

Parliament has breached the spirit and intent of the Fixed-Term Parliaments Act, rendering it meaningless

LSE blogs.lse.ac.uk/politicsandpolicy/ftpa-rendered-meaningless/

October 31,
2019



*By calling an early election, government and parliament have effectively breached both the spirit and intent of the Fixed-Term Parliaments Act, writes **Martin J. Bull**. He explains the implications of this outcome and concludes that it is difficult to see the act surviving another legislative session.*



With the focus of all attention in UK politics now on the forthcoming General Election, very little attention has been paid to what has just occurred in its parliament: the passage of a law which is patently in breach of the spirit and intent of the Fixed-Term Parliaments Act (FTPA) passed in 2011. Section 1, Article 3 of this Act states that '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.'

The FTPA also lays down explicit and limited provisions for there to be a General Election earlier than this date. These are either that the House of Commons passes, by a two-thirds majority, a Motion proposing 'That there shall be an early parliamentary general election', or the House of Commons passes a formal vote of no confidence in the government and is subsequently unable to pass a vote of confidence in a new government after 14 days have elapsed from the passing of the first motion. In these circumstances, Parliament will be dissolved 25 days before polling day. And the Act is explicit in stating that 'Parliament cannot otherwise be dissolved'.

Yet none of these conditions were met when Parliament decided to hold a General Election on 12 December 2019. In contrast with his predecessor, Theresa May (whose proposed early election for 8 June 2017 was supported by a two-thirds majority in the Commons), Prime Minister Boris Johnson failed on three successive occasions (3 Sept, 10 Sept, 24 Oct) to secure the requisite two-thirds majority for an early parliamentary election. He then decided simply to circumvent the FTPA through new legislation which stated simply that 'An early parliamentary general election is to take place on 12 December 2019 in consequence of the passing of this Act' and 'That day is to be treated as a polling day appointed under section 2(7) of the Fixed-term Parliaments Act 2011'.

As an item of new legislation, it needed only a simple majority to pass. He was aided and abetted in this manoeuvre by the Liberal Democrats and Scottish National Party, both of whom wanted an early parliamentary election (and had proposed an alternative mechanism via amending the Act through a simple majority), and was supported by the official position of the Labour Party.

Of course, in most other liberal democracies this would likely have been unconstitutional – if not a constitutional outrage – in the sense that the mechanisms by which parliaments can be dissolved are invariably entrenched in the Constitution. But the Prime Minister was able to exploit the fact that the UK political system is not, as such, based on a formal, codified, written Constitution, but on a different principle: parliamentary sovereignty. And this principle means that there is no distinction between constitutional laws and ordinary laws, and therefore no parliament can be bound by the Acts of its predecessors. Hence, the government and parliament were able to ride roughshod over a law which was of constitutional 'significance' in order to get their political way.

Yet, in 2016, when an official petition calling for an early General Election was signed by over 100,000 signatures (on the back of the Panama Papers scandal and Prime Minister David Cameron's revelation that he had an investment in an off-shore trust), the government rejection of the request stated that 'the Fixed-Term Parliaments Act means no Government can call an early general election any more'. Clearly, Boris Johnson's advisers no longer recognised the validity of that position.

The FTPA was passed under the Conservative-Liberal Democrat coalition government, but it was not designed purely to enhance the stability and duration of that coalition. Rather, it was also aimed at responding to several problems of a system based, until then, on Prime Ministerial prerogative to dissolve parliament at a time of his/her choosing (by advising the Monarch to do so). This was widely viewed as giving an unfair political advantage to the Prime Minister. It was regarded as encouraging Prime Ministers to use elections to try and solve their own political problems (when often the election then failed to do so). And it was regarded as being at the root of feverish periods of political pre-electioneering and government stasis when a premature dissolution was widely anticipated (but possibly not acted upon). Overall, the provisions of the FTPA were clearly designed to ensure that parliamentary terms were fixed and that the mechanisms

by which this could be circumvented were limited, exceptional in nature and the *only* mechanisms available. So, what is the point of the FTPA if it can be dispensed with so easily?

Not much if truth be told for it seems to work only as long as a parliamentary majority wants it to work. As with much in the UK political system, its operation was based more on trust and goodwill than on the detail of the law itself. The protagonists of the FTPA never envisaged a situation arising of the existence of a minority government but an opposition refusing to table a motion of no confidence.

Moreover, the FTPA tinkered with a matter of constitutional significance while ignoring the implications of 'oversight' needed in any system based on fixed-term parliaments. Several parliamentary democracies delegate such oversight to a President who is elected or appointed from within the political system. This gives Presidents greater authority and legitimacy to act as arbiters and political impartial actors in the resolution of matters pertaining to the dissolution of legislatures. But in the UK there is universal agreement that a hereditary Monarch should not be 'dragged into politics', leaving the government to act without restraint.

The FTPA is, therefore, not long for this world. The Conservative Party Manifesto of 2017 promised to repeal it, but Teresa May failed to secure a parliamentary majority and no legislation was brought forward. But it is difficult to see it surviving another legislative session. This is less because of the possible reoccurrence of an embarrassing situation of a British Prime Minister effectively being held hostage in Downing Street, than because the FTPA fails to do what it is meant to do and prevent a Prime Minister from choosing the date of the next General Election. The calling of this early General Election was, after all, the decision of a minority government dependent upon the votes of the opposition to secure it. But the real significance of the vote was that it confirmed that a Prime Minister with a large majority could, in the future, act in precisely the same way without the need of opposition votes. For what's good for the goose is good for the gander.

About the Author

Martin J. Bull is Professor of Politics in the School of Arts & Media at the University of Salford.

All articles posted on this blog give the views of the author(s), and not the position of LSE British Politics and Policy, nor of the London School of Economics and Political Science. Featured image credit: [Pixabay](#) (Public Domain).

