

**Supplementary written evidence submitted by Professor Robert Hazell, Professor of Government and the Constitution, UCL. (FTP0013)**

1 My earlier submission to the Committee ([FTP0003](#) written jointly with Professor Meg Russell) made three main arguments:

- That dissolution should remain in the hands of Parliament, not the Executive
- That it is unnecessary to repeal the Fixed Term Parliaments Act (FTPA)
- But the Act should be amended in three respects.

2 This submission makes a separate argument in defence of the FTPA: that fixed term legislation works. It works in the sense that most of the time, parliaments in the Westminster world which have fixed term legislation hold their elections at regular intervals prescribed by the fixed term. Early dissolution is the exception rather than the rule. But the impression among many Westminster parliamentarians, because of the early dissolutions in 2017 and 2019, is that fixed term legislation cannot work. The purpose of this submission is to dispel that misconception.

3 If the expectation is that fixed term legislation will always deliver fixed terms, it clearly cannot work. All fixed term legislation contains provision for early dissolution, in the event of deadlock, or loss of confidence. That has led some to call fixed terms a misnomer (Chezenko 2017; Schleiter 2019). What fixed term legislation creates is a norm, rather than a rigid rule. Even in countries with more rigid rules, like Germany, fixed terms can be circumvented. That led us to conclude, in our report on Fixed Term Parliaments (Hazell, 2010):

It is difficult to devise a set of rules robust enough to withstand the wishes of a parliamentary majority. But that does not undermine the case for trying to construct a set of rules in the first place. Rules in politics are occasionally circumvented; but if they succeed in creating a new norm, obeyed by most of the parties most of the time, that can be a net gain.

4 The remainder of this submission demonstrates that fixed term legislation can create a new norm, which is obeyed most of the time in other Westminster-style parliaments. It is based on the experience of the devolved assemblies in the UK, the state parliaments in Australia, and the federal and provincial parliaments in Canada. It excludes the federal parliament in Australia (Bennett 2008), and the parliaments of New Zealand (Madden, 2013) and Ireland (McAllister 2018), because they do not have fixed terms. It does not pretend to sophisticated analysis of the data: but such analysis is not necessary to make the basic point. I have not appended the underlying data, but it can easily be made available.

5 The devolved assemblies started with four year fixed terms, since extended to five to match the five year fixed term at Westminster. They have run for four full terms since 1999, with the current term due to expire in May 2021 (Scotland and Wales) and in May 2022 (Northern Ireland). There has been only one early dissolution, in Northern Ireland in 2017 (triggered by the resignation of the Deputy First Minister). So the score so far for all the

devolved assemblies has been 12 sessions running the full fixed term, and one early dissolution.

6 In Australia all the state parliaments except Tasmania have introduced fixed terms, starting with New South Wales in 1995, and the latest being Queensland which legislated in 2015 (Bennett, 2008; Congdon 2013). State Governors retain the power of early dissolution, in limited and prescribed circumstances, such as where the government loses confidence or there is deadlock between the two chambers; but so far there have been no early dissolutions. The aggregate score in the Australian states has been 17 sessions running the full fixed term, with no early dissolutions. If we add in the legislatures of the territories (Australian Capital Territory and Northern Territory) the score has been 28 sessions running the full fixed term.

7 In Canada all the provincial legislatures except Nova Scotia have introduced fixed terms, starting with British Columbia in 2001, with the most recent being Quebec which legislated in 2013. The federal parliament in Ottawa has also introduced fixed term legislation, in 2007. But to avoid the need for amending the constitution (a difficult procedure in Canada), the Canadians retained the prerogative power of dissolution, exercisable upon request. That makes the fixed term norm particularly vulnerable (Chezenko, 2017). Early dissolutions have been much more common in Canada: six out of the ten early dissolutions we have identified were for opportunistic reasons, to increase the government's majority, or obtain a fresh mandate for a new Premier. The federal parliament has experienced early dissolution twice, and each of the provincial parliaments once, save for Saskatchewan. Nevertheless, more parliamentary sessions have run the full term than been dissolved early. The aggregate score so far in Canada has been 24 sessions running the full fixed term, and ten early dissolutions. If we add in the legislatures of the territories (Northwest Territory and Nunavut; Yukon is currently legislating for fixed terms) the score is 28 sessions which have run for the full fixed term.

8 The following lessons can be drawn from this limited survey of other Westminster-style parliaments in Australia, Canada and the UK:

- Fixed term legislation creates a norm, not a rigid rule.
- It is perfectly possible for a Westminster parliament to adopt fixed terms. Indeed, Westminster recognised that when it introduced fixed terms for the devolved assemblies.
- It is perfectly possible for fixed term legislation to work, in the sense that it leads to elections normally being held at regular, fixed term intervals.
- But all fixed term legislation contains a safety valve allowing for early dissolution, in the case of loss of confidence, blocking the budget, or other deadlock.
- The experience in Australia and the devolved assemblies shows that the norm was observed, with parliaments running for fixed terms, and early dissolution almost unknown.
- Canada was different, because retaining the prerogative power of dissolution allowed incumbent Prime Ministers/Premiers to call an early election at will. But

even in Canada the norm has been observed more often than not, with early dissolution the exception, not the rule.

9 In conclusion, fixed term legislation does not establish a rigid rule, that all parliaments must run for the fixed term; but it does establish a new norm, that (absent early dissolution) they will normally do so. The norm has been for parliamentary sessions in these other Westminster parliaments to run for the full fixed term. That could be the norm at Westminster too. But for that to happen, instead of repealing the FTPA, it should be amended as we proposed in our earlier submission.

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## **References**

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