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Political and Constitutional
Reform Committee

**Government formation
post-election**

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*Report, together with formal minutes relating
to the report*

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The Political and Constitutional Reform Committee

[Mr Graham Allen MP](#) (Labour, Nottingham North) (Chair)

[Mr Christopher Chope MP](#) (Conservative, Christchurch)

[Tracey Crouch MP](#) (Conservative, Chatham and Aylesford)

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[Chris Ruane MP](#) (Labour, Vale of Clwyd)

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The following Members were also members of the Committee during the Parliament:

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Committee staff

The current staff of the Committee are Martyn Atkins (Clerk), Edward Faulkner (Committee Specialist), Ami Cochrane (Legal Assistant), Tony Catinella (Senior Committee Assistant), Nerys Davies (Campaign Co-ordinator), James Camp (Committee Assistant) and Jessica Bridges-Palmer (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Political and Constitutional Reform Committee, House of Commons, Political and Constitutional Reform Committee, House of Commons, 14 Tothill Street, London SW1H 9NB. The telephone number for general enquiries is 020 7219 0737; the Committee's email address is pcrc@parliament.uk.

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Summary

Opinion polling in the last months of this Parliament has consistently indicated the likelihood of an election result with no overall majority. This means it is likely there will be a negotiation period for the formation of a potential coalition Government or a Government supported on a confidence and supply arrangement. It is likely this will take longer after the 2015 election than it did after the 2010 election.

We undertook this inquiry to provide guidance to the public on what to expect in the government formation process in a Parliament with no overall majority. The key issues we draw to the attention of the public are:

- The negotiation period in 2015 is likely to be longer than in 2010.
- A Prime Minister who is unlikely to be able to form a new administration is nevertheless likely to remain in office, and in Downing Street, until it is clear that another administration can form a Government which can command the confidence of the House of Commons.
- If there is no parliamentary majority to support the current administration, it will nevertheless continue in office on a caretaker basis until a new government is formed. Caretaker Ministers ought to consult with their counterparts on any major decisions.
- Ministers who lose their seats at the General Election continue in their Ministerial roles until a new government has been formed.

We have welcomed the fact that parties involved in negotiations in 2010 have made formal changes to their internal processes so that there is greater consultation with Members of Parliament, but believe it is wrong that Parliament may not have its first meeting after the election until after a new administration has been appointed.

We consider that it is wrong in principle that the decision on the date of Parliament's return should be in the hands of the Prime Minister, and recommend that the date of Parliament's first meeting after a General Election should be put on a statutory basis. In the event that no single party has a majority in the House of Commons to be elected at the forthcoming general election, Parliament should return as soon as possible, and we recommend that in any case the Prime Minister should set the date for Parliament's return following the General Election for Monday 11 May 2015. We have set out ways to expedite the House's procedures for electing a Speaker and swearing in Members to allow for substantive debate in the House to begin as soon as possible on 11 May. We also recommend that procedural changes are made to enable a future House to hold an early investiture vote to demonstrate its confidence in a new administration and to indicate the end of any caretaker period of government.

Our report also considers the role of the Civil Service and caretaker administration before the election and during the period when government formation discussions are taking place.

1 Introduction

1. In 2010, for the first time in 36 years and for only the second time since World War II, the general election held on 6 May resulted in no clear majority for one single party in the House of Commons. Following negotiations, Rt Hon David Cameron MP was appointed Prime Minister and formed a coalition government with the Liberal Democrats. We undertook an inquiry into the process of Government formation after the election and in January 2011 published a report on *Lessons from the process of Government formation after the 2010 General Election*.¹ Our report focused on the processes which took place after the 2010 General Election and suggested some improvements which could make the processes and conventions clearer both to the parties involved in the negotiations and to the wider public. For example, after the 2010 election, there had been considerable confusion over the rules and conventions governing the role of the incumbent Prime Minister, then Rt Hon Gordon Brown MP, once it was clear that he could not command a parliamentary majority, as well as over the power and authority the incumbent Government had to make decisions during the negotiation period.

2. In this report we aim to inform the public what they should expect after the 2015 election should it result in another House of Commons with no overall majority, to provide feedback to the Government on areas where there is still uncertainty as to what the rules are, and to propose changes to ensure Parliament is at the heart of the process, where it should be.

3. We launched this inquiry on 29 January 2015, and invited evidence on the following issues:

- The principles governing Civil Service support to the leaders of political parties involved in discussions over the formation of a new administration (Cabinet Manual, 1st edition, para 2.14);
- Operation of the ‘caretaker convention’ restricting government activity following an election with no overall majority as long as there is “significant doubt over the Government’s ability to command the confidence of the House of Commons” (Cabinet Manual, 1st edition, para 2.30);
- Arrangements to demonstrate whether a Prime Minister forming a new administration commands the support of the House of Commons;
- How best to facilitate any negotiations between political parties on government formation.

¹ [Lessons from the process of Government formation after the 2010 General Election](#), Fourth Report of Session 2010–12, HC 528

4. During the course of this inquiry, we received five pieces of written evidence and took oral evidence on two occasions, from a variety of witnesses including the Clerk of the House of Commons,² the Cabinet Secretary and the Chairs of the three main political parties' parliamentary groups. We are grateful to all those who have contributed to the inquiry.

² When the Committee took oral evidence from David Natzler on 9 March 2015 he was Acting Clerk of the House of Commons. On 23 March 2015 he was appointed Clerk of the House of Commons.

2 Changes from the 2010 election

Length of negotiation period

5. The length of the negotiation period after the 2010 election was relatively short. It took just five days for the outline of the coalition agreement to be agreed and thirteen days for the final programme for Government to be released. Dr Petra Schleiter and Valerie Belu, of the University of Oxford, told us that this “compared to an average of thirty-nine days for the rest of Western Europe.”³

6. There are some reasons why the negotiation period may be longer in 2015. Professor Robert Hazell, from University College London told us:

[I]t is very likely to take longer than five days before the negotiations are concluded [...] there are likely to be more players in the game this time round. [...] it is very likely that the parliamentary parties will take a closer interest and will expect to be consulted more closely before they allow their party leaders to sign up to any deal. [...] [W]e forget that in 2010 the agreement reached after five days was not formally the coalition agreement that became the programme for Government.⁴

7. Dr Catherine Haddon from the Institute for Government argued that the length of the negotiation period could be longer in 2015 compared with 2010. She told us:

[C]ertainly media and political expectations and the public’s expectations may now have changed to allow for a bit of a longer period than the pressure we saw last time round.⁵

8. In the event of an election result which delivers no overall majority, negotiations on government formation may not result in a coalition. If agreement cannot be reached between parties which have sufficient members to reach a majority in the House of Commons, a party or parties may reach agreement on forming an administration on the basis of support from other parties on matters of confidence and supply.

