

No 54

PARLIAMENTARY ELECTIONS AND THE HOUSE OF COMMONS

Revised July 1997

This *Factsheet* will attempt to explain those aspects of Elections and By-Elections that immediately affect the House of Commons. As much of the procedure surrounding an Election occurs without the House being involved, an Election can be said to be the stage before Parliament's work begins - "The overture before the first Act". Electoral law is governed by the Home Office (for England and Wales), Scottish Office and Northern Ireland Office respectively, principally under the Representation of the People Acts 1983 and 1985. It is not within the scope of this *Factsheet* to deal with matters such as European Parliament or local Elections, agents, candidates, election petitions, electoral quotas, returning officers, eligibility to vote or the procedure of casting a vote.

GENERAL ELECTIONS

The Parliament Act 1911 established the maximum life of a Parliament (i.e. the time between General Elections) as 5 years. Since that Act, Parliaments have twice been extended beyond 5 years during the two World Wars. The 1911 Parliament was extended to eight years by the Parliament and Registration Act 1916, and the Parliament and Local Elections Acts 1916 and 1918. The 1935 Parliament was extended to ten years by the Prolongation of Parliament Acts 1940, 1941, 1942, 1943 and 1944.

A Parliament is dissolved by a proclamation of the Sovereign on the advice of the Prime Minister. *Dissolution* (the end of a Parliament), does not require a sitting of either House. In the past, it has occurred when both Houses have stood adjourned, although on 16 March 1992, both Houses had sat for Business before the ceremony of Prorogation which was followed approximately 2 hours later by dissolution. *Prorogation* (the end of a session), is by Royal Command, read either in the presence of the Monarch or by commission, by the Lord Chancellor in the House of Lords, the Speaker and Members of the Commons being also present. Prorogation and dissolution can occur either on the same day or a few days apart. Practice has varied in the past (for details see Erskine May). The last Monarch to prorogue and dissolve Parliament on the same day in person was Queen Victoria on 23 July 1847

It is customary for the Prime Minister personally to announce the date of dissolution and the reason for holding a General Election in all the constituencies in the United Kingdom. (The size and number of constituencies are reviewed at intervals of between 8 and 12 years by the Boundary Commissioners and agreed by Parliament. The last review formed the basis for the 650 constituencies fought at the 1983 and 1987 General Elections. The number was increased by 1 in 1992, following the division of Milton Keynes). The reasons for calling a General

Election are varied, but generally stem from the desire to obtain a further and/or increased majority in the House of Commons for the next 5 years. Obviously in such an instance the timing may be determined by the Government's view of its chances of victory. But Governments may be forced into a position whereby they have no option but to seek a renewal of confidence by the country in the Government's policies.

A Government cannot operate effectively unless it can command a majority within the House of Commons. Should it fail to enjoy the confidence of the majority of the House, it has to hold a General Election. For example on 28 March 1979, the Conservative Opposition defeated the then Labour Government by 311-310 votes on the motion, "*That this House has no confidence in Her Majesty's Government*". Parliament was dissolved on 7 April, the General Election was won by the Conservatives on 3 May, with the new Parliament summoned to meet on 9 May 1979. Governments could also be forced into resigning or calling a General Election by being defeated in the debate on the Queen's Speech (its legislative programme for the session) as for instance on 21 January 1924, or losing its Finance Bill, or other major items of legislation on which it fought a General Election campaign.

Before the Representation of the People Act 1867, the death of the Monarch resulted in a dissolution within 6 months, but under that Act, Parliament continues to meet for as long as it otherwise would have done. Parliament meets immediately for Members to take the Oath to the new Sovereign, but does not conduct normal business for a few days. In 1952, when King George VI died on 6 February, Parliament was already in session and continued to meet each day for Members led by the Speaker to take the Oath and hear messages of condolences, until 11 February, when following the visit of the House to the lying-in-state in Westminster Hall, the Commons adjourned until 19 February.

If Parliament is in Recess at the time of the Monarch's death, then it is immediately recalled. Should the death occur after a dissolution but before votes have been cast at a General Election, then polling day will be postponed by a fortnight, (Representation of the People Act 1985 s 20), subject to those days that are disregarded by the Electoral Timetable (see Appendix 2, note 2).

