



## UK Constitution

### Should MPs have a say in the timing of elections?

#### What's the story?

On 24<sup>th</sup> March 2022, the Dissolution and Calling of Parliament Act received Royal Assent. The Act repeals the 2011 Fixed-Term Parliaments Act, and revives the Prime Minister's prerogative power to call a General Election at a time of their choosing. The Government argues that it is "restoring power to the people", but critics oppose the decision to remove Parliament's role in approving the timing of elections.

#### What did the 2011 Fixed-Term Parliament Act (FTPA) do?

Until the passage of the FTPA, the Monarch used their prerogative power to dissolve a Parliament and call a general election. As this power was only used on the advice of the prime minister, the government was in control of the timing of elections. Prime ministers could not only time an election for when it least suited the opposition, they could also use the threat of an early election to restrain rebellious MPs, by declaring crucial votes to be a 'matter of confidence', in which defeat would lead to the government's resignation. Limits were placed on this prerogative power in order to secure the 2010-15 Conservative-Liberal Democrat coalition. The Liberal Democrats wanted to be assured that the Conservatives would not use prerogative powers to call an early election, and walk away from the coalition, at a politically convenient time. As a result, the FTPA set the date of the next election as 7th May 2015, and required all subsequent elections to take place every five years. Despite its title, the Fixed-Term Parliaments Act still provided two paths to an early election, but gave the power to make this decision to Parliament, rather than the executive. First, an early election could take place if two-thirds of MPs (434 out of 650) voted for one. Alternatively, an early election could take place if the government lost a formal confidence motion, with a majority of MPs voting "That this House has no confidence in Her Majesty's Government".

#### What does the Dissolution and Calling of Parliament Act (2022) do?

Firstly, the Act repeals the 2011 Fixed-Term Parliaments Act. Next, it states that the prerogative powers to dissolve Parliament and call a general election, which existed prior to the FTPA, "are exercisable again, as if the Fixed-term Parliaments Act 2011 had never been enacted". The Act then includes an 'ouster clause', which states that courts cannot question the use, "limits or extent", of these restored prerogative powers. Lastly, the Act states that, if not dissolved earlier, Parliament is automatically dissolved after five years. This means that the latest the next election can be held is January 2025.

#### Are there any limits on these revived dissolution powers?

Prior to the passage of the FTPA, dissolution was historically limited by the "Lascelles principles", a constitutional convention established in 1950, after the Private Secretary to King George VI, Sir Alan Lascelles, wrote an anonymous letter to The Times, in which he set out a "common sense" scenario in which the King could refuse to grant the prime minister a dissolution. Lascelles argued that a dissolution could be refused if: "(1) the existing Parliament was still vital, viable, and capable of doing its job"; (2) "a General Election would be detrimental to the national economy"; (3) the monarch "could rely on finding another Prime Minister who could carry on his Government, for a reasonable period, with a working majority" in the Commons. In a statement on the "constitutional principles that apply to dissolution", which accompanied a draft of the Dissolution Bill, the Government made no reference to the Lascelles principles. Instead, the statement simply said that the sovereign "acts upon the advice of the Prime Minister", as long as "the Government appears to have the confidence of the House", and the Prime Minister "maintains support as the leader of that Government." In response, critics raised the concern that, by making no reference to the Lascelles principles in either the dissolution statement or the bill, the Government was revealing an intention to not simply return to the pre-FTPA position, but to bring about a new regime, in which the prime minister will have even greater flexibility in requesting a dissolution.



## How does this fit into your exams?

### UK Constitution – Is the UK's uncodified constitution too flexible?

The repeal of the Fixed-Term Parliaments Act (2011) is important to consider when evaluating the advantages and disadvantages of the UK's flexible, uncodified constitution. Coming only a few months after the repeal of 'English Votes for English Laws' (see our November 2021 case study: *Is it time to ask the West-Lothian Question again?*), this is the second constitutional reform to have been introduced by one Conservative government, only to be repealed by another just a few years later.

On the one hand, the ease with which constitutional reforms can be introduced, tested, and then repealed if unsuccessful, is an asset. It allows for a degree of experimentation that is prevented when constitutions are entrenched, and difficult to amend. The Government argues that, while it was hoped that EVEL and the FTPA were the answer to longstanding issues, they ended up causing more problems than they resolved. The Government blames the FTPA for the gridlock that plagued the 2017-2019 Parliament. Prior to 2011, the government could declare key votes to be a 'matter of confidence', in which defeat could lead the government to resign or request a dissolution. But, under the FTPA, MPs were able to repeatedly vote against the Government's Brexit deal, which, until 2011, would have been treated as a matter of confidence, while keeping this 'zombie government' in place by repeatedly voting against an early election. On three occasions, (4<sup>th</sup> Sep, 9<sup>th</sup> Sep and 28<sup>th</sup> Oct 2019), Prime Minister Boris Johnson asked the Commons to approve an early General Election (see our November 2019 case study: *Should the Fixed-Term Parliament Act be repealed?*). While these motions were approved by a majority of MPs, they lacked the two-thirds majority required to trigger a General Election under the FTPA. The Government argues that, had it been possible to make Brexit a confidence matter, this deadlock could have been broken sooner. Others argue that, under the UK's constitutional framework, it was impossible to entrench a super-majority requirement for an early election anyway. Boris Johnson eventually circumvented the FTPA, and secured an election with a simple majority, by passing new legislation. The Early Parliamentary General Election Act provided for an election on 12<sup>th</sup> Dec 2019.

On the other hand, if you believe that there were benefits to the FTPA, then the ease with which it has been repealed, and the flexibility of the UK's constitution, has its drawbacks. Supporters argue that the FTPA had a number of strengths that are now being overlooked. They argue that more fixed election cycles encourage long-term thinking in government, make it easier for civil servants and political parties to plan ahead, and reduce the risk that Parliamentary business is interrupted by early elections. They argue that the FTPA largely worked as intended – the Conservative-Liberal Democrat Coalition lasted its full term, and when Theresa May requested an early election in 2017, under the terms of the FTPA, it was approved by MPs. They argue that the gridlock of the 2017-19 Parliament was caused by a combination of highly unusual political conditions – the country was being led by a minority government, and both the governing and opposition parties were unusually divided by the defining political issue of the day – Brexit. Some argue that the FTPA was treated as a scapegoat – there was nothing to stop the Government, having faced repeated defeats on fundamentally important votes, from resigning. Supporters of the FTPA argue that the Royal Prerogative power to dissolve Parliament gives incumbent governments an unfair advantage, as they can trigger elections when it best suits them. They argue that it hands an already dominant executive even more influence over MPs. In 2015, the Conservative manifesto praised the FTPA as "an unprecedented transfer of Executive power", and many continue to argue that Parliament should play a role in approving the use of this power. On 9<sup>th</sup> February 2022, the House of Lords voted 200-160 to amend the Dissolution and Calling of Parliament Bill to require the Commons to approve a dissolution, but this was overturned by the Commons on 14<sup>th</sup> March 292-217.

While the recent trend has been to replace more vaguely defined prerogative powers, which exist only in common law, with more precise statutes, the Dissolution and Calling of Parliament Act takes the unprecedented step of putting this process into reverse. While critics argued that the FTPA was badly written, its terms were at least easily identifiable. But with judges prevented, by the Dissolution and Calling of Parliament Act's 'ouster clause', from giving an opinion on the use of restored dissolution powers, and with the Government seemingly reluctant to debate the constitutional conventions it considers itself to be limited by, the constitutional picture has arguably become considerably less clear.