response to the Joint Committee’s report.

term, the Proclamation summoning the new Parliament also dissolved the previous Parliament. At the same time as the Proclamation, an Order in Council was made requiring the issue of these writs.

- 8 The long-standing position prior to the 2011 Act was that the exercise of the prerogative powers to dissolve one Parliament and call another was not reviewable by the courts. In *Council of Civil Service Unions v Minister of State for Civil Service* [1985] AC 374 (“the CCSU case”), Lord Roskill included the dissolution of Parliament in a list of examples of prerogative powers that in his view were not susceptible to judicial review because their nature and subject matter meant they were not amenable to the judicial process. He considered that the courts were not the place to determine whether Parliament should be dissolved on one date rather than another.² Following the CCSU case, in *R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Everett* [1989] 1 QB 811, Lord Justice Taylor noted dissolving Parliament (among other examples) was not justiciable as it was “a matter of high policy” “at the top of the scale of executive functions” and therefore was not justiciable.³
- 9 Some prerogative powers have been held by the courts to be reviewable, both in the CCSU case and in subsequent cases.⁴ It is generally accepted and understood that, before the commencement of the 2011 Act, the dissolution of one Parliament and calling of another were not susceptible to judicial review: see for example the Independent Review of Administrative Law, March 2021.
- 10 The 2011 Act provided for fixed days for polls for parliamentary general elections. It provided that the polling day for parliamentary general elections would ordinarily be the first Thursday in May every five years. The 2011 Act also made provision to enable the holding of early parliamentary general elections. Under the 2011 Act the Sovereign did not retain any residual power to dissolve Parliament.
- 11 In 2017 an early parliamentary general election was called under section 2(1) of the 2011 Act. For the early parliamentary election in 2019, bespoke primary legislation - the Early Parliamentary General Election Act 2019 - was needed because the two thirds majority required by the 2011 Act could not be secured in the House of Commons.
- 12 The law governing the proceedings at a parliamentary election is set out principally in the Representation of the People Act 1983. Section 23(1) of that Act provides that such proceedings are to be conducted in accordance with Schedule 1 to the Act which sets out the Parliamentary Elections Rules. Rules 1 and 2 concern the timetable that applies leading up to polling day.

² Page 418.

³ Page 820. See also *R v Secretary of State for the Home Department, ex parte Bentley* [1994] QB 349, page 363; *R (Abbasi) v Secretary of State for Foreign and Commonwealth Affairs and Secretary of State for the Home Department* [2002] EWCA Civ 1598, paragraphs 83 to 85 and *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2007] EWCA Civ 498.

⁴ For example, *R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Everett* (power to grant passports) and *R v Secretary of State for the Home Department, ex parte Bentley* (power to grant pardons). See also *R (Miller) v The Prime Minister, Cherry and Others v The Advocate General for Scotland* [2019] UKSC 41 (regarding the power to prorogue Parliament).

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Territorial extent and application

- 13 Section 6 sets out the territorial extent of the Act. The Act will extend and apply to the whole of the United Kingdom, including Northern Ireland. The Schedule to the Act has made a number of minor and consequential amendments to other legislation. While most of that legislation extends (and applies) to the whole of the UK, some has more limited extent (or application). Section 6(2) therefore provides that amendments, repeals and revocations made by the Schedule have the same extent as the provision amended, repealed or revoked.
- 14 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. The matters to which the provisions of the Act relate are not within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly. There are a few provisions in the Schedule which amend legislation relating to elections and referendums in Scotland and Wales. These amendments are purely consequential upon the provision made by the sections. Therefore, no Legislative Consent Motion was required in relation to any provision of the Act.

Commentary on provisions of Act

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

15 *Section 1* repeals the 2011 Act.

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

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

Section 3: Non-justiciability of revived prerogative powers

- 19 Section 3 confirms that the exercise (or purported exercise) of powers relating to the dissolution of Parliament, and the calling of a new Parliament, is non-justiciable and be reviewed by a court or tribunal. This reaffirms the long standing and generally accepted position that existed prior to the 2011 Act (referred to in paragraphs 8 and 9 above).⁵ This provision is included for the avoidance of any doubt that may arise and to preserve the long standing and generally accepted position.
- 20 Section 3 covers any decisions (or purported decisions) relating to the powers to dissolve one Parliament and call another. This is to ensure that any preliminary steps leading to the exercise of these powers – including any request to the Sovereign to dissolve Parliament and any related advice – are non-justiciable and cannot be reviewed by a court or tribunal.
- 21 Section 3 further provides that a court or tribunal cannot consider the limits or extent of those powers. This is to address the distinction drawn by the Supreme Court in *Miller v The Prime Minister, Cherry and Others v The Advocate General for Scotland* [2019] UKSC 41 as regards the court's role in reviewing the scope of a prerogative power, as opposed to its exercise. It seeks to clarify that neither is justiciable in the context of decisions relating to the dissolution of one Parliament and the calling of another.

⁵ See the [Independent Review of Administrative Law](#), paragraph 2.84.