Once dissolution has been announced, Writs of Elections are issued by the Clerk of the Crown in Chancery, and the Timetable (Appendix 2) commences. At this time, the date of meeting for the new Parliament will also be announced. Although the Government continues in office, there cease to be any Members of Parliament, and former Members may not enter or use the facilities of the House while the General Election is in progress.

At the beginning of the new Parliament, the Clerk of the Crown in Chancery, will deliver to the Clerk of the House of Commons (see *Factsheet* 52), a *Return Book*, of the names of Members returned to serve in the Parliament.

This book is sufficient evidence that a Member won a constituency seat at the General Election, and has the right to represent that Constituency in Parliament. (In practice the *Return Book* is handed to the Clerk Assistant below the Bar of the House of Commons). After the Speaker (see *Factsheet* 21) has been duly elected by the House and taken the Oath, Members led by the Government and Opposition Front Benches, approach the Table of the House. Here, they swear the Oath or take the Affirmation (see Appendix 1 for text) and sign the *Test Roll* (formerly a roll of parchment folded in the shape of a book, headed by the Oath or Affirmation, now a book with pages of parchment interleaved with pages of blotting paper), which remains in the possession of the Clerk of the House.

After signing the Test Roll, Members are introduced to the Speaker by the Clerk of the House. Once the majority of Members have been sworn in (this usually takes a few days), the House is properly constituted and ready to go to the House of Lords and hear the Queen's Speech, outlining the Government's legislative programme for the session. It is not necessary for a Speaker to be elected or Members to be sworn in at the commencement of subsequent sessions of that Parliament, although there will of course be further Queen's Speeches at the opening of each session.

BY-ELECTIONS

A by-election occurs when a seat becomes vacant either by resignation (see *Factsheet 34*), expulsion, elevation to the Peerage, bankruptcy, lunacy or death of the sitting Member, during the lifetime of a Parliament.

In Session (House sitting)

If a vacancy occurs when the House is in Session, the Motion for a new Writ is customarily moved by the Chief Whip of the Party that formerly held the seat. Prior notice does not have to be given in the order paper of the House.

The Motion is generally moved without debate, although debate will occur if the Motion is opposed, when it can be voted on and defeated. If defeated, the Motion could not be moved again (for the same Constituency) within the same Session of Parliament. It is possible for a Member belonging to a party other than that which held the seat to move such a Motion. However this will involve debate, and unless the Member can command enough support, the Motion would be defeated. This method has been used in the past, in frustration at the delay of the sitting party at moving the Writ, or as a Parliamentary tactic to attempt to delay or lose the day's business, or to make political capital out of a given situation. However, on 21 February 1990, the House agreed to a Motion that if a Writ was moved on a day when Private Members' business had precedence, and was opposed, then debate on the Motion would lapse; thereby saving the day's business. There is no time limit within which a new Writ has to be issued following the vacancy occurring, although by convention it is usually done within three months.

The sitting party will obviously choose a time when they feel confident of success. There have been instances of seats remaining vacant longer than six months before a by-election was called. Seats have also been left vacant at the tail end of a Parliament, to be filled at the subsequent General Election. On the other hand, by-elections have occurred just before dissolutions: for example, Mr Alton won the Liverpool Edge Hill by-election on 29 March 1979, took his seat on 3 April; dissolution was 7 April, and the General Election followed on 3 May 1979.

While a vacancy exists, constituency matters are handled by a Member of the same party in a neighbouring constituency, and when a new Member has been elected all outstanding matters are handed to him or her.

The motion takes the following form: - "That Madam Speaker do issue her Warrant to the Clerk of the Crown to make out a new Writ for the electing of a Member to serve in this present Parliament for the (here is inserted the type, ie Borough, Burgh or County) Constituency of (name of constituency) in the room of (name of former Member and reason for by-election)."

The Writ is usually issued on the same day as the issue of the Warrant, and the Timetable (see Appendix 2) commences.

In Recess (House not sitting)

If a vacancy due to death or elevation to the Peerage occurs during a Recess, the Speaker has the authority, by the Recess Election Act 1975, to issue his warrant, if any two MPs certify that the seat is vacant, and the Speaker has given six days notice in the *London Gazette*. If the vacancy occurs through the death of a Member, the warrant may not be issued unless the Return of the late Member has been brought to the office of the Clerk of the Crown fifteen days before the end of the last sitting of the House. Neither may the warrant be issued if after taking into account the six days required notice in the *London Gazette*, the House would again be in session. (In this instance the procedure in (a) described above occurs).

