



Fixed-term Parliaments Bill

[Bill No 64 of 2010-11]

RESEARCH PAPER 10/54 26 August 2010

The *Fixed-term Parliaments Bill* was introduced to the House of Commons on 22 July 2010. The proposals are part of the Coalition Agreement between the Conservative and Liberal Democrat parties, agreed after the May 2010 General Election.

The Bill fixes the date of the next general election at 7 May 2015, and provides five year fixed-terms. There are provisions to allow the Prime Minister to alter the date by Order by up to two months. There are also two ways in which an election could be triggered before the five year term: if a motion of no confidence is passed and no alternative government is found within 14 days; or a motion for an early general election is agreed either by at least two-thirds of the House or without division.

This briefing has been prepared to inform the Second Reading debate on the Bill.

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Summary

The *Fixed-term Parliaments Bill 2010-11* fixes the date of future general elections. If enacted, the next general election will take place on 7 May 2015, with elections occurring thereafter every five years on the first Thursday of May. The Prime Minister, by Order, would be able to extend or shorten the period between general elections by up to two months. Parliament would be dissolved 17 days before the date of the general election.

It would be possible to trigger an early general election in two circumstances:

- if a motion of no confidence is agreed by the House of Commons and no alternative government can be confirmed by the House within 14 days;
- if a motion for an early general election is agreed. Where this is on a division of the House, the number of Members voting must be equal to or above two-thirds of the total number of seats in the House of Commons (434 out of a House of 650; 400 out of a House of 600).

Although the Bill has major constitutional and political implications, it has not been subject to pre-legislative scrutiny. The Bill ends the Monarch's prerogative power to dissolve Parliament on the advice of the Prime Minister. This is designed to end speculation over the date of the next general election and curtail the ability of a Prime Minister to call a 'snap' general election. The summoning of Parliament after a general election would remain a prerogative power. The date of the actual meeting of Parliament following the election is not fixed in the Bill. The Monarch's power to prorogue Parliament would also not be affected.

Initial plans for a 55 per cent vote on early dissolution were changed after criticism to the effect that this figure had been chosen to reflect the current political composition of the Coalition Government. Wider concerns about the statutory provision for a super-majority have persisted. The Coalition would need support from other parties to pass such a motion. However, the Labour party, with its 256 seats in the current Parliament, could prevent an early dissolution on its own. Since there are no provisions in the UK to entrench constitutional legislation, it would also be possible to amend this Bill, once passed, by a further Bill to change the date of the next general election. Such legislation would require a simple majority only in both Houses.

The procedures for dissolution following a vote of no confidence in the Bill have also provoked debate. The Bill appears to allow the Government to table constructive votes of no confidence to trigger an early election. Historically, there is no set formula for a confidence or no confidence motion. There may be uncertainty as to whether the loss on a key part of the Government's policy agenda might count as a confidence motion. The Bill provides for the Speaker to issue a conclusive certificate as to whether a no confidence vote has been carried. This has led to concerns about the wisdom of referring to proceedings of the House in legislation and the potential for the Speaker to be involved in controversy. The need for two different processes: one for confidence motions and one for dissolution motions has also been questioned.

The legislation sets the period between general elections at five years. The current limit on the length of a Parliament, set out in the *Septennial Act 1715* as amended by the *Parliament Act 1911*, is five years. However, a dissolution has always been sought before the elapse of the full five years or the parliament has been lengthened by wartime Acts. Commentators have suggested that elections would more suitably be held every four years as this better reflects the current constitutional position, historical practice, and comparisons with other parliaments. However, others have argued that a five year period between elections is required for a government to have a fair chance at pursuing its policies.

1 Introduction

The *Fixed-term Parliaments Bill 2010-11* was introduced in the House of Commons on 22 July 2010.¹ Its Second Reading is scheduled to take place on 13 September.

The Bill fixes the date of future general elections. The next general election is to take place on 7 May 2015, with elections subsequently occurring every five years on the first Thursday of May. Parliament would be dissolved 17 working days before the date of each general election. The Bill therefore ends the Monarch's prerogative powers to dissolve parliament on the advice of the Prime Minister.

There are provisions to allow for an early dissolution. This would require the House of Commons to agree a 'dissolution motion'. If this were done on a vote, two thirds of Members of the House of Commons would need to vote in favour. A general election would also result from a vote of no confidence if no alternative government could be found within a 14 day period. The Bill allows the Prime Minister by order to extend or shorten the period between general elections by up to two months. The Bill extends to the whole of the United Kingdom.

The Bill, if enacted, would therefore have major implications for both our constitution and our wider political system. The ability of the Prime Minister to choose the date of the general election has been a key political power which will now be limited. Advance knowledge of the election date will have implications for parliamentary timetabling. General elections will, by statute, always take place on Thursdays and normally take place in May. For the first time in legislation there will be a requirement for a super-majority rather than simple majority in the House of Commons. The consequences of a vote of no confidence, previously a matter for convention and precedent, would become a matter of law.

The issues involved in legislating for fixed-terms are not simple. In order to be effective, the bar on triggering an early dissolution needs to be set high enough to be relatively difficult for an incumbent government to name the date of the next general election. However, it has to be flexible enough to allow a dissolution if, for some reason between elections, the incumbent government is unable to command a majority in the House and there is no alternative government available.

The Bill is a product of the Coalition Agreement between the Conservative and Liberal Democrat parties in May 2010. As well as the principled arguments for introducing the legislation in terms of reducing prime ministerial power, there has been some speculation that the Bill is also politically desirable to hold the Coalition parties together for a full parliamentary term.

The Bill has not been subject to pre-legislative scrutiny and the timetable for parliamentary consideration has been subject to some criticism. Its Second Reading is due to take place one week after that of another constitutional bill: the *Parliamentary Voting Systems and Constituencies Bill 2010-11*. The Constitution Committee in the House of Lords is conducting an inquiry into the Government's proposals. The Political and Constitutional Reform Committee in the House of Commons took evidence from the Deputy Prime Minister, Nick Clegg, on constitutional issues including fixed-term parliaments, and is to take evidence from the Clerk of the House on 7 September 2010.

This Research Paper sets out the Government's proposals for fixed term parliaments and the background to them. It sets out the main provisions of the Bill. It then considers the key issues raised by the Bill including the length of parliaments, the super-majority which will be required for early dissolutions, and defining votes of no-confidence in legislation.

¹ [Fixed-term Parliaments Bill 2010-11](#) [Bill 64 of 2010-11]

2 The Government's proposals

2.1 Introduction

Fixed-term parliaments were a part of the Coalition Agreement reached by the Conservative and Liberal Democrat Parties in May 2010. The Liberal Democrats have long been supporters of fixed-term parliaments. Although the legislation had not been a specific Conservative Party manifesto commitment, they had pledged to make "the Royal Prerogative subject to greater democratic control so that Parliament is properly involved".² In a speech given at the Scottish Parliament on 14 May 2010, after the coalition terms had been agreed, David Cameron said:

I'm the first Prime Minister in British history to give up the right unilaterally to ask the Queen for a dissolution of Parliament. This is a huge change in our system, it is a big giving up of power. Others have talked about it, people have written pamphlets and made speeches about fixed term parliaments, I have made that change. It's a big change and a good change.³

A fixed-term parliament offers the Coalition Government a certain amount of stability as it creates an expectation that parliament will run a full term. Christopher Chope asked Nick Clegg, Deputy Prime Minister and Leader of the Liberal Democrat Party, if the legislation was intended to lock the Liberal Democrats into the coalition:

...does it not suggest that there is a lack of trust at the heart of the coalition because you can introduce legislation so that prospective parliaments are bound by a fixed-term rule? In this Parliament there is the complication of a possible AV [Alternative Vote] referendum. Is not your desire to encapsulate something in the form of legislation to provide you with a way out if the AV referendum goes the wrong way? ...there are lots of rumours circulating that if the Liberal Democrats do not win the AV referendum they will pull out of the coalition and that is the reason why we need to legislate now for a fixed-term parliament.

Mr Clegg: You have an elegant but suspicious turn of mind. This is really not driven by endless rumours and counter-rumours about what might or might not happen in future. I think it is a simple fact that if you look at fixed-term parliaments anywhere else around the world... this is a constitutional innovation of significant proportions and should not be left to the whim of an individual prime minister or politician; it needs to be enshrined in legislation. It would be bizarre to have a political commitment to a fixed-term parliament that applied to only one parliament. Surely, the point of a fixed-term parliament is precisely to give the reassurance that that is the way it is fixed henceforth, and again I think that can be done only through primary legislation.⁴

2.2 The Coalition Agreement and further announcements

The initial Coalition Agreement between the Conservative and Liberal Democrat parties was published in the afternoon of 12 May 2010. It included a commitment to five-year fixed-term parliaments:

The parties agree to the establishment of five year fixed-term parliaments. A Conservative-Liberal Democrat coalition government will put a binding motion before the House of Commons in the first days following this agreement stating that the next

² Conservative Party, *Invitation to join the Government of Britain*, 2010, p67

³ 'Cameron defends change over election vote rules', *BBC News*, 14 May 2010

⁴ Uncorrected Transcript of Oral Evidence taken before the Political and Constitutional Reform Committee, *The Coalition Government's Programme of Political and Constitutional Reform*, Rt Hon Nick Clegg MP, to be published as HC 358-i 2010-11, Q67

general election will be held on the first Thursday of May 2015. Following this motion, legislation will be brought forward 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.⁵

This commitment was repeated in the Coalition's *Programme for Government* published on 20 May 2010:

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.⁶

The Queen's Speech on 25 May 2010 included a commitment to bring forward measures "to introduce fixed term Parliaments of five years".⁷ Background material provided to accompany the Queen's speech said that the Government would introduce a 'Parliamentary Reform Bill' which would include provisions to introduce fixed term parliaments of five years, with a procedure for early dissolution on a vote of 55 per cent of the House of Commons.⁸ In response to an adjournment debate, David Heath, Deputy Leader of the House, confirmed that a motion would be brought forward before the summer recess, with legislation on fixed term parliaments to follow.⁹ In the event, this motion was not brought forward. Nick Clegg told the Political and Constitutional Reform Committee that:

We felt that it [the resolution] was necessary on the assumption that the legislation would then come much further down the track. When we looked at it again we decided it was simpler and also in a sense would provide greater scrutiny for the measure in Parliament if we just moved straight to introducing a Bill... I freely admit that we have shifted in a sense but it is a procedural shift. Initially, we thought we needed the motion to show the political commitment to a fixed-term parliament and then, on a more leisurely timetable, produce the legislation. The closer we looked at it given its constitutional importance we thought it better and more proper to move to legislation on a quicker timetable.¹⁰