9. The public should expect that the negotiation period for the formation of a potential coalition Government or confidence and supply arrangement will be longer in 2015 than in 2010.

3 Dr Petra Schleiter and Valerie Belu ([GFE 02](#)) para 2

4 Q2 [Prof Robert Hazell]

5 Q3 [Dr Catherine Haddon]

The effect of the Fixed-term Parliaments Act 2011

10. The Fixed-term Parliaments Act 2011 has meant that for almost five years the Government and the Civil Service have known the date of the 2015 General Election. The Institute for Government told us that this meant that:

[R]estrictions on government activity should be more of a theoretical than a practical problem. [...] the government and the civil service have been able to plan ahead to avoid any decisions both during the campaign and in the weeks afterwards.⁶

11. It will of course not be possible to schedule all major decisions to be taken by a caretaker administration to fall outside the process of government formation: unexpected issues may require an immediate decision by Ministers, and while a government is being formed Ministers may be required to attend and take decisions at scheduled or unscheduled international meetings. For instance, shortly after the 2010 election, the then Chancellor of the Exchequer, Rt Hon Alistair Darling MP, attended an urgent meeting of EU finance ministers to discuss the bailout for the euro, and committed the UK to the deal.⁷

12. Asked whether the Act had helped with Government planning for the 2015 election, the Cabinet Secretary, Sir Jeremy Heywood, told us:

It has certainly helped to plan when the election is going to be so you work out at what point during the five years certain things can happen. I do not think it has materially helped in the period after, at the start of a new five-year term, because whether or not you have uncertainty depends on the outcome of the election. In many scenarios, you may not have an uncertainty.⁸

13. While we recognise that, in a number of scenarios, after a general election there may not be uncertainty over the nature of the continuing or incoming administration, opinion polling in the last months of this Parliament has consistently indicated the likelihood of an election result with no overall majority. We are therefore disappointed that the opportunity provided by the Fixed-term Parliaments Act 2011 has not been used by the Government and the Civil Service to plan better for the potential of a period of negotiations immediately following the General Election. An opportunity to ensure that as far as possible key decisions do not have to be taken by a caretaker administration during a period of government formation appears to have been missed. We recommend that in future the Civil Service seeks as far as possible to schedule key decisions for Ministers until after the end of any likely period of Government formation after an election.

6 Institute for Government ([GFE 03](#)), para 7

7 '[Osborne urged Darling to opt out of EU bail-out](#)', *The Telegraph*, 1 July 2011

8 Q109 [Sir Jeremy Heywood]

Consultation within political parties

14. Given the likelihood that the 2015 election will not deliver a clear majority to a single party, there will need to be negotiations between the parties before a new government can be formed. We considered the processes that the three largest parties in the current Parliament, who all participated in negotiations following the 2010 election, had in place to manage the process. We focussed in particular on the processes by which the party leaders and negotiating teams consulted with their parliamentary parties, recognising that in the absence of such processes any agreement might lack legitimacy within the parties that have committed to it and might therefore be unstable.

15. In May 2010 only the Liberal Democrats had a clear process by which the approval of the party was sought for the agreement that had been reached. Annette Brooke, Chair of the Liberal Democrat Parliamentary Party, and Baroness Brinton, President of the Liberal Democrats, indicated that, because of the way the Liberal Democrats were constituted, there had been a steady process of consultation through the negotiation process. The party's Federal Executive and Federal Policy Committee had made clear to the negotiating team the sort of approach they would like to see adopted. Subsequently, the parliamentary party convened in Westminster on the Saturday following the election and met regularly until the initial coalition agreement was approved by the Federal Executive on Tuesday 11 May. On Saturday 16 May, the party held a special conference in Birmingham at which the coalition agreement was approved.

16. The Labour and Conservative parties were seemingly less well-equipped to deal with the negotiation process. Mr Graham Brady MP, the chair of the Conservative Party's 1922 Committee, a committee of all backbench Conservative MPs, said that the "circumstances took everyone by surprise" and conceded that "our institutional framework was simply not there".⁹ The chairman of the Committee had not stood for re-election and there had been no procedures in place to ensure continuity until a new chairman had been selected. The Labour Party had no mechanism in place to ensure consultation between the negotiating team and front bench and parliamentary party and national executive.¹⁰

17. It is clear that those parties which participated in the negotiation process last time have reflected on and learnt from the experience. Labour and the Conservatives have acknowledged the need for greater internal consultation during any negotiations. Labour have updated their standing orders to require the party leader to consult with both the parliamentary party and the party's national executive committee.¹¹ John Cryer MP, chair of the Parliamentary Labour Party (PLP), also noted that the power of the PLP's ruling body, the backbench-dominated Parliamentary Committee, to call a meeting at any time could be used to ensure any proposals were properly discussed.¹² Mr Brady made clear that the 1922 Committee was now properly prepared for engagement with negotiations after

9 Qq144–147 [Mr Graham Brady MP]

10 Q77 [John Cryer MP]

11 Q77 [John Cryer MP]

12 Q78 [John Cryer MP]

the election: arrangements had been made to ensure that there was a body that could communicate the views of Conservative backbench MPs to the leadership throughout any negotiations. The Liberal Democrats have refined their consultation mechanisms, trying to streamline the process without sacrificing representativeness. The party bodies previously involved now nominate smaller reference groups to liaise with the negotiating team.¹³

18. It is not for us to specify the precise mechanisms by which parties should approach any negotiations over forming a government. They are structured differently, and the detail of any consultation and subsequent ratification will reflect that. As we indicated in our earlier report on government formation, it is for the political parties to decide if they wish to review their internal procedures. We are pleased to note that they all appear to agree on the principle that there should be consultation throughout the process.

19. We welcome the fact that parties involved in negotiations in 2010 have made formal changes to their internal processes so that there can be greater consultation with Members of Parliament and, perhaps equally importantly, all three parties seem to acknowledge the need for consultation on any agreement to which their party wishes to commit them.

3 Operation of the ‘caretaker convention’

What is the ‘caretaker period’?

20. The ‘caretaker period’ refers to the period after the general election until a new Government that commands support of the House of Commons has been formed. In the UK transition periods have traditionally been very short: according to Dr Petra Schleiter and Valerie Belu “on average government formation in the UK took just four days in the period 1945–1994”. Therefore, the need for a ‘caretaker’ government and rules governing this period have been largely unnecessary until now.