This procedure was adopted for the Eastbourne Constituency in the Summer Recess of 1990. The House had been recalled for emergency debate in September, which enabled the fifteen days rule to be used; The Speaker's notice was placed in the *London Gazette* by the Chairman of Ways and Means (Mr Speaker being absent from the UK), on 20 September, allowing the by-election to occur on 18 October. The procedure was also used during the Whit recess of 1994 for the Monklands East Constituency. The notice was placed in the *London Gazette* on behalf of Madam Speaker by Mr Don Foster (Chief Whip of the Labour Party), on 3 June, allowing the by-election to occur on 30 June.

After a new Member has been elected, the Clerk of the Crown sends to the Clerk of the House of Commons a certificate of the return. The new Member must obtain a receipt from the Public Bill Office in the House of that certificate, to be produced at the Table before he or she can be sworn. By a resolution of the House of 23 February 1688, Members returned at a by-election are customarily escorted into the Chamber by two fellow MPs, usually of the same party, the new Member then takes the oath or affirmation, signs the Test Roll and is introduced by the Clerk of the House to the Speaker. The swearing in of a new Member takes place after Questions, but before the main business of the day begins, in order that he or she may take a full part in it.

If a vacancy occurs because of a Member having resigned, the Speaker cannot issue his Warrant during a Recess. If the vacancy is because of bankruptcy as defined by the Insolvency Act 1986, and the order for bankruptcy is not removed in six months, the Speaker will issue his Warrant on receipt of a certificate of bankruptcy from the Court. A Member may continue to sit and vote during that six months unless ordered to withdraw by the House.

A statutory procedure exists under the Mental Health Act 1959 (amended by the Mental Health (Amendment) Act 1982), whereby the seat of a Member detained on the grounds of mental illness can be declared vacant. The procedure is such that on notification of a detention, the Speaker authorises two specialists in mental disorders (appointed for the purpose by the President of the Royal College of Psychiatrists), to visit the Member. If they report that the Member is suffering from mental illness, then six months elapse before the Speaker will again cause two specialists to visit the Member. If their subsequent report is the same, the seat becomes vacant. Under the terms of the procedure laid down by the Mental Health Act 1959, the Writ cannot apparently be issued during a Recess.

GENERAL

At the beginning of a Parliament, the Speaker appoints between 3 and 7 MPs, for the duration of that Parliament to exercise his powers with reference to a Warrant in Recess, should there be no Speaker, or if the Speaker is absent from the UK. Should the number of Members fall below 3, other Members will be appointed by the Speaker. Once these appointments are made, they are entered in the Journal of the House of Commons and published in the *London Gazette*.

The instrument of appointment is retained by the Clerk of the House and a duplicate kept by the Clerk of the Crown. Any one of the Members so appointed may exercise these powers if so required, but only the name of the first to do so is recorded in the London Gazette in each instance.

If a subsequent vacancy occurs in the same seat after an election, either before or after the originally elected Member has been sworn in, the usual by-election procedures apply.

A Member cannot vote or take part in debate in the House if he or she has not first been sworn in. Should the Member do so, he or she is liable to a fine of £500 for each offence, and the seat would be declared vacant as if a death had occurred. Similarly a Member may not draw a Parliamentary salary or expenses unless he or she has taken the oath or affirmation.

D B Inns July 1989
Revised by C C Pond
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Providing information on the work, history and membership of the House of Commons

APPENDIX 1

Text of the Oath sworn in the House of Commons

While holding a copy of the New Testament or if a Jew, the Old Testament, a Member swears

"I swear by Almighty God that I will be faithful and bear true Allegiance to Her Majesty Queen Elizabeth, her heirs and successors, according to law. So help me God".

Text of the Affirmation taken in the House of Commons

"I do solemnly, sincerely and truly declare and affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors according to law".

Section 1 (3) of the Oaths Act 1978 permits persons of neither the Christian nor Jewish faiths to take the Oath "*in any lawful manner*". For example Moslems or Sikhs would be sworn in the usual manner except a Koran (in an envelope, to avoid it being touched by one not of the faith), or Granth would be substituted for the Bible.

Section 5 (2) of the Act allows a person to affirm where "*it is not reasonably practicable without inconvenience or delay to administer an Oath in the manner appropriate to his religious belief*". A person who may be permitted to affirm under Section 5 (2) may also be required to do so under Section 5 (3).