Section 4: Automatic dissolution of Parliament after five years

- 22 Section 4 provides that Parliament will automatically dissolve five years after it has first met. By making express provision for a maximum parliamentary term of five years, this is broadly a return to the position prior to the 2011 Act under the Septennial Act 1715 (as amended by the Parliament Act 1911). However, for the purposes of simplicity the start of the five-year term will now be the date on which Parliament actually first meets rather than the date on which the Parliament was summoned to meet, as it was under the 1715 Act. In practice those dates were usually the same.⁶

Section 5: Minor and consequential amendments and savings

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

Section 6: Extent, commencement and short title

- 25 Subsection (1) provides that the Act extends to England and Wales, Scotland and Northern Ireland.
- 26 Subsection (3) provides that the Act comes into force on Royal Assent.
- 27 Subsection (4) establishes the short title as the Dissolution and Calling of Parliament Act 2022.

Schedule: Minor and consequential amendments

- 28 The Schedule contains minor and consequential amendments to primary and secondary legislation. These are primarily to reverse amendments made by the 2011 Act, to remove references to the 2011 Act and to ensure that after the repeal of the 2011 Act the relevant legislation still works (for example to amend provisions passed after the 2011 Act which were drafted on the basis of a fixed election cycle). The key amendments are:
- Rule 1 of Schedule 1 to the Representation of the People Act 1983 (which sets out the election timetable) is amended to provide that the trigger for the election process in the case of a parliamentary general election is the dissolution of Parliament (whether by exercise of the prerogative or by virtue of section 4) (*paragraph 8(2)(a)* of the Schedule). Provision is also made, in order to give additional certainty in relation to election process, so that the election writ is deemed to have been received the day after the dissolution of Parliament (or in the case of a by-election, the day after the date of the warrant for the writ) (*paragraph 8(2)(b) and (c)(ii)*). Equivalent changes are made to other provisions of the 1983 Act that depend on the date of the receipt of the writ (sections 28 and 95) (*paragraphs 5 and 7* of the Schedule).

⁶ Two exceptions were in 1919 and 1924, when the date of Parliament's first meeting was postponed by a few weeks.

- Section 20 of the Representation of the People Act 1985 is amended. Previously that section provided that, in the event of the demise of the Crown during an election period (or up to 7 days beforehand), the polling day and the date set for the first meeting of Parliament were automatically postponed by 14 days. The amendments to the Representation of the People Act 1985 mean that the polling day may, by Royal Proclamation on the advice of the Privy Council, be moved by up to 7 days either side of this default 14 day postponement. The date of the first meeting of the new Parliament may also be moved by Royal Proclamation on the advice of the Privy Council (*paragraph 9 of the Schedule*).
- Section 95A of the Political Parties, Elections and Referendums Act 2000 is amended to implement a maximum 365 day reporting period for third party donations where third party donations are reported quarterly, beginning four years from the first sitting of the current Parliament (*paragraph 15 of the Schedule*). This period will end on dissolution, whether by exercise of the prerogative or automatic expiry at the end of a five year term, as third-parties will begin weekly donations reporting from that point.
- The Recall of MPs Act 2015 is amended to ensure that there continues to be provision to prevent or terminate recall petitions close to a general election to avoid redundant by-elections. The amendments mean there is no requirement to trigger a recall petition if the last possible polling day for a general election (based on Parliament running its full term) is less than six months away (*paragraph 25 of the Schedule*) and a recall petition is to be terminated when Parliament is dissolved (*paragraph 26 of the Schedule*). These amendments do not change the conditions which can trigger a recall petition, do not change how a recall petition is to be conducted and do not impact what happens in the event that a recall petition meets the signing threshold and successfully leads to a by-election.

Commencement

29 The Act commenced on Royal Assent.

Related documents

30 The following documents are relevant to the Act and can be read at the stated locations:

- The Fixed-term Parliaments Act 2011, which can be accessed at: <https://www.legislation.gov.uk/ukpga/2011/14/contents>.
- Independent Review of Administrative Law, published in March 2021, which can be accessed at: <https://www.gov.uk/government/groups/independent-review-of-administrative-law>.
- Joint Committee on the Fixed-Term Parliaments Act's Report, published in March 2021, which can be accessed at: <https://committees.parliament.uk/committee/491/joint-committee-on-the-fixedterm-parliaments-act/>. The Joint Committee carried out a review of the operation of the 2011 Act, and it reported on a draft version of the Dissolution and Calling of Parliament Act.
- The draft version of the legislation, published for pre-legislative scrutiny, can be accessed at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940027/Draft-Fixed-term-Parliaments-Act-Repeal-Bill.pdf.
- The Government's response to the Joint Committee on the Fixed-Term Parliaments Act's Report can be accessed at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984482/Government_response_to_the_Joint_Committee_on_the_Fixed-term_Parliaments_Act_Report.pdf.

Annex A - Hansard references

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

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	12 May 2021	Vol. 695, Col. 162
Second Reading	6 July 2021	Vol. 698, Col. 788
Committee of the Whole House, Third Reading	13 September 2021	Vol. 700, Col. 718
<i>House of Lords</i>		
Introduction	14 September 2021	Vol. 814, Col. 1276
Second Reading	30 November 2021	Vol. 816, Col. 1277
Committee of the Whole House	25 January 2022	Vol. 818, Col. 180
Report	9 February 2022	Vol. 818, Col. 1584
Third Reading	24 February 2022	Vol. 819, Col. 348
Final stages		
Commons Consideration of Lords Amendments	14 March 2022	Vol. 710, Col. 642
Lords Consideration of Commons Reason	22 March 2022	Vol. 820, Col. 855
Royal Assent	24 March 2022	House of Commons Vol. 711 Col. 458
		House of Lords Vol. 820 Col. 1083

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