The proposals on a 55 per cent threshold required for a dissolution to be agreed by the House of Commons attracted immediate political and media comment. There were a number of interrelated issues. There was concern that the House could not bind itself for the future due to the doctrine of parliamentary sovereignty. The 55 per cent threshold was attacked as protecting the executive against Parliament. The Coalition parties together have 56 per cent of seats in the House of Commons. There was also unease that the convention of an immediate dissolution following a vote of no confidence was being eroded.¹¹ The first adjournment debate of this Parliament was on the question of the dissolution of Parliament.¹²

On 5 July Nick Clegg made a statement on political and constitutional reform in which he indicated changes in the initial Coalition proposals. The requirement for a 55 per cent

⁵ [Conservative Liberal Democrat coalition negotiations: agreements reached 11 May 2010](#)

⁶ Cabinet Office, *The Coalition: Our Programme for Government*, 20 May 2010

⁷ HL Deb 25 May 2010 c6

⁸ Number 10, *Queen's Speech: parliamentary reform bill*, 25 May 2010

⁹ HC Deb 25 May 2010 c154

¹⁰ Uncorrected Transcript of Oral Evidence taken before the Political and Constitutional Reform Committee, *The Coalition Government's Programme of Political and Constitutional Reform*, Rt Hon Nick Clegg MP, to be published as HC 358-i 2010-11, Q65

¹¹ See Library Standard Note, SN/PC/2873, *Confidence Motions*

¹² HC Deb 25 May 2010 cc135-153

threshold was to be replaced by a 66 per cent threshold, as is the case in the Scottish Parliament. Nick Clegg stated:

I know that when the coalition agreement was published there was some concern about these proposals. We have listened carefully to those concerns, and I can announce today how we will proceed... 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. These changes will make it impossible for any Government to force a Dissolution for their own purposes. These proposals should make it absolutely clear to the House that votes of no confidence and votes for early Dissolution are entirely separate, and that we are putting in place safeguards against a lame-duck Government being left in limbo if the House passes a vote of no confidence but does not vote for early Dissolution.¹³

Most of the questions on this statement concentrated on the announcement of legislation to introduce a referendum on the Alternative Vote and to reduce the size of the House to 600.

2.3 Opportunity for parliamentary scrutiny

There have been some concerns expressed that the Bill has been drafted in a short time scale, particularly as if enacted the legislation will have a major impact on the UK constitution. Professor of Constitutional Law at Kings College London, Robert Blackburn, has said that:

This particular bill is something that needs very careful thought because it can have a huge impact on general elections. Let us not forget, of course, that a general election really is the main political event in our democracy. We are determining not just the life and the composition of the House of Commons but also of the Executive, so it is a very important subject which should not really be rushed.¹⁴

The Political and Constitutional Reform Committee published a short report expressing concerns about the timetable for the *Parliamentary Voting System and Constituencies Bill 2010-11*.¹⁵ The Second Reading of that Bill, also introduced on 22 July, is scheduled to take place one week before that of the *Fixed-term Parliaments Bill*. The report included a letter from the Chair of the Committee, Graham Allen, to the Deputy Prime Minister which also criticised the timetable for the *Fixed-Term Parliaments Bill 2010-11*. Graham Allen wrote:

When the House agreed to establish the committee, it did so, in the words of the Deputy Leader of the House, "to ensure that the House is able to scrutinise the work of the Deputy Prime Minister". In the case of these two bills you have denied us any adequate opportunity to conduct this scrutiny.¹⁶

The Committee has announced that the Clerk of the House of Commons is to give evidence on the *Fixed-Term Parliaments Bill 2010-11* on 7 September 2010.

¹³ HC Deb 5 July 2010 c24

¹⁴ Minutes of Evidence taken before the Constitution Committee (Unrevised), *The Government's Constitutional Reform Programme*, Ev 1, Professor Robert Blackburn, Professor Robert Hazell and Peter Riddell, Wednesday 21 July 2010, Q10

¹⁵ *Parliamentary Voting Systems and Constituencies Bill 2010-11* [Bill 63 2010-11]

¹⁶ Political and Constitutional Reform Committee, *Parliamentary Voting System and Constituencies Bill*, 2 August 2010, HC 422 2010-11

The Constitution Committee in the House of Lords is conducting an inquiry into Fixed-term Parliaments. The Committee took evidence from Professor Robert Blackburn, Professor Robert Hazell (Director of the Constitution Unit at UCL) and Peter Riddell (Chair of the Hansard Society) before the summer recess and further evidence sessions are planned for the autumn.¹⁷

2.4 Previous debate on fixed-term parliaments

Fixed-term parliaments have been part of the debate on constitutional reform for some time. It was the *Meeting of Parliament Act 1694* (known as the *Triennial Act* until 1948) that first limited the length of a parliament at three years. The *Septennial Act 1715* extended this limit to seven years. The *Parliament Act 1911* amended the *Septennial Act* to the current limit of five years. Since then, there have been recurring debates on the appropriate maximum length of a parliament and on whether there should be fixed parliamentary terms.

The arguments for introducing fixed-term parliaments can be summarised as follows:

- The present system offers the incumbent government an ‘unfair’ advantage, since the Prime Minister can choose the most favourable date;
- There is a lengthy period of uncertainty before a general election is called, which affects politics, government and the economy;
- The role of the Monarch could become subject to political controversy under the current system. The Monarch could refuse a request to dissolve Parliament, particularly when there has been a general election some months previously and a hung Parliament has resulted. Constitutional authorities have disagreed as to whether any personal prerogative of the Monarch remains in such circumstances.

The arguments against fixed-term parliaments have tended to focus on the possible encouragement to coalition government, given the premise that an administration losing support in parliament would prefer to find a partner than lose power by calling a general election before the fixed time period had expired. The theory is that the executive holds office and governs with the confidence of the House. When that confidence is lost, it is time for the electorate to be given a choice of parties which should form the next executive. One possibility would be to require a dissolution whenever there is a change of Prime Minister. As leader of the Opposition, David Cameron had suggested that Parliament should be dissolved within six months of a new Prime Minister being appointed.¹⁸ Another argument used against fixed terms is that there is a danger of a long drawn-out election campaign although it is not clear that this would be the effect.¹⁹

The Labour Party manifesto for the 2010 General Election included a pledge to “legislate for fixed-term parliaments”.²⁰ The Labour Party’s 1992 manifesto had included the same commitment,²¹ but it was not in the 1997 manifesto and did not form part of the Labour Government’s programme of constitutional change.

¹⁷ See [Lords Constitution Committee – Fixed Term Parliaments](#) for more information

¹⁸ “David Cameron says that the Tories would prevent parties from replacing a serving Prime Minister”, *Independent*, 24 April 2010

¹⁹ For more on the general arguments for and against fixed-term parliaments see Philip Norton, ‘Would fixed-term Parliaments enhance democracy?’ in Lynton Roberts and Bill Jones eds, *Debates in British Politics Today*, 2000

²⁰ Labour Party, [The Labour Party Manifesto 2010: A Future Fair for All](#), May 2010, 9:3

²¹ Labour Party, *Time to get Britain working again*, 1992

In 2007, the Labour Government published the *Governance of Britain* Green Paper which proposed wide-ranging constitutional reform. Although it shied short of recommending fixed-parliamentary terms, it proposed that the Prime Minister should have to seek the approval of the House of Commons before asking the Monarch to dissolve Parliament. Any new arrangements would have needed to provide for a situation in which it proved impossible to form a government which commanded the support of the House of Commons, yet Parliament refused to dissolve itself. The Government announced that it would consult on these proposals and any change would, through precedent, become a new convention.²² In the event, the Modernisation Select Committee launched an inquiry into the proposal but this did not progress beyond receiving written evidence.²³ The announcement for the 2010 General Election was made by the Prime Minister on 6 April 2010 outside Downing Street.²⁴ No vote of the House of Commons was held to confirm the dissolution.

The Liberal Democrats have been committed to introducing fixed-term parliaments for some time. A policy paper agreed at their 2007 party conference argued in favour of four-year fixed-terms.²⁵

Although David Cameron argued that “the arguments for fixed-term parliaments are strengthening” in a 2009 speech made during the expenses crisis,²⁶ the Conservative Party’s 2010 manifesto did not include a commitment to introduce them.

There have been a number of Private Members’ bills in recent years which have sought to introduce fixed terms. The former Labour Member, Dr Tony Wright, introduced the *Fixed Term Parliaments Bill 2000-01* which provided for four-year fixed terms; and introduced a second Bill under the ten minute rule procedure in 2002.²⁷ On 10 October 2007 a *Fixed Term Parliament Bill* was introduced by the former Liberal Democrat Member David Howarth, again providing for four year fixed terms.²⁸

In his 1995 book, *The Electoral System in Britain*, Professor Robert Blackburn put forward his own version of a Bill to introduce fixed-term Parliaments. He entitled this the *Parliamentary Assembly Bill*.²⁹

3 The Bill

The *Fixed-term Parliaments Bill 2010-11* was introduced in the House of Commons on 22 July 2010, five days before the House rose for the Summer recess. Its Second Reading is scheduled to take place on 13 September, one week after the House returns.

The section below sets out the main clauses of the Bill. It is a selective summary only; readers are referred to the Bill’s *Explanatory Notes*, and to the text in sections 4 and 5 of this Research Paper for a full discussion of the effects of the provisions.³⁰ The Bill comes into force on royal assent.

²² Ministry of Justice, *The Governance of Britain*, July 2007, Cm 7170, paras 34-36

²³ Modernisation Committee, *Recall and Dissolution: Memoranda Received*

²⁴ BBC News, *Gordon Brown announces election date*, 6 April 2010

²⁵ Liberal Democrats, *For the People, By the People*, Autumn 2007, p9

²⁶ Conservative Party, *David Cameron: Fixing broken politics*, 26 May 2009

²⁷ *Fixed-term Parliaments Bill 2001-02* [Bill 134 of 2001-02]

²⁸ *Fixed-term Parliaments Bill 2006-07* [Bill 157 of 2006-07]

²⁹ Robert Blackburn, *The Electoral System in Britain*, 1995, p65

³⁰ *Fixed-Term Parliaments Bill: Explanatory Notes*

3.1 Polling days for parliamentary general elections

Clauses 1(1)-1(4) provide that the date of the next parliamentary general election will be 7 May 2015, and that subsequent general elections will take place on the first Thursday in May in the fifth calendar year following that in which the last general election took place.