APPENDIX 2 THE ELECTORAL TIMETABLE

Statutory electoral timetables for both general and by-elections are laid down in the Parliamentary Elections Rules appended to the Representation of the People Act 1983. The timetable was amended in the Representation of the People Act 1985.

GENERAL ELECTIONS	DAY OF TIMETABLE	BY-ELECTIONS
Royal Proclamation and issue of writs	0	Issue of new writ
Receipt of writs	1	Receipt of writs
	2	
Notice of election	3	Notice of election
Earliest day for nomination	4	Earliest day for nomination
	5	
Latest day for nomination	6	Earliest day for nominations to close
	7	
	8	Latest day for nominations to close
	9	
	10	
	11	
	12	
	13	
	14	
	15	Earliest polling day
	16	
Polling day	17	
	18	
	19	Latest polling day

Notes:-

- (1) In the case of a by-election, the last day for nominations and polling day are fixed, within certain limits, by the returning officer.
- (2) For the purposes of the timetable, Saturday, Sunday, Christmas Eve, Christmas Day, Maundy Thursday, Good Friday, a bank holiday and any day appointed for public thanksgiving or mourning are disregarded.

APPENDIX 3

DATES OF GENERAL ELECTION SINCE 1945

	Government Elected
Thursday 5 July 1945	Labour
Thursday 23 February 1950	Labour
Thursday 25 October 1951	Conservative
Thursday 26 May 1955	Conservative
Thursday 8 October 1959	Conservative
Thursday 15 October 1964	Labour
Thursday 31 March 1966	Labour
Thursday 18 June 1970	Conservative
Thursday 28 February 1974	Labour
Thursday 10 October 1974	Labour
Thursday 3 May 1979	Conservative
Thursday 9 June 1983	Conservative
Thursday 11 June 1987	Conservative
Thursday 9 April 1992	Conservative
Thursday 1 May 1997	Labour

NB: It is customary for an Election to be held on a Thursday. The last General Election held on a day other than a Thursday was Tuesday 27 October 1931

APPENDIX 4

BY-ELECTION CHANGES IN PARTY SINCE 1979

<u>Constituency</u>	<u>Old Party</u>	<u>Date of By-Election</u>	<u>New Party</u>
1979 - 83 Parliament			
Croydon NW	Conservative	22/10/81	Liberal
Crosby	Conservative	26/11/81	SDP
Glasgow Hillhead	Conservative	25/03/82	SDP
Mitcham & Morden	SDP	03/06/82	Conservative
Birmingham Northfield	Conservative	28/10/82	Labour
Southwark Bermondsey	Labour (Ind)	24/02/83	Liberal
1983 - 87 Parliament			
Portsmouth South	Conservative	14/06/84	SDP
Brecon & Radnor	Conservative	04/07/85	Liberal
Newry & Armagh	U.U.	23/01/86	SDLP
Fulham	Conservative	10/04/86	Labour
Ryedale	Conservative	08/05/86	Liberal
Greenwich	Labour	26/02/87	SDP
1987 - 92 Parliament			
Glasgow Govan	Labour	10/11/88	SNP
Vale of Glamorgan	Conservative	04/05/89	Labour
Mid-Staffordshire	Conservative	22/03/90	Labour
Eastbourne	Conservative	18/10/90	Liberal Democrat

By-Election changes in Party since 1979 (ctd)

<u>Constituency</u>	<u>Old Party</u>	<u>Date of By-Election</u>	<u>New Party</u>
1987 - 92 Parliament			
Ribble Valley	Conservative	07/03/91	Liberal Democrat
Monmouth	Conservative	16/05/91	Labour
Kincardine and Deeside	Conservative	07/11/91	Liberal Democrat
Langbaugh	Conservative	07/11/91	Labour
1992 Parliament			
Newbury	Conservative	06/05/93	Liberal Democrat
Christchurch	Conservative	29/07/93	Liberal Democrat
Eastleigh	Conservative	9/06/94	Liberal Democrat
Dudley West	Conservative	15/12/94	Labour
Perth and Kinross	Conservative	25/05/95	Scottish National Party
North Down	Ulster Popular Unionist	15/06/95	United Kingdom Unionist
Littleborough & Saddleworth	Conservative	27/07/95	Liberal Democrat
Staffordshire South East	Conservative	11/04/96	Labour
Wirral South	Conservative	27.2.97	Labour