

## Written evidence submitted by Junade Ali (FTP0004)

1. I provide this subsequent evidence as a follow-up to my previous written evidence to the Constitution Committee of the House of Lords, published as [FPA0011](#).
2. In my previous evidence I focussed on the constitutional implications of the Fixed-term Parliaments Act 2011. I feel there are some important legal issues relevant to the draft repeal Bill which I did not cover in my previous evidence.

### Revival of Dissolution Power

3. On the 1st December, the Government published the text of the [Draft Fixed-term Parliaments Act \(Repeal\) Bill](#).
4. The draft Bill contains a number of reasonable and proportionate sections to achieving repeal. In my view, the primary weakness of the Bill is that Section 2 relies on an assumption that dissolution and summoning were solely prerogative powers.
5. Historical records show that [16 Cha. I c. 1](#) passed during the English Long Parliament made provision for that Parliament “not to be dissolved but by Act of Parliament”. [16 Cha. II c. 1](#) repealed the previous Act as “wholly repealed annulled and utterly made void” and effectively codified the power of summoning a Parliament.
6. [6 & 7 Will. & Mar. c. 2](#) exists in statute in amended form as the [Meeting of Parliament Act 1694](#). Section II provides a codified process for summing a Parliament under the Great Seal which is still in statute. Section IV (repealed in 1867) provided for that Parliament to dissolve automatically “unlesse their Majesties shall think fitt to dissolve it sooner.”
7. The Septennial Act 1715 remained in force until repeal by the Fixed-term Parliaments Act 2011 and made explicit that Parliaments were to run for their maximum length “unless this present or any such Parliament hereafter to be summoned shall be sooner dissolved by his Majesty”.
8. Canada’s Constitution Act, 1867 (which may be found in UK statute as the [British North America Act 1867](#)) confers the power of dissolution in Section 50 by stating the maximal length of a Parliament with the caveat applied that it is “subject to be sooner dissolved by the Governor General”. This is the sole source of such prerogative in Canadian law.
9. Therefore, if the Bill were enacted in it’s existing form, the only possible avenue of legal challenge that I foresee would be to argue that the prerogative powers referenced in Section 2 were already in abeyance “immediately before the commencement of the Fixed-term Parliaments Act 2011” and every dissolution of Parliament since 1715 has been done under a statutory power conferred by the Septennial Act 1715.
10. This is fortunately an easy problem to fix; as an extra safeguard, the dissolution power may be made explicit in Section 4 of the draft Bill as follows:

“Her Majesty, at any time seeing fit, may dissolve Parliament. If it has not been dissolved earlier, a Parliament dissolves at the beginning of the day that is the fifth anniversary of the day on which it first met.”

11. Similarly, the Ouster clause in Section 3 should be amended to cover “the exercise or purported exercise of the powers referred to in section 2 or section 4”.
12. In effect, this achieves a “triple-lock” for reviving dissolution powers. Section 2 provides an explicit revival of prerogative powers, Section 3 offers a robust Ouster clause in the event it is challenged and finally Section 4 would also provide a clear statutory basis for the exercise of such powers in the event of a claim that the historical exercise of powers were done on a statutory basis (instead of using a prerogative power).

### **Constitutional Safeguards**

13. As I discussed in my previous submission, the power of dissolution is an essential constitutional power in our system. In Dicey’s words: “The necessity for dissolutions stands in close connection with the existence of Parliamentary sovereignty”...“Where Parliament is supreme, some further security for such harmony is necessary, and this security is given by the right of dissolution, which enables the Crown or the Ministry to appeal from the legislature to the nation”.
14. Rather than using prorogation or refusing to grant Royal Assent to legislation, this provides a democratic solution to legislative deadlock by both the fate of the executive and the legislature being decided by the electorate.
15. Given the inherently democratic nature of this power, the Ouster clause in Section 3 is rightfully as robust as possible and has evolved with recent constitutional evolutions (as did previous Ouster clauses before it, such as that in Article IX of the Bill of Rights and that in Section 3 of the Parliament Act 1911).
16. As the dissolution power will be exercised by the Sovereign, continuity is also secured by the provisions of the Regency Acts.
17. It is further worth noting that Section 2(1) of the Parliament Act 1911 precludes the exercise of the Parliament Acts on any "Bill containing any provision to extend the maximum duration of Parliament beyond five years". This safeguard was not repealed by the Fixed-term Parliaments Act 2011 and will be applicable to this draft Bill too.

### **Title of the Act**

18. It is important to note that this Act will become a fundamental component of British constitutional law. Sections 2 onwards of the Bill will need to remain on the statute books as this Bill will determine the maximal period of a Parliament and secure the powers of dissolution and summoning of Parliament.
19. I would therefore suggest that this Bill should be more appropriately named than the Fixed-term Parliaments Act (Repeal) Bill. Traditionally, such acts are named after the

duration of the Parliament (e.g. the Triennial Act or Septennial Act). According to such tradition, this Bill should be known as the Quinquennial Act upon assent.

### **Summary**

20. In summary, this proposed legislation is very well drafted and my suggestions can be summarised as follows:
  - a. Add “Her Majesty, at any time seeing fit, may dissolve Parliament.” to the start of Section 4.
  - b. In Section 3, replace “referred to in section 2” with “referred to in section 2 or section 4”.
  - c. In Section 6(4), substitute “Fixed-term Parliaments Act 2011 (Repeal) Act 2021” with “Quinquennial Act 2021” or a similarly appropriate short name.
21. On the whole, this is a well-drafted, reasonable and proportional Bill to achieve the much needed repeal of the Fixed-term Parliaments Act 2011.

*Junade Ali*

*26<sup>th</sup> December 2020*