Necessity to differentiate between the ‘caretaker’ and ‘purdah’ rules

21. One issue raised with us during the course of this inquiry is the different rationale for the rules during the ‘purdah’ period—the period prior to an election when the parties are officially on an election footing—and the rules during a ‘caretaker’ period—the period following an election before any new government has been appointed. While there is always a purdah period before an election, rules for caretaker periods only apply in the event that the outcome of an election has not delivered an overall majority for one party.

22. We heard from Professor Hazell that that the purdah rules before elections apply “even when a Government is not a caretaker Government but has a full working majority”.¹⁴ For example, during local government or European elections the incumbent Government “should not use the Government publicity machine to generate good news stories for your party.”¹⁵ The restrictions during a ‘caretaker’ period are for significantly different reasons. Dr Petra Schleiter and Valerie Belu stated in their written evidence:

Caretaker conventions exist to permit limited government until the next regular administration can be formed. Their function is to protect the national interest and to ensure that there is always an executive to continue ‘daily administrative management, custody of ongoing concerns, and handling of urgent matters and international commitments’.¹⁶

14 Q7 [Prof. Robert Hazell]

15 Q7 [Prof. Robert Hazell]

16 Dr Petra Schleiter and Valerie Belu ([GFE 02](#)), para 12. The reference is to Geert Bouckaert and Marleen Brans, ‘Governing without Government: Lessons from Belgium’s Caretaker Government’, *Governance*, April 2012, p 174.

23. In the section ‘Restrictions in Government Activity’, the Cabinet Manual, in paragraphs 2.27–2.29, states:

While the government retains its responsibility to govern and ministers remain in charge of their departments, governments are expected by convention to observe discretion in initiating any new action of a continuing or long-term character in the period immediately preceding an election, immediately afterwards if the result is unclear, and following the loss of a vote of confidence. In all three circumstances essential business must be allowed to continue.¹⁷

During this period [the run up to the General Election], the government retains its responsibility to govern, ministers remain in charge of their departments and essential business is carried on. Ministers continue in office and it is customary for them to observe discretion in initiating any action of a continuing or long-term character.¹⁸

In the same section, the Manual goes on to say that after the election, whilst there is no new Government in place “many of the restrictions set out in para 2.27–2.29 would continue to apply”.¹⁹ This means the rules for what should happen in a caretaker period are unclear.

24. Dr Petra Schleiter and Valerie Belu argue that “the current conventions do not adequately specify why government power is restricted during caretaker periods”.²⁰ It is important that *purdah* and caretaker periods are clearly distinguished as there are different rationales for the restrictions on government activity under the two. Professor Hazell explained:

It would help to keep them conceptually and practically distinct if Cabinet Office could adopt the term ‘caretaker convention’ to describe the restrictions on government decision making. The ‘*purdah*’ rules describe the restrictions on government publicity, which apply during any election, even when the government has a majority.²¹

17 [The Cabinet Manual](#), Cabinet Office, October 2011, para 2.27

18 *Ibid*, para 2.29

19 *Ibid*, para 2.30

20 Dr Petra Schleiter and Valerie Belu ([GFE 02](#)), para 10

21 Robert Hazell ([GFE 04](#)), para 8

25. We asked the Cabinet Secretary, Sir Jeremy Heywood, about clarity in using the two terms in the Cabinet Manual and using the term ‘caretaker government’ more readily. He told us:

[T]he term we use, the *purdah*, and restrictions around *purdah*, is more commonly understood in the civil service than in Government, I think. Since the current arrangements seem to work quite well, we have not found the need to invent some new technical term.

He also made it clear he thought that there was no confusion between the two different periods in the Cabinet Manual.

26. It is clear to us that there are significantly different rationales for restrictions on the normal government activity during a ‘*purdah*’ period before an election and a ‘caretaker’ period afterwards. This is not made clear in the Cabinet Manual. During the former, which is in place for any election, the Government may still command a majority in the outgoing House of Commons but is expected to observe discretion in initiating any new action of a continuing or long-term character which might aid an election campaign.

27. During a caretaker period, the incumbent government can no longer command the confidence of Parliament and a new administration will eventually be formed. The rationale for the incumbent Government remaining in place during the caretaker period is that it can continue with the management of the country, carrying out administrative tasks and dealing with any urgent matters which arise, and ensuring that there is a continuous source of constitutional advice to the Queen.

28. We recommend that in the next Parliament the Cabinet Manual should be updated to differentiate more clearly the reasons behind the periods of restriction. This will give greater clarity to Ministers, Members of Parliament, civil servants and the public about what should and what should not happen during these periods.

Right of an incumbent Prime Minister to remain in office

29. After the 2010 election, the then Prime Minister, Rt Hon Gordon Brown MP, remained in office pending the completion of the coalition talks. In the media he was described as a ‘squatter in Downing Street’ and there were calls for him to resign, despite being encouraged by the then Cabinet Secretary to remain in post. We heard from many of our witnesses that it is important for the incumbent Prime Minister to remain in post whilst negotiations on who will be able to form the next Government are taking place. Dr Petra Schleiter and Valerie Belu stated, “To ensure effective governance in the transition period, it is essential that the Prime Minister and government do not resign until the next regular government has been formed”.²²

22 Dr Petra Schleiter and Valerie Belu ([GFE 02](#)), para 8

30. The Cabinet Secretary recognised that there is some debate over whether there is a duty on the incumbent Prime Minister to remain in office after the General Election. He acknowledged that the Cabinet Manual currently recognised different views and that “the passage of time will determine whether or not what happened last time around will become a constitutional convention.”²³ He went on to praise Gordon Brown for staying in office in May 2010 until it was clear that someone else was in a better position to form an administration.

31. In our report on Revisiting the Cabinet Manual, we concluded that the Cabinet Manual should clarify the principle that there must always be a Government in place.²⁴ In the same report we recommended:

for the benefit of the media and the general public, the Cabinet Secretary should set out clearly, and well in advance of the forthcoming general election, the Government’s view of the constitutional principles which underpin the continuance in office or otherwise of administrations following a general election.²⁵

32. The current Cabinet Secretary addressed the matter thus:

I think there is a debate about this that has not been fully resolved [...] the idea was that [Gordon Brown] would stay in Downing Street until it was pretty clear who would be better placed than [him] to form another Government. That is what he did and that is what happened and we ended up with a very smooth transition. I would certainly urge a future Prime Minister in the same position to adopt a similar approach. Certainly, I think it is quite important that this issue is widely debated and discussed and hopefully agreed before the next election, just in case the situation arises again.²⁶

33. Should the outcome of the 2015 election result in a House of Commons with no overall majority, the public and media should expect to see the incumbent Prime Minister remain as Prime Minister, in 10 Downing Street, even if there is little prospect that he will be able to form an administration. The incumbent Prime Minister should remain in office until it is clear that a new administration is in a position to form a Government which will command the confidence of the House of Commons. Indeed we consider that there is a duty on him to stay in place until such a time.