If a general election takes place under the procedures for an early dissolution set out in Clause 2, the general election will generally take place on the first Thursday in May in the fifth calendar year following that in which the early general election took place. If the early election is held before the first Thursday in May in the year of that election, the next general election will be held on the first Thursday in May four years later. The Explanatory Notes state that:

The effect of this is that when an early general election is held, the election day of the first Thursday in May is restored at the next election, and that the duration of the Parliament resulting from the early election will normally not be more than five years in length.³¹

Under **Clause 1(5)** the Prime Minister may, by Order, provide that the polling day for a general election is to be up to two months earlier or later than the first Thursday in May. **Clause 1(6)** requires the statutory instrument to be passed under the affirmative procedure.

3.2 Early parliamentary general elections

Under **Clause 2(1)** there would be an early general election if the Speaker of the House of Commons issues a certificate to certify:

- that the House has passed a motion that there should be an early general election;
- whether or not the motion was passed on a division of the House; and
- if the motion was passed on a division, that the number of members who voted in favour for the early general election was a number equal or great than two thirds of the number of seats in the House (including vacant seats).

Clause 2(2) provides that there would also be an early general election if the Speaker of the House of Commons issues a certificate certifying that:

- the House of Commons has passed a motion of no confidence in Her Majesty's Government; and
- a period of 14 days after the date of the vote has ended without the House passing any motion expressing confidence in any Government.

The issuing of a certificate would be conclusive for all purposes (**Clause 2(3)**). Before issuing the certificate, the Speaker must consult the Deputy Speakers as far as is practicable (**Clause 2(4)**).

3.3 Dissolution of Parliament

Clause 3(1) provides that Parliament will be dissolved at the beginning of the 17th working day before the polling day of the next general election or as a result of the circumstances for an early general election set out in clause 2. **Clause 3(2)** states that Parliament cannot be dissolved in any other circumstances, hence ending the prerogative power of dissolution.

³¹ *Ibid*, p3

Under **Clause 3(3)**, once Parliament has been dissolved, the Lord Chancellor (or Secretary of State for Northern Ireland) will have the authority for the writs for the election to be sealed and issued.

The Monarch would be able to issue the proclamation summoning the new Parliament once the previous Parliament has been dissolved, and may set the date for the first meeting of Parliament. At present, the proclamation dissolving Parliament also summons the new Parliament and sets the date of the meeting of Parliament.

Under **Clause 3(6)**, new bank holidays or days of public thanksgiving or mourning are not to be disregarded for the purposes of the electoral timetable if they were introduced at a period of up to 30 days before the date of the dissolution. This means that there would always be 30 days advance notice of a changed dissolution date.

3.4 Consequential amendments and repeals

There are a number of consequential amendments and repeals set out in the Schedule to the Bill. These include the following.

The repeal of the ***Septennial Act 1715***. This Act, as amended by the *Parliament Act 1911*, includes the current limit on the maximum length of a Parliament at five years. This would no longer be required as the date of general elections would be fixed at five years: the length of a parliament would have to fit within this period, hence superseding the need for a maximum duration.

Section 20 of the ***Representation of the People Act 1985*** provides that the demise of the Crown would not affect the summoning of the new Parliament save only that the death is before polling day, in which case the date fixed for the poll is postponed for fourteen days together with the remaining time-table of events generally, including the meeting of the new Parliament. Paragraph 13 of the Schedule replaces and updates these provisions. The new section 20 would provide that if a demise of the Crown occurred seven days or fewer prior to the dissolution or once Parliament has been dissolved, the election will be delayed by 14 days (or to the next working day if the 14th day is a non-working day). This provision is to take into account circumstances where parliament may already have been prorogued prior to a planned dissolution or where there would not be time to change the date of election which will now be laid down by statute.

4 The timing of a general election

4.1 Introduction

The *Fixed-term Parliaments Bill 2010-11* will set the period between general elections at five years. The length of a Parliament, the period between Parliament meeting and being dissolved, would be less than five full years. Parliament would be summoned some days after polling day and would be dissolved 17 days before the date of the next general election. It would also remain possible for the Queen to prorogue Parliament at an earlier day on the advice of the Prime Minister, as has been the practice before some recent general elections.

This section of the Research Paper sets out the historical background to the current statutory limit on the length of a Parliament. It then considers in detail arrangements for the dissolution and meeting of the Parliament and the general election timetable, and how these would be affected by the provisions of the Bill. It also considers the length of a parliament and the amount of time between general elections.

4.2 The *Parliament Act 1911* and the *Septennial Act 1715*

The Bill provides that, in ordinary circumstances, polling days will take place every five years (Clause 1). The current five year limit is set in statute law, and has its origins in the historic development of the UK constitution.

The *Meeting of Parliament Act 1694* (known as the *Triennial Act* until 1948) placed the first limit on the length of a parliament at three years. This was in response to Charles II who maintained his second Parliament for a period of 17 years. The *Septennial Act 1715* extended the maximum duration of a parliament to seven years in order to facilitate acceptance of the new Hanoverian monarch, George I. In a time where a seat in the House of Commons was often the result of patronage, seven year parliaments were also deemed sufficient to encourage some independence from returned Members. There were some attempts during the eighteenth and nineteenth centuries to return to three year parliaments but none was successful.³²

The *Parliament Act 1911* amended the *Septennial Act* to set the maximum duration at five years. The *Septennial Act 1715* as amended states:

Be it enacted... That this present Parliament, and all Parliaments that shall at any time hereafter be called, assembled, or held, shall and may respectively have continuance for [five] years, and no longer, to be accounted for on the day on which by the writ of summons this present Parliament hath been, or any future Parliament shall be appointed to meet, unless this present, or any such Parliament hereafter to be summoned, shall be sooner dissolved by His Majesty, his heirs or successors.³³

The reduction in the length of a parliament off-set other changes included in the 1911 Act which increased the power of the elected chamber. The primary purpose of the legislation was to curtail the power of the House of Lords to veto bills following the Lords refusal to pass Lloyd George's 'People's Budget' in 1909. The veto of the Lords was limited to a delaying power of three years for ordinary bills (reduced to two by the *Parliament Act 1949*), and one month in the case of Money Bills. However, the *Parliament Act 1911* expressly excluded any bill that extended the life of a parliament beyond five years.

The *Parliament Act 1911* was not intended to result in five-year parliaments, merely to set that as the maximum length. Introducing the Bill to the House of Commons, the then Prime Minister, Herbert Asquith, stated:

...we propose to shorten the legal duration of Parliament from seven 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 confidence of the popular will – it is looking forward to the polls at which it will have to render an account of its stewardship.³⁴

In fact, at no time since 1911 has Parliament ever been allowed to run to its five year limit. At some point between the meeting of Parliament and its five year anniversary, the Sovereign, acting on the advice of the Prime Minister, has dissolved Parliament and issued writs for the meeting of a new Parliament. During both world wars in the twentieth century, legislation was passed to extend the life of the Parliament before it would have elapsed.

³² For a fuller historical account, see Robert Blackburn, *The Meeting of Parliament*, 1991, Chapter II

³³ *Septennial Act 1715* as amended

³⁴ HC Deb 21 February 1911 c1749

The *Fixed-term Parliaments Bill 2010-11* will repeal the *Septennial Act 1715*.³⁵ It does not, however, repeal the amending section of the *Parliament Act 1911*. In addition, it is worth noting that whereas these Acts limited the length of a Parliament, the *Fixed-Term Parliaments Bill* is silent on the length of a parliament; it fixes the time period between general elections. The difference between these two time periods for elections since 1918 is set out in the Appendix to this Paper.

4.3 The dissolution of Parliament

At present, it is the Queen who calls a general election, since she is vested with the legal power to dissolve and summon parliaments. The prerogative is not derived from any constitutional or parliamentary document, but from judicial recognition of activities of the Crown over past centuries.

The Bill ends this prerogative power by fixing the date of the election and attaching the date of dissolution to the date of the general election. Clauses 1(2) and 1(3) provide that:

(2) The polling day for the next parliamentary general election after the passing of this Act is to be 7 May 2015.

(3) The polling day for each subsequent parliamentary general election is to be the first Thursday in May in the fifth calendar year following that in which the polling day for the previous parliamentary general election fell.

Clauses 3(1) and 3(2) state that:

(1) The Parliament then in existence dissolves at the beginning of the 17th working day before the polling day for the next parliamentary general election...

(2) Parliament cannot otherwise be dissolved...

The Monarch will, however, retain the prerogative power to issue the proclamation summoning the new Parliament (Clause 3(4)). The Bill also explicitly states that the Monarch will retain her power to prorogue Parliament (Clause 4(1)).

In modern practice, the Monarch has dissolved Parliament by Royal Proclamation, rather than in person.³⁶ In addition, dissolution now only takes place when Parliament has either been prorogued or adjourned, never when actually sitting. The form of the Royal Proclamation is a document signed by the King or Queen in Council, with the Great Seal attached. It proclaims not only the fact of the dissolution, but also both that orders have been given for writs to be issued in due form for the summoning of a new Parliament, and the date which the new Parliament is to meet. The *Fixed-term Parliaments Bill 2010-11* provides that once Parliament is dissolved under the Act, "Her Majesty may issue the proclamation summoning the new Parliament" (Clause 3(4)).

At present, the Monarch dissolves parliament on the advice of the Prime Minister. Unless there is some external factor such as a vote of no-confidence, the date of the general election is a matter of choice for the Prime Minister. As Professor Blackburn has written:

The most important political factor weighing in a Prime Minister's choice of dissolution date is the prospect of winning or losing the consequent general election. The Prime

³⁵ *Fixed-term Parliaments Bill 2010-11* s4(3) and Schedule

³⁶ There have been just two occasions since 1679 when the Monarch has dissolved Parliament in person: in 1681 by Charles II and in 1818 by the Prince Regent.

Minister will decide on the date most favourable to his or her party's chances of success in being returned to government.³⁷

This Prime Ministerial power has been summed up by Roy Jenkins as follows:

Under the British system almost all general elections lost by the prime ministers are ex hypothesi thought to have been held on the wrong date.³⁸

The choice over the date of the general election has also given the Prime Minister leverage over parliamentary colleagues as the threat of an early general election can put parliamentary careers at risk. Professor Blackburn concludes that:

This prerogative power to control the election date is the most important source of political authority to a strong premier, and together with his or her other prerogative right of appointing and removing ministers, gives great credence to the widely-held thesis that in Britain behind the dignified ceremonial facade of Cabinet Government, there exists a political reality of Prime Ministerial rule.³⁹

Fixing the date of the general election in statute will limit this personal and political power of the Prime Minister. The ability to trigger or avoid an early general is particularly important in this context.

