



BREXIT AND A GENERAL ELECTION IN THE UK – THE RULES AND THE LIKELIHOOD

Will there be a general election in the UK? The next general election in the UK is scheduled for 5 May 2022 by the Fixed-term Parliaments Act 2011, and triggering one is not easy but not impossible.

In this briefing we look at how an early general election could happen.

The Fixed Term Parliaments Act

The Fixed Term Parliaments Act 2011 (the “FTPA”) removes the government’s power to trigger a general election at a time of its own choosing and instead sets five-year parliamentary terms where “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 first general election under the FTPA was on 7 May 2015.

The FTPA also provides for early general elections. These can take place in one of two ways.

Motion for an early general election – two thirds of MPs required

First, two thirds or more Members of Parliament vote for a motion saying, “That there shall be an early parliamentary general election.”

This is the most likely way for an election to take place if the government of the day wants one to happen. In those circumstances, the government throws down the gauntlet to the opposition, challenging them not to vote for a general election (unless they have more two thirds of the MPs, in which they can just do it themselves).

This is what happened when Theresa May announced on 18 April 2017, after a now famous walking holiday in Wales, that an early general election should take place on 8 June 2017.

A motion was passed in a 522-12 vote in the House of Commons on 19 April 2017, and the election took place as planned. Theresa May said that her aim was to increase her majority of 17 in order to “strengthen [her] hand” in the upcoming Brexit negotiations.

Key issues

- The UK’s Fixed Term Parliament Act 2011 sets fixed five-year intervals between general elections
- The next election is due to take place on 5 May 2022
- An early general election could happen if either two thirds of MPs voted for one, or if half of MPs voted for and sustained a motion of “no confidence”
- The FTPA makes it less easy for a “snap” general election to take place than before, but such an event is still possible

Theresa May and her Conservative Party failed to win the election, and went from 330 seats to 317, losing their overall majority. The government entered into a “confidence and supply” agreement with the Democratic Unionist Party (the “DUP”) who won 10 MPs, thereby building a working majority of 13.

Motion of no confidence – simple majority of MPs required with 14 day cooling off period

The second way that a general election can be triggered under the FTPA is for a simple majority to vote on a motion saying, “That this House has no confidence in Her Majesty’s Government.”

The government can stop the election from happening if, within 14 days, it can win a vote on a motion stating “That this House has confidence in Her Majesty’s Government.”

Before the passing of the FTPA, a government that thought itself in danger of losing an important vote could make that vote itself a matter of confidence, so that if the vote was lost then the government would fall, triggering a general election.

Such a vote would deter all but the most determined backbencher from breaking the whip and voting against the government. Examples of this were when James Callaghan, the Labour Prime Minister, lost a confidence vote by 311-310 in 1979. Conservative Prime Minister John Major initiated and won a vote of confidence in 1993. The Major government lost a key vote on the European Communities Amendment Bill (approving the ratification of the Treaty) – a tie with the speaker’s casting vote against – and then made a subsequent vote approving government policy a motion of confidence. John Major won this vote, hence there was no general election.

Now, under the FTPA, even if the initial confidence vote is lost, the Prime Minister would have two weeks to demonstrate she still commands the support of the House of Commons.

Support for the government to continue could be entirely detached from the original subject of the vote. This reduces the importance of the confidence vote – it is plausible that backbench Conservative MPs and/or DUP MPs opposed to the government’s Brexit or other plans could vote against the government in a vote of confidence, but then return to the fold two weeks later, still refusing to support the Brexit plans, but nevertheless wishing the Prime Minister to continue in office.

How likely is an early General Election?

The FTPA represents a significant change in the Parliamentary dynamic, and means a government cannot fall “by accident” – it requires a definite decision by MPs over the course of two weeks or a definite decision by the government to call a vote under the two-thirds mechanism.

A vote on a Brexit issue or the budget, for example, will not be a vote of confidence within the strict meaning of the FTPA because it will not be in the form required. The government can't now make any issue a vote of confidence – Parliament needs to take an additional, separate vote.

As a result, the government can potentially lose a vote on Brexit (more than once), but its dissident MPs can, next day, support a confidence motion because they don't want a general election.

The government could still announce that if a particular motion or piece of legislation were not passed, it would itself put a motion before the House calling for a general election and would whip its MPs in support of that motion. Unless there was mass defiance by Conservative MPs, the motion would get the required two-thirds majority, resulting in a general election.

In our view the FTPA reduces the chance that Parliamentary manoeuvres around Brexit could trigger an early election, however a general election before the next scheduled vote on 5 May 2022 is still possible.

CLIFFORD CHANCE

CONTACTS



Phillip Souta
Head of UK Public Policy
T: +44 20 7006 1097
E: phillip.souta
@cliffordchance.com



Dan Neidle
Partner
T: +44 20 7006 8811
E: dan.neidle
@cliffordchance.com



Jessica Gladstone
Partner
T: +44 20 7006 5953
E: jessica.gladstone
@cliffordchance.com



Liz Morony
Partner
T: +44 20 7006 8128
E: elizabeth.morony
@cliffordchance.com



Michael Bates
Partner
T: +44 20 7006 2783
E: michael.bates
@cliffordchance.com



Kate Gibbons
Partner
T: +44 20 7006 2544
E: kate.gibbons
@cliffordchance.com



Andrew Dean
Director of Public Law
T: +44 20 7006 3274
E: andrew.dean
@cliffordchance.com

This publication does not necessarily deal with every important topic nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2018

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571
Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications.

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or contact our database administrator by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ.

Abu Dhabi • Amsterdam • Barcelona
Beijing • Brussels • Bucharest
Casablanca • Dubai • Düsseldorf
Frankfurt • Hong Kong • Istanbul
London • Luxembourg • Madrid
Milan • Moscow • Munich • Newcastle
New York • Paris • Perth • Prague
Rome • São Paulo • Seoul • Shanghai
Singapore • Sydney • Tokyo • Warsaw
Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.