23 Q112 [Sir Jeremy Heywood]

24 [Revisiting the Cabinet Manual](#), Fifth Report of Session 2014–15, HC 233, para 60

25 Ibid

26 Q112 [Sir Jeremy Heywood]

Incumbent Ministers

34. As well as the incumbent Prime Minister, other Ministers remain in post during the caretaker period. For example, Alastair Darling remained as Chancellor of the Exchequer until 11 May 2010, five days after the election, and attended a meeting of finance ministers representing the UK as its Chancellor of the Exchequer.

35. We considered whether Ministers who have lost their seats should be able to make decisions as part of a ‘caretaker government’. There is a statutory bar on this in the Scottish Government and the Welsh Government: section 47 of the Scotland Act 1998 requires Ministers to be drawn from the Parliament, and provides that they cease to hold office if they lose this status. Section 53 of the Government of Wales Act 1998 also requires Assembly Secretaries to be Assembly Members.

36. There is no such requirement for ‘caretaker Ministers’ to remain as MPs in order to continue acting in this role. The Cabinet Secretary confirmed to us that Ministers who have lost their seats could continue to serve in a caretaker government and take decisions.²⁷

37. Following the 2015 election, in the event of a House of Commons with no overall majority and an extended negotiating period, the public should expect to see Ministers who have lost their seats in the House continuing in their ministerial roles until a new government has been formed.

Duty on a ‘caretaker’ government to consult with other parties

38. It is not clear from the Cabinet Manual whether there is a duty on an incumbent government to consult with other parties in circumstances where an important decision needs to be made urgently and it is unclear what the composition of the next government will be. The IFG stated:

Where postponement [of a Ministerial decision during a caretaker period] would be ‘detrimental to the national interest or wasteful of public money’, the guidance [in the Cabinet Manual] suggests they either make temporary arrangements or consult with the Opposition.²⁸

39. In 2010 one such event which arose during the post-election period and which could not be postponed was an extraordinary meeting of EU finance ministers, which was set to adopt far-reaching new powers for the European Commission, as well as signing up to an EU bailout of the euro. In that instance the then Chancellor of the Exchequer, Alastair Darling, chose to consult his Conservative and Liberal Democrat counterparts before the

27 Q128 [Sir Jeremy Heywood]

28 Institute for Government ([GFE.03](#)), para 4

meeting, though the Cabinet Secretary confirmed to us that the consultation “amounted to telling them what was going to happen, and the other parties accepted that”.²⁹

40. When asked what was a suitable level of consultation and what consideration the incumbent government should give to the views of other parties, the Cabinet Secretary stated:

In the end, if a decision absolutely has to be taken, cannot be postponed, or it would be illogical or counterproductive or expensive to postpone it, then the Government of the day has to take that decision. As a courtesy, it would be sensible to raise it with the other two people who might be involved in the future.³⁰

41. Dr Petra Schleiter and Valerie Belu stated that while there is a convention to consult with other parties there was “no constitutional convention preventing him [Mr Darling] from making substantial commitments that would have bound the incoming government, possibly in direct contradiction to its policy position.”³¹

Who should the ‘caretaker Government’ consult with?

42. After the 2010 election, it was reasonably clear which parties were most likely to be in a position to form a new administration, and therefore with whom the incumbent government should consult with should they have to take a decision. In 2015 the situation could be different and it could be unclear who will be in a position to form a government.

43. When questioned about who should be consulted first, the Cabinet Secretary told us:

That will depend very much on the particular circumstances. What is absolutely clear is during that period, whether you want to call it a caretaker period or some other terminology, the Government is the Government of the United Kingdom and have the right to govern and to take essential decisions with the support of the civil service. In cases where they felt they really did have to [take a decision], it would be courteous to explain that to the Opposition.³²

29 Q117 [Sir Jeremy Heywood]. It was subsequently reported that whilst George Osborne was consulted he indicated that abstention from the decision might be more appropriate given the caretaker nature of the administration: see [‘Osborne urged Darling to opt out of EU bail-out’](#) The Telegraph 1 July 2011.

30 Q121 [Sir Jeremy Heywood]

31 Dr Petra Schleiter and Valerie Belu, [“Avoiding Another ‘Squatter in Downing Street’ controversy: The need to improve the Caretaker Conventions before the 2015 Election”](#), *Political Quarterly*, Vol.85, No.4 (2014), p.454

32 Q115 [Sir Jeremy Heywood]

44. We believe that any caretaker administration required to take significant decisions during a period of Government formation should consult each of the parties taking part in negotiations relating to the formation of the next Government; however, we recognise that if a decision needs to be made urgently and agreement with other parties cannot be met, the caretaker administration has a right to take a decision, bearing in mind the public interest.

End of a caretaker period

45. The end of the caretaker period is inextricably entwined with the appointment of the new administration, or, in certain circumstances, the continuation in office of elements of the incumbent administration following negotiations. The Cabinet Manual says only that when the caretaker period ends “depends on circumstances, but may often be either when a new Prime Minister is appointed by the Sovereign or where a government’s ability to command the confidence of the Commons has been tested in the House of Commons”.³³ Professor Robert Hazell stated that “This is not satisfactory, especially if the post-election negotiations take some weeks. It should always be clear to politicians, Whitehall, the media and the public whether a government is a caretaker or not.”³⁴

46. In practice, caretaker government *usually* ends when the Queen invites the person most likely to form a government that commands the confidence of the House of Commons to do so. Sir Jeremy Heywood noted that a core principle of government formation was that the Sovereign must remain above any political controversy. To adhere to that principle, the invitation to form a new government is issued on the advice of the incumbent Prime Minister. Where the election delivers a clear majority to a single party, this process is straightforward, with the caretaker period coming to an end when the leader of the majority party is invited to form the new government—usually in a matter of hours. However, where the election does not deliver a decisive result, it can be less straightforward.