In 2007, Canada amended its *Elections Act* to provide for fixed periods between elections. However, it did not make any special provisions to limit the executive power to dissolve Parliament early. Neither did it give Parliament the power to cause an early dissolution. The following section was added to the *Elections Act*:

Powers of Governor General preserved

56.1 (1) Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General's discretion.

Election dates

(2) Subject to subsection (1), each general election must be held on the third Monday of October in the fourth calendar year following polling day for the last general election, with the first general election after this section comes into force being held on Monday, October 19, 2009.

An early general election was held in Canada during October 2008 after the Prime Minister, Stephen Harper, requested that the Governor General dissolved Parliament. Professor Hazell has explained that:

...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

³⁷ Robert Blackburn, *The Meeting of Parliament*, 1991, p72

³⁸ Roy Jenkins, *A Life at the Centre*, 1991, p367 as quoted in Alastair Smith, *Election Timing*, 2004, p1

³⁹ Robert Blackburn, *The Electoral System in Britain*, 1995, p57

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.⁴⁰

The provisions in the *Fixed-term Parliaments Bill 2010-11* for an early dissolution are discussed in Section 5 below.

The announcement of the date of the general election has itself become something of an event in the political calendar. In 2010, Gordon Brown announced the date of the election from the steps of Downing Street with the Cabinet gathered behind him.⁴¹ In 2001, Tony Blair had announced the election date at St Saviour's & St Olave's Church of England School in Bermondsey, South London. In 1992 John Major made a televised announcement in Downing Street. In his book, *The Electoral System in Britain*, Professor Blackburn explained that earlier in the twentieth century, announcement to the House of Commons had been customary, with the method of making an announcement to the press first dating from 1945. However, from 1945-1964 the announcement could not have been made to Parliament first because it was in recess at the time.⁴²

The announcement has normally been made some days before prorogation or adjournment, and the subsequent dissolution, to allow a few days to finish parliamentary business. During this period, known as wash-up, the Government seeks the co-operation of the Opposition to get through priority pieces of legislation. Some bills are lost completely, others are much shortened.⁴³ There have been some concerns that parliamentary scrutiny is curtailed during the wash-up period.⁴⁴ With a fixed polling date and date of dissolution, there would be no need for a 'wash-up' period. Theoretically at least, the legislative programme could be arranged so that Bills are able to complete their passage through parliament before the dissolution without aggressive use of timetabling.

'Wash-up' is an example of the impact on parliamentary practice of a switch to fixed terms which may take some time to absorb. Another might be the timing of sessions; if every parliament is elected in May, one might question the need for an 18 month first session ending in October or November the following year. If sessions continue to run from autumn to autumn, however, this would still leave a short parliamentary session in the run-up to a general election which might limit the ability to legislate during this period. The autumn to autumn sessional pattern is not one required by law, as *Griffith and Ryle on Parliament: Functions, Practice and Procedures* explains:

Sessions usually last for about a year, although there is no requirement, other than a well-established convention and certain practical convenience, for this to be so; business could be conducted in sessions extending over several years and in some countries, for example, Canada, this occurs frequently. The Scottish Parliament has a

⁴⁰ Robert Hazell, *Fixed-term Parliaments*, August 2010 p17

⁴¹ 'Gordon Brown announces election date', *BBC News*, 6 April 2010

⁴² Robert Blackburn, *The Electoral System in Britain*, 1995, pp33-37

⁴³ For more information see the Library Standard Note, SN/PC/5398, *Wash-up* and House of Lords Library Note, LLN 2010/011, *Wash-Up: Bills Receiving Royal Assent, 1987-2005*

⁴⁴ See for example the House of Lords Constitution Committee, *Constitutional Reform and Governance Bill*, 18 March 2010, HL 98 2009-10, paras 43-47

fixed four-year term, but with no division of that period into separate annual sessions. In practice, apart from those sessions beginning after a spring or summer election, Parliament is normally opened early in November and prorogued about a year later...⁴⁵

4.4 The electoral timetable

The *Fixed-Term Parliaments Bill 2010-11* does not alter the existing length of the general election timetable. The period between dissolution and polling day will remain at its current length of 17 days (Clause 3(1)). Statutory electoral timetables for both general and by-elections are laid down in the *Parliamentary Elections Rules* which are in Schedule 1 of the *Representation of the People Act 1983*. The timetables were last amended by the *Electoral Administration Act 2006* which removed Maundy Thursday from the list of days that are disregarded for the purposes of the timetable.⁴⁶

The Electoral Commission published proposals in July 2003 to lengthen the general election timetable to bring it into line with the 25 day local election timetable, but these have not been implemented. The Electoral Commission had argued that there were two main problems caused by the timetable's brevity: the heavy workload associated with postal and proxy votes, and the short timescale for electors to organise a postal vote. However, the Government did not favour the change in its response, published in December 2004. The Electoral Commission reiterated its call for a consistent length for all UK election timetables in its 2005 report, *Securing the Vote*.⁴⁷ Their report on the 2010 general election stated once more that:

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...⁴⁸

The Bill introduces, for the first time, a statutory requirement for Parliamentary elections to be held on Thursdays. At present, General Elections can be held on any weekday. However, using Thursdays has become an election convention. Since 1935 every general election has been held on a Thursday (Clause 1(3)). The Labour Government published a consultation paper on weekend voting in June 2008.⁴⁹ The Government's response to the consultation was published in March 2010. This stated that the evidence provided by local authorities and electoral administrators suggested that a weekend poll, particularly one held over two days, would add considerably to the logistical complexity of running elections. On balance, the Government stated that they believed that the potential benefits of a move to weekend voting were outweighed by the lack of consensus overall. However, they stated that "if further evidence or a stronger view in favour of weekend voting were to become apparent in the future, we believe that this issue should be examined further".⁵⁰

The Bill fixes the month of the election as May in normal circumstances. This would mean that the general election would be combined with local elections in England in most years, as long as elections by thirds continue for local authorities.⁵¹ Polling day took place in May in 1979, 1997, 2005 and 2010, but in June in 1983, 1987, 1992 and 2001. The last time there was an autumn general election was the second election of 1974, and before that in 1964,

⁴⁵ Robert Blackburn and Andrew Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures*, Second Edition, 2003, 6-024

⁴⁶ *Electoral Administration Act 2006 (Commencement No 2, Transitional and Savings Provisions) Order 2006*, SI 2006/3412

⁴⁷ The Electoral Commission, *Securing the Vote*, 2005, p53

⁴⁸ The Electoral Commission, *Report on the Administration of the 2010 UK General Election*, p3

⁴⁹ Ministry of Justice, *Election Day: Weekend Voting*, Consultation Paper CP 13/08, June 2008, Cm 7334

⁵⁰ Ministry of Justice, *Weekend voting: Summary of Responses*, March 2010, Cm 7835

⁵¹ For details see

<http://www.communities.gov.uk/localgovernment/local/governanceelections/electoralarrangements/>

1959 and 1951.⁵² Elections may still take place in other months as there is a power to vary the date of the election by up to two months along with the provision for early dissolutions but the presumption is for May general elections. Professor Hazell has suggested that the best way of avoiding the clash of general election dates with other elections taking place in the UK would be to fix the dates of general elections to October.⁵³ At present in England, Scotland and Wales an annual canvass form is sent to each household by Electoral Registration Officer between September and November. October elections would come at the busiest time of the year for election administrators. The *Political Parties and Elections Act 2009* clarified the law to ensure that electors may be added to the register when an election is held during a canvass period.

4.5 The meeting of Parliament

The *Fixed-term Parliaments Bill 2010-11* would fix the date of the dissolution and of polling day, but not of the meeting of Parliament following the general election. In modern times, it has generally been the practice that the acts of dissolution of the existing parliament and summoning of the new one take place simultaneously, and are declared in the same Royal Proclamation. After stating the fact of dissolution, which is effective forthwith, the Proclamation announces that orders have been given for writs to be issued for the calling of a new Parliament, and then specifies the date of the first meeting. The meeting of Parliament after an election may be deferred by an additional proclamation under the *Proclamation Act 1867* proroguing Parliament to a date not less than 14 days after the date of the original proclamation.⁵⁴

The *Meeting of Parliament Act 1694* requires the Crown to issue writs for a general election and meeting of Parliament within three years from the dissolution of the previous one. However, it is not now possible for the Crown to allow more than one year to elapse before calling a new parliament. Government cannot continue without the annual authority to levy taxes; and since the *Bill of Rights 1689* the Crown cannot levy taxes without the agreement of Parliament. Parliamentary authority is also required on an annual basis for the maintenance of a standing army in the United Kingdom in times of peace.

It might be questioned whether legislation which fixes the date of dissolution should also fix the date of the first meeting of Parliament after a general election or at least require the meeting of Parliament by a certain date. This might be advantageous in giving a sense of certainty to proceedings (mirroring the requirement in Clause 2 that if no new government is formed within 14 days of a vote of no confidence a general election is called). However, it might exert unnecessary pressure on future parties to negotiation proceedings or hold up the meeting of Parliament. Professor Blackburn's *Parliamentary Assembly Bill* set a limit on the time between the election and the meeting of Parliament. It provided that:

...the meeting of the newly elected Parliament shall be held within one month of the general election, as such times as the Proclamation shall appoint.⁵⁵

In 2010, it took the Coalition five days to form a Government. The meeting of Parliament took place seven days later and the practical deadline of the Queen's Speech seven days after that.

⁵² The Appendix to this Research Paper sets out the dates of all UK general elections since 1918

⁵³ Robert Hazell, *The Conservative Liberal Democrat Agenda for Constitutional and Political Reform*, June 2010, p15

⁵⁴ The Parliament summoned to meet on 18 November 1924 was prorogued from 18 November until 2 December 1924.

