



Chloe Smith MP
Minister of State for the Constitution and Devolution
Cabinet Office 70 Whitehall London SW1A 2AS

William Wragg MP
Chair, Public Administration and
Constitutional Affairs Committee
House of Commons
London
SW1A 0AA

Our reference: MC2021/13511

By email: pacac@parliament.uk

1 July 2021

Dear William,

I would like to thank the Committee for the opportunity to give evidence in respect of the Government's Bill to repeal the Fixed-term Parliaments Act. In that session, I committed to write to the Committee in relation to the maximum length of Parliamentary terms, the application of the Parliament Act 1911 to the Dissolution and Calling of Parliament Bill, the Government's thinking on the Prorogation Act 1867 and the operation of pre-dissolution prorogations.

Maximum five year terms

The Committee asked why, in respect of when the maximum five year term will commence, the Government has decided that the five year term should run from the date of the first meeting of Parliament. The Government thinks this is the most straightforward way to ensure the maximum length of parliamentary terms (and consequently the maximum interval between elections) is understood.

The Government recognises that there is a theoretical possibility of "drift" in the election cycle if the life of a Parliament runs from the date of its first meeting (rather than from dissolution of the previous Parliament). In practice, the historical record has shown that Parliaments seldom last a full term and were in practice dissolved sooner. This was the case even under the Fixed-term Parliaments Act which did not have its intended effect as neither the 2015 Parliament nor the 2017 Parliament lasted for a full five-year term.

I would also note that it has become common practice for elections to be held on the first Thursday in May. Prior to the Fixed-term Parliaments Act, since the 1970s this has been the case on five occasions. In deciding when to call a general election towards the end of a term, the Prime Minister of the day may wish to take account, which would be likely to address "drift", and also provides some familiarity in arrangements for voters and electoral administrators.

The Government is grateful to the Joint Committee and PACAC for raising this issue and we will continue to give this careful consideration to ensure that the provisions which relate to the lifecycle of a Parliament operate effectively and are clearly understood.

The Parliaments Act 1911 and 1949

The Parliament Acts 1911 and 1949 allow for certain public bills to be presented for Royal Assent without the consent of the Lords. This does not apply to bills which “extend the maximum duration of Parliament beyond five years”. As set out above, the Government’s Bill provides that Parliament will automatically dissolve five years after its first meeting, if Parliament has not been dissolved earlier. Accordingly, the Government’s view is that the Bill does not contain any provision that would “extend the maximum duration of Parliament beyond five years”. On this basis, the Government considers that the restriction of the power of the House of Lords in the Parliament Acts 1911 and 1949 will apply to the Dissolution and Calling of Parliament Bill. Ultimately, of course it is a matter for the Speaker to determine whether the Parliaments Act apply.

The Prorogation Act 1867 and the first meeting of the new Parliament

The Government has considered the operation of the Prorogation Act 1867 which allows for the postponement of the date of the first meeting of the new Parliament. The Government recognises that very occasionally, the Prorogation Act has been used to delay the first meeting of a new Parliament. We understand this last happened in the first half of the twentieth century. A prorogation under the 1867 Act after a general election is a possibility, for instance to allow time for Government formation to take place following an uncertain election outcome, but is not the usual position. Clause 4 of the Bill, provides that the life of a Parliament runs from the day of its first meeting. In normal circumstances (without a post-election prorogation under the 1867 Act) this will have the same practical effect as regards when the clock starts to run on the duration of a new Parliament as the Septennial Act 1715. Under the 1715 Act the maximum five year term started from the date appointed in the writ of summons for the first meeting of Parliament, rather than the actual first meeting.

As the historic record demonstrates, there is typically a short interval between polling day and the first meeting of the new Parliament because it is in the interest of the public, Government and Parliament for the new Parliament to meet at an early opportunity. The Government therefore thinks that we should retain the flexibility which is a vital part of our arrangements and not regulate the timing of the first meeting in legislation.

Prorogation

The Committee also asked about the purpose of a prorogation prior to the dissolution of Parliament. This is different from a prorogation under the Prorogation Act 1867. As you will know, Parliament is prorogued by the Sovereign on the advice of the Prime Minister and prorogation marks the end of a parliamentary session. The period for which Parliament stands prorogued is the period between the end of a parliamentary session and the State Opening of Parliament that begins the next session.

A parliamentary session may also be prorogued before Parliament is dissolved. This may be necessary to allow the swift conclusion of Parliamentary business in advance of a dissolution and the ensuing election period. In recent times, the interval between prorogation and dissolution (and the interval between polling day and the first meeting of Parliament) has typically been very short. For example in 2017, Parliament was prorogued on 27 April and then dissolved on 3 May (triggering the statutory election timetable) which allowed for the general election to take place on 8 June. Parliament then met for the first time five days after the election on 13 June (for the

swearing in of the newly elected MPs) with the State Opening of Parliament taking place on 21 June.

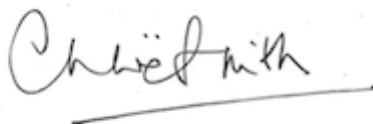
The purpose of this Bill is to restore the tried and tested arrangements for the dissolution of Parliament and also (once a dissolution request has been granted) to provide certainty on the date of the election. This is why the Government has, on the recommendation of the Joint Committee, amended the Bill so that the statutory election period will be triggered automatically by the dissolution of Parliament. Within this, prorogation is an established part of our parliamentary arrangements to ensure the smooth ending of a Parliamentary session prior to a dissolution which will under this Bill, start the statutory election timetable. The Government believes that this pre-dissolution prorogation should be as short as possible but that limits should not be set out in legislation.

Whilst the Government welcomes the Committee's consideration of these issues, this is a narrowly focussed Bill concerning the ending of one Parliament and the beginning of a new one. It is the Government's understanding therefore that pre-dissolution prorogations are not within the scope of this Bill. They are not a necessary part of bringing a Parliament to an end and the power to prorogue Parliament is not subject to revival by clause 2. Of course, it is for the House Authorities to determine the scope of the Bill.

The Elections Bill

In addition, the Committee asked about the Elections Bill and the requirement for the Secretary of State (once the measure is introduced) to consult this Committee on the draft Strategy and Policy Statement (before submitting it to parliamentary approval). I recalled there was some confusion as to whether this requirement would be set out on the face of the Elections Bill, and can confirm that will be the case. The clauses will set out that the Secretary of State must consult this Committee, the Commission, the Speaker's Committee on the Electoral Commission and the Devolved Administrations on the draft Statement.

I am grateful to the Committee for its continued scrutiny of these issues and I look forward to the debate on this Bill and Parliament's careful consideration of the Government's legislation and the constitutional conventions that will underpin the revived prerogative powers relating to the dissolution of one Parliament and calling of another.

A handwritten signature in dark ink, appearing to read 'Chloe Smith', is written over a horizontal line.

Chloe Smith MP
Minister of State for the Constitution and Devolution