47. The Cabinet Manual states that an incumbent government remains in office until the incumbent Prime Minister tenders his or her resignation and that of the government to the Queen. This resignation should be tendered when it becomes apparent that another individual is better placed to form an administration that can command the confidence of the House. It is easy to envisage a situation where it becomes apparent that an incumbent government is unlikely to command the confidence of the House but the composition of the new government has yet to be established: in 2010, Gordon Brown resigned in favour of David Cameron at a time when negotiations between the Conservatives and Liberal Democrats were still continuing. The Cabinet Manual notes that, by recent tradition, Prime Ministers have not resigned until their likely successor has become apparent but that “[i]t remains to be seen whether or not these examples will be regarded in future as having established a constitutional convention.”³⁵ Ultimately, “it remains a matter for the Prime

33 [The Cabinet Manual](#), Cabinet Office, October 2011, para 2.30

34 Robert Hazell ([GFE 04](#)), para 9

35 [The Cabinet Manual](#), Cabinet Office, October 2011, para 2.10

Minister, as the Sovereign's principal adviser, to judge the appropriate time at which to resign".³⁶

48. Where it is unclear who is best placed to form a government, the Cabinet Manual clearly states that the first opportunity to do so falls to the incumbent Prime Minister: "An incumbent government is entitled to wait until the new Parliament has met to see if it can command the confidence of the House of Commons, but is expected to resign if it becomes clear that it is unlikely to be able to command that confidence and there is a clear alternative."³⁷

49. We have highlighted the lack of clarity surrounding the transition between governments before³⁸ and the issue was strongly reiterated to us in the course of this inquiry.³⁹ Where elections have delivered decisive results, this lack of clarity has been easily ignored. Yet it is precisely when there is no decisive result that clarity is needed.

50. We recommend that, for the avoidance of doubt, a caretaker administration should continue in office until it can be demonstrated that a prospective new administration will have the confidence of the House of Commons. A single party majority or a formal majority coalition agreement have been taken as tantamount to a formal vote of confidence. Where there is any doubt, the caretaker administration should continue until that doubt has been removed.

36 [The Cabinet Manual](#), Cabinet Office, October 2011, para 2.10

37 *Ibid*, para 2.12

38 [Lessons from the process of Government formation after the 2010 General Election](#), Fourth Report of Session 201011, HC 528, para 16–27

39 For example, Institute for Government ([GFE 03](#)) para 8; Robert Hazell ([GFE 04](#)) para 9; Dr Petra Schleiter and Valerie Belu ([GFE02](#)) para 8

4 The first meeting of a new Parliament

51. Prior to the passage of the Fixed-term Parliaments Act 2011, the dissolution of Parliament before a general election and its summoning after the election had been by royal proclamation, on advice from the Prime Minister. The Fixed-term Parliaments Act 2011 removed from the Prime Minister control of the date of the dissolution at the end of a fixed-term Parliament. Control of the date for the return of Parliament continues to reside in the incumbent Prime Minister's hands. Formally, the date is set by Royal Proclamation following dissolution ahead of the general election. Edward Young, Deputy Private Secretary to the Queen, confirmed to us that this is done on the advice of the incumbent Prime Minister.⁴⁰ The Cabinet Manual notes that recent practice had been for Parliament to return on the first Wednesday following the election but there has been a significant variation throughout the post-war period, from as little as two days in 1955 to as long as 19 in 1992.⁴¹ Following a recommendation by the Modernisation Committee, a delay of 12 days between the election and the summoning of the new Parliament was adopted in 2010.

52. There is no statutory basis for the 12 day period between the general election and the summoning of the new Parliament. In fact, the Prime Minister is under no obligation to summon Parliament by a specific date: the only restrictions on the decision are imposed by political pressure and parliamentary opinion.⁴² The 12 day period was introduced to allow new MPs to deal with practical matters such as hiring staff and setting up offices, to receive some induction training and to generally “acclimatise” to their new role. It was felt that there was little opportunity for this once the formal business of Parliament had resumed.

53. We think it is wrong in principle that the decision on the date of Parliament's return should be in the hands of the Prime Minister. Control over the date of general elections was put on a statutory basis to prevent the Prime Minister from choosing the most favourable time. We recommend that the date of Parliament's first sitting following a General Election should similarly be put on a statutory basis.

54. It is possible that the Prime Minister may choose a lengthy period before the new Parliament first meets. ***We recommend that, in the event that no single party has a majority in the House of Commons to be elected on 7 May 2015, Parliament should return as soon as possible. Transparency is paramount, and a newly elected Parliament should be as informed and involved as possible in any negotiations surrounding the formation of the new government. It is important that the House of Commons should be able to publicly debate important issues surrounding the formation of government at the earliest opportunity.***

40 Appendix 4

41 [Constitutional implications of Coalition government](#), House of Lords Select Committee on the Constitution, Fifth Report of 2013–14, HL 139, para 38

42 Q52 [Paul Evans, David Natzler]

55. *We recommend that the Prime Minister sets the date for Parliament's return following the General Election for Monday 11 May 2015. In the event that there is a decisive result and a single party has a majority, Parliament's return could be postponed.*

56. **The introduction of the 12 day period before Parliament's return in 2010 was for reasons relating to the induction of new members but was done without regard to issues of government formation. We believe that induction could proceed in parallel with sittings of the House. Indeed, debating the formation of the new government would prove a valuable part of any induction for a new Member.**

57. Once summoned, there are some practical issues that place some constraints on the speed with which the House of Commons can resume its business.⁴³ Under the current timetable, on the day Parliament is summoned to meet, the Father of the House leads members to the House of Lords to hear the cause of summons from a Royal Commission. The House of Commons then chooses its Speaker. If the previous Speaker has been returned as a Member at the General Election and is elected, the following day the Speaker-elect leads Members back to the Lords to be formally confirmed in the post. The process would take a day longer if the election were contested.

58. Members must then be sworn in. Currently, there is a statutory requirement that each member must be sworn in individually at the Table of the House. This would normally take place over two or three days. We were told by the Clerk of the House of Commons that under current practice up to 90 members could be sworn in every half hour, but that it could be done at twice the speed if there were general agreement.⁴⁴ It seems clear that, if there is a general consensus, these practical and legal issues could be dealt with more quickly, allowing the House to proceed to substantive business significantly more quickly.

Appointing the government

59. Following the election of the Speaker and swearing in of Members, the first significant piece of business for the House of Commons is the debate on the Queen's Speech setting out the government's programme. The vote on the Address in response to the Queen's Speech is currently the first opportunity the new government has to demonstrate that it has the confidence of the House and can indeed govern. Consequently, it is also one signal of the end of a caretaker period of government.