⁵⁵ Robert Blackburn, *The Electoral System in Britain*, 1995, p65

In 2010 the period between the election and the meeting of Parliament, at 12 days, was slightly longer than usual. This was the result of a recommendation from the Modernisation Committee. The Committee's 2007 *Revitalising the Chamber: the role of the back bench Member* had stated that:

...there should be a longer gap than usually occurred in the past between the election and the day the House first meets to permit some of the practicalities that prevent Members from focusing on their new job to be addressed and to make time for an induction programme before the House starts its work. We recommend that the gap should be about twelve days.⁵⁶

The Government accepted the recommendation in principle, and the House approved "the proposals for changes in the procedures and practices of the House set out in the Government's response to the report".⁵⁷

4.6 Five year parliaments

There has been some comment about the Bill's intention of setting the time between general elections at five years (Clause 1(3)). Some say that a five year fixed-term seems long in both comparative and historical terms. Although the *Parliament Act* sets the maximum duration of a parliament at five years, in practice no Prime Minister has ever let the full term elapse (see Appendix, *Length of Parliaments since 1918*). It has also been suggested that those governments which do run to the full five years are those who are most likely to lose the subsequent general elections (for example following the 1992-1997 Parliament and the 2005-2010 Parliament). However, others argue that in order for a government to deliver its programme a longer period in office is desirable. Professor Hazell has considered these contrasting views:

[Five years] feels long by comparison with Westminster's recent experience. An analysis of those post war parliaments which ran for a full term records seven parliaments which lasted 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); so the balance is more even than people suppose. But more debate is certainly needed on whether the term should be four years or five years.⁵⁸

In comparative terms, Westminster-style democracies generally have three or four year parliamentary terms. Australia and New Zealand both have three-year maximum length parliaments. Canada has a fixed term of four years, as do the devolved legislatures of Scotland, Wales and Northern Ireland. Ireland's lower chamber has a five-year fixed term. In Europe, Belgium, Denmark, Germany, the Netherlands, Spain, Sweden and Switzerland all have four year terms. The maximum duration of the French National Assembly is five years; the Senate is elected by indirect election every six years. International variations in lengths of Parliaments may depend on the wider constitutional arrangements in a country, for example, whether there are one or two elected chambers and whether there is a directly elected head of state. However, Professor Hazell has commented that "a five year term is long by comparison with most other parliamentary systems".⁵⁹

⁵⁶ Select Committee on Modernisation of the House of Commons, *Revitalising the Chamber: the role of the back bench Member*, 20 June 2007, HC 337 2006-07, para 39

⁵⁷ HC Deb 25 October 2007 c502

⁵⁸ Robert Hazell, *The Conservative-Liberal Democrat Agenda for Constitutional and Political Reform*, June 2010, p15

⁵⁹ *Ibid*

Five years would also appear to be long in the context of other recent attempts to introduce fixed-terms: Tony Wright's Private Member's bill on fixed term parliaments proposed four-year terms, as did David Howarth's 2007 Bill. Indeed, when Asquith introduced the *Parliament Act 1911* setting the maximum duration of Parliaments at five years, he indicated that this would lead, in practice, to parliaments of roughly four years. In his book, the *Electoral System in Britain*, Professor Blackburn stated that:

In Britain, there can be little doubt that the period between general elections should be four years. The proposal for fixed-term Parliaments 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... 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 sufficient time to put its programme of public policies into effect before submitting its record of achievement, or otherwise, to the votes. Three full legislative sessions, and certainly four, is sufficient for this purpose.⁶⁰

Another issue which is worth considering is how a programme of five year parliaments will interact with other electoral cycles in the UK. Professor Hazell told the Constitution Committee that:

The Government has proposed that the next general election should be in May 2015; but in May 2015 we already know there will be elections to the devolved assemblies in Scotland, Wales and Northern Ireland. If general elections continue to be held in May, there will, from time to time, be an overlap with the electoral cycle for elections to the European Parliament, held in June every five years. Although they would not be on the same date, the election campaigns would effectively overlap. I do not think it is very desirable to hold general elections at the same time as either devolved assembly or European elections. There would be a solution if the Government were willing to consider it, which would be, if they want fixed terms, to propose a general election debate in October.⁶¹

The various elections which are held in the UK also use a variety of electoral systems. There is some concern that this could lead to confusion on polling day, with long ballot or numerous ballot papers being produced.⁶²

Nick Clegg defended the choice of five years to the Political and Constitutional Reform Committee as follows:

When we proposed fixed-term parliaments we had to decide what the period should be. Five years is the established period of time. That means that every fourth election there will be a coincidence between the Scottish elections and the general election. I hope that, first, when they look at it people will accept the reasons why we decided on the five-year cycle in the way we have; and, second, that having that coincidence once every two decades is not too great a complexity to bear.⁶³

Later during the evidence session, he stated that:

⁶⁰ Robert Blackburn, *The Electoral System in Britain*, 1995, p62

⁶¹ Minutes of Evidence taken before the Constitution Committee (Unrevised), *The Government's Constitutional Reform Programme*, Ev 1, Professor Robert Blackburn, Professor Robert Hazell and Peter Riddell, Wednesday 21 July 2010, Q13

⁶² For more information see the Library Research Paper, *Parliamentary Voting System and Constituencies Bill 2010-11*

⁶³ Uncorrected Transcript of Oral Evidence taken before the Political and Constitutional Reform Committee, *The Coalition Government's Programme of Political and Constitutional Reform*, Rt Hon Nick Clegg MP, to be published as HC 358-i 2010-11, Q32

...it seems that, going with the grain of some of the founding texts of our unwritten constitution and following the precedent set by the immediate outgoing government, to give any government of whatever complexion enough time to govern and deliver a programme of change and reform seems to us to lead us towards a five-year period.⁶⁴

It has also been suggested that in instances of coalition government, a period is required before the next general election for the coalition partners to decouple in order to allow them to present different programmes to the electorate. David Steel recounted in his autobiography that during the Lib Lab pact in the late 1970s he had discussed with James Callaghan that the Liberal Party would require a “quarantine period” between the formal ending of the pact and the general election.⁶⁵ A fixed-term parliament of five years might allow for a period where the parties begin to move apart and potentially for the Government to be defeated, giving a coalition government perhaps four and a half years to get a combined programme through Parliament. If the UK moves towards a proportional voting system, it could be argued that instances of coalitions might become more common, and hence legislating for five years periods between elections might provide greater stability. However, most European countries’ parliaments which have four year fixed-terms also operate with coalition governments.

Although the Bill would fix the gap between elections at five years in normal circumstances, it would be open, at least in theory, for this or any future government to amend the legislation to provide for a different length of Parliament by simple majority, or to repeal the legislation altogether. Such legislation would as always require the assent of the House of Lords.

4.7 The *Parliament Acts* and fixed-term parliaments

The *Parliament Act 1911* states that bills that extend the life of a Parliament cannot be passed without the consent of the House of Lords:

If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in two successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the second time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless one year has elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the second of those sessions.⁶⁶

At present, it is possible to extend the life of a parliament beyond the five-year maximum through the passage of an ordinary act of Parliament, although it would not be possible to use the Parliament Act to force the legislation through the House of Lords. Since the *Parliament Act 1911* established the maximum length of a parliament as five years, parliaments have twice been extended beyond five years, during the two world wars. The 1911 Parliament was extended to eight years by the *Parliament and Registration Act 1916*, and the *Parliament and Local Elections Acts 1916* and *1918*. The 1935 Parliament was extended to ten years by the *Prolongation of Parliament Acts 1940, 1941, 1942, 1943 and 1944*. Professor Blackburn has written about the conventions on the prolongation of a parliament. After a discussion of the historical precedents he states that these show:

⁶⁴ *Ibid*, Q71

⁶⁵ David Steel, *Against Goliath: David Steel's Story*, 1989, p144

⁶⁶ *Parliament Act 1911*, section 2(1) as amended

...the very narrow limits within which the possibility of extending the life of Parliament beyond its normal maximum duration, a present five years, has been almost universally regarded. It can confidently be asserted that Members of the House of Commons would never countenance a suggestion for the suspension of elections outside these emergency conditions. However there can be no objection to Peers in the House of Lords retaining under the Parliament Acts an absolute veto on this one single matter. For putting the act of popular democracy into abeyance is a matter so fundamental to the constitution that the degree of political support for the measure must be nothing less than genuinely collective and virtuously unanimous.⁶⁷

The *Fixed-term Parliaments Bill 2010-11* does allow for the date of the general election to be changed by Order but by no more than two months either earlier or later than the first Thursday in May. Clause 1(5) states that:

The Prime Minister may by order made by statutory instrument provide that the polling day for a parliamentary general election in a specified calendar year is to be earlier or later than the day determined under subsection (2) or (3), but not more than two months earlier or later.

The Order would have to be made under the affirmative procedure for considering statutory instruments (SIs). The House of Lords would be able to veto an Order made under the affirmative procedure as the assent of both Houses of Parliament are required for SIs. These provisions give some leeway in case of unforeseen events which might otherwise interfere with the electoral timetable. The Explanatory Notes to the Bill give the example of the postponement of the 2001 General Election due to the Foot and Mouth outbreak.⁶⁸

If the Prime Minister chose to use the power in Clause 1(5) to delay the general election due on 7 May 2015 for two months, the election would be held on 7 July at the latest. Allowing that general elections take place on Thursdays, it is likely that the election would be delayed until Thursday 2 July 2015. If the election was to be held then, Parliament would be dissolved on Tuesday 9 June, which is more than 5 years after the current Parliament assembled (18 May 2010).

If the *Fixed-term Parliaments Bill 2010-11* is considered to be a bill that contains “any provision to extend the maximum duration of Parliament beyond five years”, it could not be enacted without the assent of the House of Lords. This depends on whether it is possible to interpret a provision that allows the Prime Minister to delay a general election (through secondary legislation) as a bill to extend the length of a Parliament. This would only become a matter of concern if the Bill was rejected by the House of Lords and was reintroduced in the next Session.

Arguably, the Bill could be changed to amend the *Parliament Act 1911* to refer to the maximum duration between elections rather than the length of a Parliament. This could remove the possibility of doubt over the applicability of the Parliament Act to any future Bills which might move the date of the next general election. However, to do so would open up various other constitutional issues related to the *Parliament Act* and the powers of the House of Lords to parliamentary debate. It is possible that these issues would be raised in any debate on reform of the second chamber which would follow the publication of a draft bill on Lords reform expected before Christmas.⁶⁹

⁶⁷ Robert Blackburn, *The Meeting of Parliament*, 1991, p38

⁶⁸ *Fixed-Term Parliaments Bill: Explanatory Notes*, p3

⁶⁹ See HM Government, *The Coalition: Our Programme for Government*, 20 May 2010, p27

5 Early dissolution procedure

5.1 Introduction

Although the Bill establishes a pattern of fixed elections every five years, Clause 2 of the Bill includes provisions that would allow for early general elections. The Bill provides that the House of Commons would be able to cause an early general election in two ways.

- The House can pass a motion that there should be an early general election. In this case, the Speaker has to issue a certificate certifying that the motion has been passed. If the motion was passed on a division, the certificate has to certify that the number of Members voting in favour of the dissolution was equal or greater than two thirds of the number of seats in the House, including vacant seats.⁷⁰ The Bill also provides for the Speaker to issue his certificate if the motion is passed without a division. In this circumstance, it would appear that the motion could be passed without securing the support of two thirds of the House.
- The House can pass a motion of no confidence in the Government and then, if within 14 days a motion expressing confidence in another Government is not passed, there would be an early general election. Again, the Speaker would have to issue a certificate certifying that the House did so. The Speaker's certificate, in either case, is "conclusive for all purposes".