60. The means by which the date of the Queen's Speech is decided upon is fairly opaque: Sir Jeremy Heywood told us that there was "no great constraint constitutionally" on when the date of the speech was announced, but that it would be announced "in good time for [it] to happen".⁴⁵ There is no specified date by which this must be done, and there can be a substantial gap between the Queen's appointment of a new Prime Minister and the opportunity for the House to demonstrate its confidence: the Queen's Speech has

43 Qq35–36 [David Natzler]

44 Qq47–49 [David Natzler]

45 Q41 [Paul Evans, David Natzler] and Qq 104–05 [Sir Jeremy Heywood]

sometimes been held three weeks or more after the general election and a week or more after Parliament has returned.⁴⁶ Consequently, the Queen's appointment of the new Prime Minister is made only in the *expectation* that they will be able to command the House's confidence.⁴⁷ Where the election has delivered a single party a clear majority, then this expectation might be confident. But where coalition negotiations are ongoing, a minority government is in prospect, or there are a variety of alternative governments conceivable, it may be far less so. The vagueness of the rules governing the caretaker period means that it is uncertain whether the caretaker period continues until this vote has taken place.

61. For this reason, we considered the Institute for Government's proposal that some form of parliamentary investiture or approval might be introduced, to take place rather earlier than the votes on the Queen's Speech.⁴⁸ The Institute for Government note that such practice is common in many other jurisdictions. In both Scotland and Wales, for example, it is a legal requirement for there to be a vote formally nominating the incoming First Minister (in the form of a recommendation to the Queen) following an election. The advantages are clear. **An investiture vote of some form would give a clear signal that the person appointed as Prime Minister by the Queen would indeed have the confidence of the House and would be able to govern. Without that, the new appointment may be made on the balance of probability. Such a vote would also give a clear and decisive indication that a caretaker period has ended and a new government has begun.**

62. A matter of days away from dissolution, it is clearly too late for a procedure for an investiture vote to properly be introduced in time for Parliament's return after the election, though if there were a clear requirement in the national interest for an early demonstration of the House's confidence in a new administration then we expect that it would be possible for agreement to be reached on the procedural change required. *We recommend that, in the next Parliament, the necessary steps are taken to introduce investiture votes for incoming governments in the future.*

An expedited process

63. At our request, the Clerk of the House of Commons outlined an expedited process that would allow the House to resume normal business as soon as possible after the election. Such a process could also allow for some form of affirmatory vote on the new prime minister. The Clerk's note, which includes more detail, is included in Appendix 1 of this report. The Clerk of Parliaments has confirmed to us that the House of Lords could accommodate an expedited process of this sort.⁴⁹

46 [Constitutional implications of Coalition government](#), House of Lords Select Committee on the Constitution, Fifth Report of 2013–14, HL 139, para 38

47 Q8 [Dr Catherine Haddon]

48 Institute for Government ([GFE 03](#)), para 15

49 Appendix 2

64. In this expedited process, the House of Commons could be debating as early as the afternoon of the Monday following the election, assuming that the election results had been declared and the writs of election duly returned. The House could return on Monday morning, and, rather than requiring the first visit of the House to the Lords seen in current practice, a senior Privy Counsellor could direct the house to elect a Speaker.⁵⁰ If the returning Speaker were re-elected, royal approval of the appointment could be conveyed by the same Privy Counsellor rather than requiring a second visit to the Lords.

65. With the Speaker confirmed, Members must then be sworn in. It is a legal requirement of the Parliamentary Oaths Act 1866 that Members must be sworn in at the table of the House. This has been taken to preclude a mass swearing of the oath. But we were told that swearing-in could be conducted with two separate ‘streams’, allowing the whole House to be sworn in a couple of hours. **The process for individual swearing of the oath in the Chamber could be expedited, and other reforms considered. *The legislation governing this should be revisited with a view to considering some form of collective swearing of the oath or individual swearing outside the chamber. Pending that change, we recommend that the swearing-in process should be carried out using two streams.***

66. With the Speaker in place and Members sworn in, some form of formal commission from the Queen would be required for Parliament to resume business. This has traditionally taken the form of a motion to debate the Address in response to the Queen’s Speech. However, with a successor government still to be decided, the commission could be delivered by a senior Privy Counsellor. This would allow the House to reassemble by early afternoon to debate a motion to be moved by a Minister in the caretaker Government. This could continue until the composition of the new government were clear. The Queen’s Speech would then proceed, with the subsequent vote as a *de facto* affirmation vote.

67. We recommend that, in the event of an indecisive election, Parliament should return on Monday 11 May and, using an expedited process, should enter on business as soon as is practicable that day. The necessary measures to enable this should be put in place ahead of the General Election, including by a further proclamation if necessary.

50 This was a recommendation of the Procedure Committee in 1996 but was never implemented. See Procedure Committee, First Report of Session 1995–96, *Proceedings at the Start of a Parliament*, HC 386, para 3

5 Civil Service support to political parties in post-election discussions

68. Following the result of the 2010 election, the then Cabinet Secretary, Sir Gus O'Donnell, offered Civil Service support for negotiations to form a government to all political parties on the same basis. In the event, however, the civil service provided only very limited support for the negotiations that took place. The support provided to the parties is subject to the approval of the Prime Minister⁵¹ and we were told by the Cabinet Secretary that after the 2015 election “he [the Prime Minister] has agreed in principle that the Civil Service should play the same role in 2015, if it is needed, as was played in 2010.”⁵²

69. The current Cabinet Secretary outlined what he thought the role of the civil service should be during the period of uncertainty after a general election:

from my perspective, as head of the civil service, the civil service’s role is to support the incumbent Government of the day in the essential Government of Britain, but otherwise to remain completely impartial. In the Government formation, the civil service’s role is to be providing logistical support, to provide factual advice, but not to try to sway the coalition discussions in one direction or another. We are impartial when it comes to that because that is an issue for the elected politicians.⁵³

How best to facilitate discussions

70. Given the UK has what the Institute for Government describes as an “unordered process of Government formation”⁵⁴ there are no rules parties that must follow when they enter into negotiations. In a situation after the election where there is no overall majority in the House, it might not become clear immediately which parties will be involved in trying to form a government and what that government might look like.