The following parts of this section of the Research Paper consider issues relating to the requirement for a "super-majority" to trigger an early dissolution; the consequences of confidence motions in the House of Commons in the past; and the requirement for a Speaker's certificate.

5.2 A super-majority

If decisions in the House of Commons are not taken on voices, then a division is called. A question is put, and if more Members vote for the question than against it, it is agreed to. If more Members vote against the question than for it, it is negatived. A simple majority is all that is required for the House to come to a decision on almost any question. There is one exception: a vote on a question for the closure requires that not fewer than one hundred Members vote in support of the motion. Standing Order No 37 states that:

If a division be held upon a question for the closure of debate under Standing Order No. 36 (Closure of debate) or for the proposal of the question under Standing Order No. 29 (Powers of chair to propose question), that question shall not be decided in the affirmative unless it appears by the numbers declared from the chair that not fewer than one hundred Members voted in the majority in support of the motion.⁷¹

The Bill provides that one way of triggering an early general election would be for the Speaker to certify that the House has passed a motion "that there should be an early parliamentary election" (Clause 2(1)(a)). If passed on a division of the House, the Speaker would also need to certify that:

...the number of members who voted in favour of the motion was a number equal or greater than two thirds of the number of seats in the House (including vacant seats).⁷²

⁷⁰ *Fixed-term Parliaments Bill* [Bill 64 of 2010-11], clause 2(1)(c)

⁷¹ House of Commons, *Standing Orders of the House of Commons – Public Business (2010) New Parliament*, April 2010, HC 539 2009-10, Standing Order No 37

⁷² *Fixed-term Parliaments Bill 2010-11* [Bill 64 of 2010-11], clause 2(1)(c)

As outlined above, when the Coalition Government first proposed fixed-term parliaments, they had suggested that the motion would require 55 per cent of Members to vote in favour, but this was raised to two thirds after adverse comment. In an article for the *House Magazine* Dr Meg Russell wrote that:

...collectively, the coalition has 56 per cent of seats – meaning Cameron and Nick Clegg together could call an early election, even if the measure went through. Governing parties often exceed 55 per cent: Blair did in 1997 and 2001, and Thatcher in 1983 and 1987. In contrast, a threshold of 67 per cent, as applies in the Scottish Parliament, would have bound every post-war government. Adopting this figure would look like long-term constitutional engineering, rather than a short-term fix.⁷³

However, Professor Blackburn has argued that:

I think fixed terms are a good idea but I do not think that means that we need to be frightened of general elections. Setting the threshold at two-thirds I think is too high.... I think a normal voting rule for a dissolution vote is the best. And if you want to have a special majority, then the Commons can think of that at a later date and change standing orders accordingly.⁷⁴

Professor Hazell told the Lords Constitution Committee that:

...I am still puzzling myself to understand the rationale for what I called, in shorthand, the dual threshold. Why should it be a much higher threshold if it is the government which seeks to initiate a dissolution?⁷⁵

The requirement that the number of Members voting in favour must equal at least two thirds of seats in the House of Commons, including vacant seats means that in practice, less than one third of Members voting against an early dissolution could prevent it from happening. In the current Parliament, with a Speaker and three Deputy Speakers who do not participate in divisions and five Sinn Fein Member not taking their seats, 208 Members voting against a motion to dissolve Parliament would prevent it (the maximum number of Members that could participate in a division is 641, 434 are needed to support such a motion. If 208 voted against, a maximum of 433 could vote for the motion). The strength of the political parties in the House of Commons as at August 2010 is:

Conservative	305	SDLP	3
Labour	256	Alliance	1
Liberal Democrat	57	Green	1
DUP	8	Independent	1
SNP	6	Speaker and three Deputies	4
PC	3	Sinn Fein	5

⁷³ Meg Russell, 'Hot Topic: A fix or a fair reform', *The House Magazine*, 7 June 2010, p8

⁷⁴ Minutes of Evidence taken before the Constitution Committee (Unrevised), *The Government's Constitutional Reform Programme*, Ev 1, Professor Robert Blackburn, Professor Robert Hazell and Peter Riddell, Wednesday 21 July 2010, Q21

⁷⁵ *Ibid*

So, in the current Parliament, the Coalition could not bring about an early dissolution requiring a two-thirds vote in favour without support, whereas the Labour Party could prevent an early dissolution on its own. It could be questioned whether there would be any circumstances in which it would be in their advantage to do so.

The requirement for a vote of two-thirds of the total number of seats reflects the legislation for the Scottish Parliament. The *Scotland Act 1998* provides that ordinary elections:

...shall be held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary general election was held.⁷⁶

However, it also allows extraordinary general elections to take place under specific circumstances:

(1) The Presiding Officer shall propose a day for the holding of a poll if—

(a) the Parliament resolves that it should be dissolved and, if the resolution is passed on a division, the number of members voting in favour of it is not less than two-thirds of the total number of seats for members of the Parliament, or

(b) any period [lasting 28 days] during which the Parliament is required under section 46 to nominate one of its members for appointment as First Minister ends without such a nomination being made.⁷⁷

The provisions for fixed-term parliaments and for a two-thirds majority for early dissolution reflected proposals from the Scottish Constitutional Convention that were subsequently reiterated in the Labour Government White Paper, *Scotland's Parliament* of July 1997.⁷⁸

During the passage of the *Scotland Bill* in the House of Lords, an amendment to remove the need for a two-thirds majority was debated. Lord Mackay of Drumadoon argued that “when a parliament votes, the majority of those voting on the day in question should carry the day”.⁷⁹ Lord Steel of Aikwood countered that Lord Mackay had “not grasped the essential difference between the nature of a Scottish parliament and the Westminster system”. He said that a fixed-term parliament was different. He then continued that:

... It follows that it should not be at the convenience of the executive or the first minister to call an election when he wishes, or, indeed, to stage manage an election when he wishes by having a simple vote in the parliament.⁸⁰

For the Government, Lord Sewel argued that some decisions on powers exercised by the Parliament merited the safeguard of a two-thirds majority, “putting a decision beyond the realistic reach of any one party”. He explained that the decision on dissolution was included among these powers “to separate out decisions on the timing of elections from the control of the executive”. He continued:

This is the thinking behind a cycle of four-yearly elections, the fixed term parliament, and the role given to the presiding officer in the unusual event that the precise four-year timetable does not apply.

⁷⁶ *Scotland Act 1998* (Chapter 46), section 2(2)

⁷⁷ *Ibid*, section 3(1)

⁷⁸ Scottish Constitutional Convention, *Scotland's Parliament. Scotland's Right*, November 1995; Scottish office, *Scotland's Parliament*, July 1997, Cm 3658, paras 9.2, 9.4

⁷⁹ HL Deb 8 July 1998 c1351

⁸⁰ *Ibid*, c1352

By ensuring that a dissolution can happen only with a two-thirds majority, we are ensuring that simply by being able to command a majority of the parliament, an executive does not also gain the ability to bring forward the date of an election to its perceived benefit by forcing a dissolution. This is an important safeguard which underpins the whole approach taken to the setting of election dates in the Bill and which follows directly the proposals of the constitutional convention. Without this provision it is too easy to imagine how in certain circumstances the possibility of dissolution would become a political gambling card.⁸¹

The requirement for a vote of two-thirds in the Scottish Parliament is yet untested, and there have been no confidence motions.

There has been some discussion as to whether it would be appropriate to place the requirements for a two-thirds majority legislation, or whether this should be a matter for Standing Orders. It can be argued that legislating on detailed proceedings of the House might affect the right of the House of Commons to regulate its own affairs, free from intervention in the courts (exclusive cognisance). The Clerk of the House of Commons is likely to discuss these issues during his oral evidence to the Political and Constitutional Reform Committee on 7 September 2010.

The UK has no special category of constitutional law which requires a super-majority to amend. Therefore, as already noted above, it would be possible for this or any future government to amend a *Fixed-term Parliaments Act* to change the date of the next general election by simple majority, or to repeal the legislation entirely.

5.3 Confidence motions

A crucial aspect of the British system of parliamentary democracy is that the government of the day must enjoy the confidence of the House of Commons. For this reason, votes of confidence or no confidence (also known as censure motions) are perhaps the most important Parliamentary procedural devices. Confidence motions can be triggered by the Government, to test their support, but also by the Opposition. Those tabled by the Opposition are the ultimate expression of the Westminster model of “parliamentary opposition” – the attempt by the Opposition to remove the present Government and, directly or otherwise, replace by it.⁸²

Despite their crucial importance, there is no certainty about the rules on the form and applicability of confidence motions in the UK Parliament. Current understanding has developed by convention, rather than statute or the Standing Orders of the House. These conventions can be summarised as follows:

- the Government finding time for the debate of motions of confidence or no confidence is purely a matter of convention and practice;
- there is no specific form of words for censure motions and Governments may indicated at a specific issue is a matter of confidence;
- there is no one specific consequence of losing a confidence motion.

⁸¹ *Ibid*, c1353

⁸² For further discussion of the Westminster model of “parliamentary opposition” see RM Punnett, *Front-Bench Opposition*, 1973, p4

Detailed information about confidence motions is also available in the Library Standard Note, *Confidence Motions*.⁸³

Provision of time for the debate of censure motions

The current edition of Erskine May's *Parliamentary Practice* explains that at present:

From time to time the Opposition puts down a motion on the paper expressing lack of confidence in the government or otherwise criticising its general conduct⁸⁴. By established convention the government always accedes to the demand from the Leader of the Opposition to allot a day for the discussion of a motion tabled by the official Opposition which, in the government's view, would have the effect of testing the confidence of the House. 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. This convention is founded on the recognised position of the Opposition as a potential government, which guarantees the legitimacy of such an interruption of the normal course of business. For its part, the government has everything to gain by meeting such a direct challenge to its authority at the earliest possible moment.⁸⁵

The Bill does not provide any detail on the circumstances in which time would be given to a vote of no confidence, nor the notice that would be required. At least some notice would be required for such a motion to appear on the Order Paper. Professor Hazell has argued that:

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)).⁸⁶

The wording of confidence motions

Broadly speaking, there are three main types of motion which act as tests of the House of Commons' confidence in the Government: 'confidence motions' initiated by the Government; 'no confidence motions' initiated by the Opposition; and other motions which can be regarded as motions of censure or confidence either because of the particular circumstances or subject matter.