71. It has been debated whether the civil service should simply supply factual information to political parties or offer advice on proposed policies. Professor Hazell suggests that the civil service could offer the following support:

- Provision of accommodation and refreshments;
- Note takers, who can summarise the issues which have been agreed and what remains outstanding;
- The provision of factual information;
- The provision of advice.⁵⁵

51 [The Cabinet Manual](#), Cabinet Office, October 2011, para 2.14

52 Q129 [Sir Jeremy Heywood]

53 Q103 [Sir Jeremy Heywood]

54 Institute for Government ([GFE 03](#)), para 17

55 Prof Robert Hazell ([GFE04](#)), para 4

He does, however, recognise that “The last item is controversial: most commentators would prefer the civil service not to go beyond answering requests for factual information.”⁵⁶

72. When we questioned the Cabinet Secretary on what type of information they would supply to parties to the negotiations, he told us:

[T]he advice provided should be essentially of a factual nature, rather than a policy advice nature, if I can put it like that. We would be very happy to supply information on the cost of something or the legislative requirements of something or the timetable required to do something in practical terms.⁵⁷

73. Professor Hazell argued that any logistical and factual support should come with some advice, otherwise negotiating parties might not know in reality how practical their policies would be implement. He said:

I think it is in the public interest that the negotiators be as fully informed as possible about the different issues that they are negotiating on. [...] Issues will arise where the negotiators want to ask: what will this cost? How long will this take? Will we run into legal difficulties? Those sound like factual questions and they can be put in that way but, as I said in my submission, to get sensible answers, the answers will come, I hope, couched with a bit of advice.⁵⁸

The Cabinet Secretary remained reluctant to give out policy advice as it could lead to the civil service looking like they favoured the policy of one party over another. He told us:

[A]s soon as you get sucked into a discussion not about factual advice but about policy advice, then indeed, you are effectively being asked to provide advice against policies as well as in favour of them. I think you could easily find yourself in a position where your position could be caricatured as favouring one party or one coalition over another, and that would not be the right place for the civil service, which has to be impartial, has to be able to serve Governments of whatever complexion, and should not be criticisable for favouring one coalition or another. That would be totally against our ethos as a civil service.⁵⁹

74. If there is no conclusive result to the election, we do not believe that Prime Ministerial approval should be required for civil service support to post-election discussions. If there is agreement among parties involved in the negotiations that they require support it should be given. The next version of the Cabinet Manual should be updated to reflect this view.

56 Prof Robert Hazell ([GFE04](#)), para 5

57 Q131 [Sir Jeremy Heywood]

58 Q28 [Prof Robert Hazell]

59 Q136 [Sir Jeremy Heywood]

75. From the outset the civil service should be ready to provide factual information to all parties involved in Government formation negotiations.

76. To avoid any impression that the civil service might favour one party's policy over another, any advice to the individual parties should be given on a confidential basis.

Impartial advice on equal basis

77. If one party in negotiations asks for information on a specific issue, the question arises of whether or not that advice should be offered as a matter of course to all of the other parties involved. Robert Hazell argued that:

The key safeguard is that any information or advice is supplied to all the parties involved in that set of negotiations; and that the parties know when they request the information that it will be shared on that basis.⁶⁰

78. According to Dr Catherine Haddon from the Institute for Government, a different approach was taken during the 2010 negotiations. She told us that the guidance issued by the civil service:

sets out what should happen in the event that one party asks for a piece of factual information on policy X. If another party does not ask for that same piece of information, it does not get it, nor does it even know that the first party has asked for it. If both do ask for it, they get the same piece of advice, supposedly. There is clearly an expectation there that they would have quite strict convention and guidance around what constitutes advice.⁶¹

79. The Cabinet Secretary did not think that issuing unsolicited information to all parties would be suitable. He said:

I do not think we would want in any sense to be leading the witness in any way by suggesting, "Here is some information you have not asked for but we think you ought to have". We are there to provide advice on request.

Of course, if it turns out that six out of seven parties have all asked for the same thing, then conceivably it might make sense just to produce a general note, but we are talking very hypothetically now. Basically, our task would be to provide advice of a factual nature to those parties that asked for it, and on a confidential basis, for whichever discussion is going on at that time.⁶²

80. Should more than one party in negotiations require exactly the same information from the civil service, then exactly the same response should be issued to all of the parties who asked for it. Any information requested by one party should only be sent to other parties involved in the negotiations if all parties agree to this practice at the outset of the negotiation period.

60 Prof Robert Hazell ([GFE04](#)), para 5

61 Q29 [Dr Catherine Haddon]

62 Q133 [Sir Jeremy Heywood]

Conclusions and recommendations

Changes from the 2010 election

1. The public should expect that the negotiation period for the formation of a potential coalition Government or confidence and supply arrangement will be longer in 2015 than in 2010. (Paragraph 9)
2. While we recognise that, in a number of scenarios, after a general election there may not be uncertainty over the nature of the continuing or incoming administration, opinion polling in the last months of this Parliament has consistently indicated the likelihood of an election result with no overall majority. We are therefore disappointed that the opportunity provided by the Fixed-term Parliaments Act 2011 has not been used by the Government and the Civil Service to plan better for the potential of a period of negotiations immediately following the General Election. An opportunity to ensure that as far as possible key decisions do not have to be taken by a caretaker administration during a period of government formation appears to have been missed. *We recommend that in future the Civil Service seeks as far as possible to schedule key decisions for Ministers until after the end of any likely period of Government formation after an election.* (Paragraph 13)
3. We welcome the fact that parties involved in negotiations in 2010 have made formal changes to their internal processes so that there can be greater consultation with Members of Parliament and, perhaps equally importantly, all three parties seem to acknowledge the need for consultation on any agreement to which their party wishes to commit them. (Paragraph 19)

Operation of the 'caretaker convention'

4. It is clear to us that there are significantly different rationales for restrictions on the normal government activity during a 'purdah' period before an election and a 'caretaker' period afterwards. This is not made clear in the Cabinet Manual. During the former, which is in place for any election, the Government may still command a majority in the outgoing House of Commons but is expected to observe discretion in initiating any new action of a continuing or long-term character which might aid an election campaign. (Paragraph 26)
5. During a caretaker period, the incumbent government can no longer command the confidence of Parliament and a new administration will eventually be formed. The rationale for the incumbent Government remaining in place during the caretaker period is that it can continue with the management of the country, carrying out administrative tasks and dealing with any urgent matters which arise, and ensuring that there is a continuous source of constitutional advice to the Queen. (Paragraph 27)