There has been much debate over whether a defeat on an issue which is central to Government policy has the same meaning as a clear vote of no confidence in the Government. The constitutional academic Geoffrey Marshall summarised the arguments as follows:

...as to what constitutes a loss of confidence there seems... to have been a development of the doctrine. The books used to say that defeat on major legislative measures or policy proposals as well as on specifically worded confidence motions was fatal to the continuance of Government. But this no longer seems to be believed or acted on... In the 1960s and 1970s, in any event, governments seem to have been following a new rule, according to which only votes specifically stated by the

⁸³ Library Standard Note, SN/PC/2873, [Confidence Motions](#)

⁸⁴ In the 22nd edition of Erskine May, the words "or otherwise criticising its general conduct" were not included. In their place were "a 'vote of censure' as it is called"

⁸⁵ Erskine May, *Parliamentary Practice*, 23rd edition, 2004, pp329-330

⁸⁶ Robert Hazell, *Fixed Term Parliaments*, August 2010 p29

Government as to be matters of confidence, or votes of no confidence by the Opposition, are allowed to count.⁸⁷

However, it remains difficult to state definitively that a motion is a confidence motion. Since 1945, 31 motions of confidence have been debated in the House of Commons. In summary they have taken the following forms:

Form	Number
<u><i>Tabled by the Opposition</i></u>	
“That this House has no confidence in HM Govt”	5
“That this House has no confidence in HM Govt” for a reason or censures it for a reason	11
That this House regrets/deplores/condemns something	6
An amendment to the Loyal Address	1
<u><i>Tabled by the Government</i></u>	
“That this House has confidence in HM Govt”	0
“That this House has confidence in HM Govt” for a reason	2
That this House supports HM Govt for a reason	2
Second Reading	2
That this House do now adjourn	2

Source: House of Commons Library Standard Note SN/PC/2873, *Confidence Motions*, Appendix

It has always been for the Government to decide when and under what circumstances an issue of confidence arises, unless its opponents choose to put down a motion of no-confidence in unambiguous terms. This is of particular importance during periods of minority government, and in the past Prime Ministers faced with this situation have indicated which issues they would regard as ones of confidence which would force Parliament to decide whether it wished the Government to remain in office.

It also would appear that a motion of confidence relates to the Government as a *whole*, and that the consequence of a defeat could not simply require the resignation of the Prime Minister alone. At the outset of the 23 July 1993 confidence debate in the Commons, the Prime Minister, John Major, set out clearly the consequences of a defeat for the Government, in terms which appear to reflect the present practice:

We have before us a motion of confidence in the Government, with all the implications that flow from that... At the conclusion of this debate, either the Government will have won the vote of confidence and we can proceed with our policy... or we shall have lost and I shall seek a dissolution of Parliament... This House must decide today whether it is prepared to sustain the Government in office or encourage me to seek a dissolution.⁸⁸

The *Fixed-term Parliaments Bill 2010-11* refers to a vote of ‘no confidence’ being passed by simple majority. It would appear that the intention is that the Government would not table a motion of no confidence in itself. However, it is not clear whether a defeat on a motion or

⁸⁷ G Marshall, *Constitutional conventions*, 1984, pp55-56

⁸⁸ HC Deb 23 July 1993 cc627, 633

issue of confidence would count as a vote of no confidence for the purposes of the legislation. See section 5.4 below on ‘The possibility of engineering a vote of no confidence’.

As already outlined, the Labour Party currently holds more than one third of seats in the House of Commons so they could prevent an early dissolution through the mechanism of the dissolution motion in Clause 2(1) of the Bill. In addition, if it was only open to the opposition parties to table a motion of no confidence in the Government and they did not wish to do so, they would effectively be able to keep a so called ‘lame-duck’ administration in power, and to control the timing of the dissolution. But this inaction might provoke a hostile response from the electorate and the likelihood of this scenario.

The effect of a Government defeat on a confidence motion

At present, the loss of a confidence motion does not automatically trigger a general election. The draft *Cabinet Manual* published before the 2010 General Election stated that:

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.⁸⁹

Since 1895, the government of the day has been defeated on motions of no confidence on four occasions:

- On Friday 21 June 1895, an Opposition motion to reduce the salary of the Secretary of State for War was agreed.⁹⁰ The Liberal government announced its resignation on 24 June.⁹¹
- On 21 January 1924, an Opposition amendment to the motion on the Loyal Address was agreed.⁹² Following a general election in which no party won an overall majority, the Conservative Government had presented a King’s Speech. Stanley Baldwin, the Prime Minister, announced the Government’s resignation on 22 January.⁹³
- On 8 October 1924, an Opposition motion of censure and a Liberal amendment, which the Prime Minister, Ramsay MacDonald, also said would be treated as a matter of confidence,⁹⁴ were debated. The original motion was defeated but the amendment was agreed.⁹⁵ On 9 October, MacDonald announced that Parliament would be dissolved that day to allow an election to take place on 29 October.⁹⁶
- On 28 March 1979, a Conservative Opposition motion, “That this House has no confidence in Her Majesty’s Government” was agreed by 311 votes to 310.⁹⁷ After the debate, the Prime Minister, James Callaghan, announced that “Tomorrow I shall propose to Her Majesty that Parliament be dissolved as soon as essential business can be cleared up”.⁹⁸

⁸⁹ Cabinet Office, *Draft Cabinet Manual: Chapter 6 – Election and Government Formation*, para 14

⁹⁰ HC Deb 21 June 1895 cc1673-1712

⁹¹ HC Deb 24 June 1895 cc1746-1749

⁹² HC Deb 21 January 1924 cc532-685

⁹³ HC Deb 24 January 1924 c696

⁹⁴ HC Deb 8 October 1924 c638

⁹⁵ HC Deb 8 October 1924 cc581-704

⁹⁶ HC Deb 9 October 1924 c731

⁹⁷ HC Deb 28 March 1979 cc461-590

⁹⁸ *Ibid*, c589

The consequences of these confidence motions reflect comments made by Professor Blackburn in evidence to the Constitution Committee in the House of Lords:

... the prime minister has a choice as to whether to resign or whether to call a general election.⁹⁹

It is here that one enters the realm of the theory and practice of dissolution – the rights of the Prime Minister to request a dissolution, and the obligation or discretion of the Monarch to grant or refuse such a request.

Under the provisions in the *Fixed-term Parliaments Bill 2010-11*, there would be a general election 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 (as then constituted), and
- (b) the period of 14 days after the specified day has ended without the House passing any motion expressing confidence in any Government of Her Majesty.

There would therefore be 14 days for a new government to be formed, and a vote would take place to confirm that the House had confidence in this new government.

It is worth noting that the legislation provides for a fixed number of days for a new government to be formed during the course of a Parliament, but that the legislation does not fix the date for the meeting of Parliament following a general election – this would still be set through the prerogative powers of the Monarch in the Royal Proclamation summoning the new Parliament.

If a vote of no confidence was passed, it is not certain that the Prime Minister would have to resign. They would also be able to try to form a new administration, perhaps changing coalition partners or putting forward an alternative minority administration. It would only be if, after 14 days, the government lost the motion of confidence that there would have to be a dissolution of Parliament under the Act.

The ability of the Monarch to prorogue Parliament is relevant in such circumstances. Theoretically at least, it would remain possible for an incumbent Prime Minister who had lost a 'no confidence' motion to go to the Queen and ask for a prorogation for 14 days. This would prevent a motion of confidence being passed in any other government and therefore Parliament would be dissolved under the Act. The check on this would be that the dissolution would not occur without certification from the Speaker, who might object to providing a certificate under such circumstances. In Canada, the Prime Minister Stephen Harper asked the Governor General to prorogue Parliament in December 2008 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.

According to the provisions of the *Fixed-term Parliaments Bill*, a vote to assert confidence in the government would only be required on a change of government, not a change of Prime Minister. It would still be open to the Prime Minister to resign at any time during a parliament, and for a new Prime Minister to take office, without an early general election. There have been a number of instances where there has been a change of Prime Minister between general elections, most recently when Tony Blair resigned in 2007, but also in 1990 on the

⁹⁹ Select Committee on the Constitution, *The Government's Constitutional Reform Programme*, [Minutes of Evidence, 21 July 2010](#), Q16

resignation of Margaret Thatcher. Whilst in opposition, David Cameron had suggested that Parliament should be dissolved within six months of a new Prime Minister being appointed.¹⁰⁰

A vote to assert confidence in a government would take place if there was a change of administration following a vote of no confidence, but would not take place at the beginning of a new Parliament to test the support of a Government. Professor Hazell has suggested that having an ‘investiture’ vote, affirming parliamentary support for the government, at the beginning of a Parliament would help encourage certainty and public understanding of who governs in the event of a hung parliament. At present, the first parliamentary test is on the motion to approve the Queen’s speech. Professor Hazell has argued that:

This conventional mechanism for testing confidence suffers from its obscure nature, which does not facilitate understanding of the process by which the government is formed amongst the general public. It might therefore be preferable for the House of Commons to hold an ‘investiture vote’ as in Scotland and many other countries, which would require MPs to vote on who should lead the new government. This change would not require any legal or constitutional change, as it could be on a motion that simply made a recommendation to the monarch on whom to appoint as PM.

If the election result were very close indeed, such that two party leaders both had plausible grounds to claim the ability to form a government, the debate on the investiture motion would offer an opportunity for the two aspiring PMs to make their cases, and for the parties holding the balance of power to explain their reasons for backing one or other of the candidates. It would therefore also have benefits in terms of accountability and transparency, helping to meet critics’ concerns that government formation following an inconclusive election takes place largely behind closed doors, especially if it involves negotiations with minor or third parties.¹⁰¹

5.4 The possibility of engineering a vote of no confidence

In parliamentary systems, it may be possible to engineer a “constructive vote of no confidence” to trigger an election at the most convenient moment for government.¹⁰²

For example, the German *Basic Law* provides for the Bundestag to be elected for four years, with elections held between 46 and 48 months after the beginning of the legislative term. The Basic Law provides for constructive votes of no confidence – it gives the Bundestag the power to dismiss a Federal Chancellor by electing a successor; and the loss of a vote of confidence to trigger the dissolution of the Bundestag and a general election (Articles 67 and 68). But it does not provide the Chancellor with any mechanism to obtain an early election. On 1 July 2005, Gerhard Schroder engineered a defeat on a confidence motion, with most of his ministers abstaining, in order to be able to request an early dissolution.¹⁰³ His request was granted but a number of smaller political parties protested and took a case to the Federal Constitutional Court which did not make a decision until 18 August, in favour of the dissolution.¹⁰⁴

The *Fixed-term Parliaments Bill 2010-11* refers to a vote of ‘no confidence’ being passed by simple majority. It would appear that the intention is that the Government would not table a

¹⁰⁰ “David Cameron says that the Tories would prevent parties from replacing a serving Prime Minister”, *Independent*, 24 April 2010

¹⁰¹ Robert Hazell and Akash Paun eds., *Making Minority Government Work: Hung parliaments and the challenge for Westminster and Whitehall*, Institute for Government, 2009, 7.1.2, p83

¹⁰² For more information about early dissolution arrangements in other parliaments see the Library Standard Note, [Fixed term parliaments – early dissolution arrangements](#)

¹⁰³ Bertrand Benoit, “Schroder engineers confidence vote defeat”, *Financial Times*, 2 July 2005

¹⁰⁴ See Dan Hough, ‘The German Bundestag election of September 2005’, *Representation*, Volume 42, Number 1, April 2006

motion of no confidence in itself. However, it is not clear whether a defeat on a motion or issue of confidence would count as a vote of no confidence for the purposes of the legislation. For example, it is not clear whether a defeat on the Government's budget would be considered as a vote of no confidence.

One possibility would be for the Government to make it clear before such a division that they considered it to be a matter of confidence; then the Speaker would certify it as such. This would effectively allow the Government to table a constructive vote of no confidence. The Speaker might rule before any debate on a motion which might be viewed as a confidence motion as to whether it would be considered as one under Clause 2(2). This might have the potential to draw the Speaker into some controversy, particularly in the case of 'engineered' confidence motions.

5.5 Speaker's certificate

The Bill stipulates that a Speaker's certificate certifying that a motion for an early parliamentary general election has been passed or that a motion of no confidence has been passed "is conclusive for all purposes" (Clause 2(3)). This would prevent the courts from questioning the proceedings of Parliament. The courts would not entertain cases arguing that the House had not properly passed such a motion because the Speaker's certificate was conclusive.

It has been suggested that there might be a possibility that whether or not a Speaker's certificate had properly been issued under the legislation could still be challenged in court. Clause 2(3) of the Bill provides that:

Before issuing a certificate, the Speaker of the House of Commons must consult the Deputy Speakers (so far as practicable).

There is precedent in other legislation for the issuing of a Speaker's certificate. The Speaker certifies money bills under section 1 of the *Parliament Act 1911*. Under the *Parliament Act 1911* (as amended by the 1949 Act) the Speaker also certifies that bills rejected by the Lords in one Session and sent to the Lords in the following Session are identical or only contain amendments necessitated by the passage of time to enable them to receive Royal Assent without the agreement of the House of Lords.

Section 3 of the *Parliament Act 1911* states that:

Any certificate of the Speaker of the House of Commons given under this Act shall be conclusive for all purposes, and shall not be questioned in any court of law.

Speaker's certificates can also be issued under section 34 of the *Freedom of Information Act 2000* to avoid an infringement of the privileges of the House of Commons. Similar provisions apply to the House of Lords. Section 34 (3) states that:

A certificate signed by the appropriate authority certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of avoiding an infringement of the privileges of either House of Parliament shall be conclusive evidence of that fact.

It is worth noting that although a Speaker's certificate would be conclusive for the purposes of the UK courts, the question of a challenge at the European Court of Human Rights cannot entirely be discounted.

In 2007, Canada amended its *Elections Act* to provide for fixed periods between elections. The legislation did not give Parliament the power to automatically cause an early dissolution

through a no confidence motion because there was a belief this might open proceedings up to the possibility of judicial review. A Canadian Library of Parliament Note explains that:

It should be noted that the legislation does not require that the government lose the confidence of the House of Commons in order for the Prime Minister to advise the Governor General to dissolve Parliament before the date prescribed by the legislation. This was made clear by the then-Minister for Democratic Reform when the bill was being debated in the House of Commons. It was explained that if the Prime Minister could only seek a dissolution of Parliament if there were a loss of confidence in the government, the legislation would have to define the situations that would constitute a loss of confidence. To do so would open the doors to judicial review where disagreements might arise as to the meanings of loss of confidence.¹⁰⁵

6 Impact on election spending limits

The *Political Parties and Elections Act 2009* amended the *Representation of the People Act 1983* and introduced limits on constituency campaign expenditure if “a Parliament is not dissolved until after the period of 55 months beginning with the day on which that Parliament first met”.¹⁰⁶ In the period after 55 months, expenses would be limited to the following proportions of:

- £25,000 plus 7p for every entry in the register of electors in a county constituency; or
 - £25,000 plus 5p for every entry in the register of electors in a borough constituency.
- (a) 100% where the dissolution was during the 60th month of the Parliament;
- (b) 90% where the dissolution was during its 59th month;
- (c) 80% where the dissolution was during its 58th month;
- (d) 70% where the dissolution was during its 57th month;
- (e) 60% where the dissolution was during its 56th month.

When the legislation was enacted, it was envisaged that these limits would be needed only exceptionally. The introduction of fixed-term parliaments would however make these a normal feature of election expenditure and would regulate the expenditure of candidates in the six months before the election. As the current Parliament first met on 18 May 2010, the 56th month of its lifetime would begin on 18 December 2014. From that point onwards pre-candidacy election expense limits would be triggered.

Under the *Fixed-term Parliaments Bill*, these limits would be triggered if a Parliament lasted its full term. Under the Bill, a general election on 7 May 2015 would mean that Parliament was dissolved on 13 April 2015, that is in the 59th month (18 March–17 April 2015) of its existence. So, in the period between the beginning of the 56th month of the Parliament and the dissolution, the expenses incurred by or on behalf of candidates would be limited to

- 90 per cent of £25,000 plus 7p for every entry in the register of electors in a county constituency; or

¹⁰⁵ Library of Parliament, *Notes of Fixed-date election legislation in Canada and Reduction of the size of legislatures in the provinces*, 7 July 2010

¹⁰⁶ *Political Parties and Elections Act 2009* (chapter 12), section 21

- 90 per cent of £25,000 plus 5p for every entry in the register of electors in a borough constituency.

If the election was delayed in accordance with the provisions in Clause 1(5) of the Bill, it is possible that the dissolution would occur during the 61st month of the Parliament. The *Political Parties and Elections Act 2009* does not make provision for this because the lifetime of a Parliament is currently limited to 5 years. The *Fixed-term Parliaments Bill 2010-11* amends the *Representation of the People Act 1983* to provide that the current period regulated by this section may extend beyond the 60th month.

7 The wider impact on Parliament and the Constitution

Taken together, if enacted, the provisions in the Bill would have a major impact on key elements of our constitution:

- the prerogative power of the Monarch to dissolve Parliament would be removed;
- the power of the Prime Minister to request a dissolution at a date of his/her choosing, and the political advantages this brings, would be removed;
- there would no longer be a limit on the length of a Parliament, instead the legislation would fix the amount of time between general election dates;
- general elections would take place on Thursdays, by law rather than convention;
- May general elections will become the norm, and elections for different levels of government will happen concurrently;
- there would be no need for a 'wash-up' in normal election cycles;
- there would be a requirement for a super-majority in the House of Commons;
- the implications of a motion of no-confidence would no longer be a matter of constitutional convention but of law;
- the Speaker would gain the power to issue a certificate that an early dissolution should properly take place;
- there would be a vote in Parliament to assert confidence in the government if there is a change of administration as a result of a vote of no confidence between general elections.

The interplay with other possible constitutional reform is also uncertain. For example, the relationship between term-limits for the House of Commons and the House of Lords if the second chamber were to have an elected element is not yet known. It is also not clear how the rolling system of boundary reviews included in the *Parliamentary Constituencies and Voting Systems Bill 2010-11* would work if an early general election did take place.

In addition, the wider effects on our political culture as a result of the loss of prime ministerial power and increasing codification of our constitution are difficult to predict.

Length of Parliaments from 1918

	Election date	Parliament assembled	Parliament Dissolved	Election date	Duration of Parliament			Duration between elections		
					Years	Months	Days	Years	Months	Days
1918-1922	14 December 1918	04 February 1919	26 October 1922	15 November 1922	3	8	22	3	11	1
1922-1923	15 November 1922	20 November 1922	16 November 1923	06 December 1923	0	11	27	1	0	21
1923-1924	06 December 1923	08 January 1924	09 October 1924	29 October 1924	0	9	1	0	10	23
1924-1929	29 October 1924	02 December 1924	10 May 1929	30 May 1929	4	5	8	4	7	1
1929-1931	30 May 1929	25 June 1929	07 October 1931	27 October 1931	2	3	12	2	4	27
1931-1935	27 October 1931	03 November 1931	25 October 1935	14 November 1935	3	11	22	4	0	18
1935-1945	14 November 1935	26 November 1935	15 June 1945	05 July 1945	9	6	20	9	7	21
1945-1950	05 July 1945	01 August 1945	03 February 1950	23 February 1950	4	6	2	4	7	18
1950-1951	23 February 1950	01 March 1950	05 October 1951	25 October 1951	1	7	4	1	8	2
1951-1955	25 October 1951	31 October 1951	06 May 1955	26 May 1955	3	6	6	3	7	1
1955-1959	26 May 1955	07 June 1955	18 September 1959	08 October 1959	4	3	11	4	4	12
1959-1964	08 October 1959	20 October 1959	25 September 1964	15 October 1964	4	11	5	5	0	7
1964-1966	15 October 1964	27 October 1964	10 March 1966	31 March 1966	1	4	11	1	5	16
1966-1970	31 March 1966	18 April 1966	29 May 1970	18 June 1970	4	1	11	4	2	18
1970-1974	18 June 1970	29 June 1970	08 February 1974	28 February 1974	3	7	10	3	8	10
1974-1974	28 February 1974	06 March 1974	20 September 1974	10 October 1974	0	6	14	0	7	10
1974-1979	10 October 1974	22 October 1974	07 April 1979	03 May 1979	4	5	16	4	6	23
1979-1983	03 May 1979	09 May 1979	13 May 1983	09 June 1983	4	0	4	4	1	6
1983-1987	09 June 1983	15 June 1983	18 May 1987	11 June 1987	3	11	3	4	0	2
1987-1992	11 June 1987	17 June 1987	16 March 1992	09 April 1992	4	8	29	4	9	28
1992-1997	09 April 1992	27 April 1992	08 April 1997	01 May 1997	4	11	11	5	0	22
1997-2001	01 May 1997	07 May 1997	14 May 2001	07 June 2001	4	0	7	4	1	6
2001-2005	07 June 2001	13 June 2001	11 April 2005	05 May 2005	3	9	28	3	10	28
2005-2010	05 May 2005	11 May 2005	12 April 2010	06 May 2010	4	11	1	5	0	1