6. *We recommend that in the next Parliament the Cabinet Manual should be updated to differentiate more clearly the reasons behind the periods of restriction. This will give greater clarity to Ministers, Members of Parliaments, civil servants and the public about what should and what should not happen during these periods. (Paragraph 28)*
7. Should the outcome of the 2015 election result in a House of Commons with no overall majority, the public and media should expect to see the incumbent Prime Minister remain as Prime Minister, in 10 Downing Street, even if there is little prospect that he will be able to form an administration. The incumbent Prime Minister should remain in office until it is clear that a new administration is in a position to form a Government which will command the confidence of the House of Commons. Indeed we consider that there is a duty on him to stay in place until such a time. (Paragraph 33)
8. Following the 2015 election, in the event of a House of Commons with no overall majority and an extended negotiating period, the public should expect to see Ministers who have lost their seats in the House continuing in their ministerial roles until a new government has been formed. (Paragraph 37)
9. We believe that any caretaker administration required to take significant decisions during a period of Government formation should consult each of the parties taking part in negotiations relating to the formation of the next Government; however, we recognise that if a decision needs to be made urgently and agreement with other parties cannot be met, the caretaker administration has a right to take a decision, bearing in mind the public interest. (Paragraph 44)
10. *We recommend that, for the avoidance of doubt, a caretaker administration should continue in office until it can be demonstrated that a prospective new administration will have the confidence of the House of Commons. A single party majority or a formal majority coalition agreement have been taken as tantamount to a formal vote of confidence. Where there is any doubt, the caretaker administration should continue until that doubt has been removed. (Paragraph 50)*

The first meeting of a new Parliament

11. *We think it is wrong in principle that the decision on the date of Parliament's return should be in the hands of the Prime Minister. Control over the date of general elections was put on a statutory basis to prevent the Prime Minister from choosing the most favourable time. We recommend that the date of Parliament's first sitting following a General Election should similarly be put on a statutory basis. (Paragraph 53)*

12. *We recommend that, in the event that no single party has a majority in the House of Commons to be elected on 7 May 2015, Parliament should return as soon as possible. Transparency is paramount, and a newly elected Parliament should be as informed and involved as possible in any negotiations surrounding the formation of the new government. It is important that the House of Commons should be able to publicly debate important issues surrounding the formation of government at the earliest opportunity.*(Paragraph 54)
13. *We recommend that the Prime Minister sets the date for Parliament's return following the General Election for Monday 11 May 2015. In the event that there is a decisive result and a single party has a majority, Parliament's return could be postponed.* (Paragraph 55)
14. The introduction of the 12 day period before Parliament's return in 2010 was for reasons relating to the induction of new members but was done without regard to issues of government formation. We believe that induction could proceed in parallel with sittings of the House. Indeed, debating the formation of the new government would prove a valuable part of any induction for a new Member. (Paragraph 56)
15. An investiture vote of some form would give a clear signal that the person appointed as Prime Minister by the Queen would indeed have the confidence of the House and would be able to govern. Without that, the new appointment may be made on the balance of probability. Such a vote would also give a clear and decisive indication that a caretaker period has ended and a new government has begun. (Paragraph 61)
16. *We recommend that, in the next Parliament, the necessary steps are taken to introduce investiture votes for incoming governments in the future.*(Paragraph 62)
17. The process for individual swearing of the oath in the Chamber could be expedited, and other reforms considered. *The legislation governing this should be revisited with a view to considering some form of collective swearing of the oath or individual swearing outside the chamber. Pending that change, we recommend that the swearing-in process should be carried out using two streams.* (Paragraph 65)
18. *We recommend that, in the event of an indecisive election, Parliament should return on Monday 11 May and, using an expedited process, should enter on business as soon as is practicable that day. The necessary measures to enable this should be put in place ahead of the General Election, including by a further proclamation if necessary.* (Paragraph 67)

Civil Service support to political parties in post-election discussions

19. If there is no conclusive result to the election, we do not believe that Prime Ministerial approval should be required for civil service support to post-election discussions. If there is agreement among parties involved in the negotiations that they require support it should be given. The next version of the Cabinet Manual should be updated to reflect this view. (Paragraph 74)

20. From the outset the civil service should be ready to provide factual information to all parties involved in Government formation negotiations. (Paragraph 75)
21. To avoid any impression that the civil service might favour one party's policy over another, any advice to the individual parties should be given on a confidential basis. (Paragraph 76)
22. Should more than one party in negotiations require exactly the same information from the civil service, then exactly the same response should be issued to all of the parties who asked for it. Any information requested by one party should only be sent to other parties involved in the negotiations if all parties agree to this practice at the outset of the negotiation period. (Paragraph 80)

Appendix 1: Correspondence between the Chair and the Acting Clerk of the House

Letter from the Chair to David Natzler, Acting Clerk of the House, 10 March 2013

Thank you for coming to the Select Committee yesterday to set out the procedures to be followed at the meeting of a new Parliament.

We discussed the possibility of the House meeting earlier than last time should the result of the Election be inconclusive. This could take place on Saturday 9 May. However it was apparent from the evidence and from the views of many colleagues that Monday 11 May, four days after the General Election, would find greater support as a date to initially debate, and perhaps later to confirm, any proposed arrangements for the formation of a new administration after the election. Thank you for indicating in outline how a reconvening like this might be achieved.

I should be grateful if you would submit to the Committee a note setting out a scheme under which Parliament would meet on Monday 11 May to enable the House to hold an initial debate of this nature. It would be helpful if you could indicate the requirements and agreements which would in your view be necessary for such a scheme to be proceeded with. I realise that you cannot speak for all those involved, and I am therefore also seeking advice from the Cabinet Office, the Clerk of the Parliaments and the Private Secretary to HM the Queen.

Such a scheme would inevitably require changes to current procedure and practice, and I would be grateful for any advice you could give the Committee on the changes which would be required for effective implementation. It would be helpful to receive the note by Wednesday 18 March for circulation to the Committee.

Note from David Natzler, Acting Clerk of the House, 18 March 2015

Date and time of meeting

1. Parliament could be summoned by proclamation to meet on Monday 11 May. This should give sufficient time for preparation of the White Book of returns to the writs. The time of meeting is not normally set out in the proclamation. The normal meeting time of the House on a Monday is 1430, but a morning start at no later than 0930 would be advisable if all the preliminaries are to be disposed of in one day so as to enable the House to hold a debate in the afternoon and evening. **In the absence of any authority for meeting at 0930, it would be necessary to regulate the meeting time in advance of**

Dissolution either by a new Standing Order designed for this circumstance or by a one-off Order.

First visit to Lords

2. Time could be saved by dispensing with the first of the conventional three visits to the Lords. This was recommended by the Procedure Committee in its 1995–96 Report on Proceedings at the start of a Parliament, but not implemented. Rather than the Commissioners in the Lords sending Black Rod to fetch the Commons to the Lords, the permission to elect a Speaker could be conveyed orally by a senior Privy Counsellor [PC]. That is how permission is conveyed when the election of a Speaker is required in the course of a Parliament. **Since the prerogative is engaged, and given the role of the Commissioners, I presume that the assent of the Monarch would be required for this change.**

Election of Speaker

3. The House then proceeds to the election of a Speaker. If the returning Speaker is elected without a division, proceedings should be complete by around 0950. If a division is called and the returning Speaker is elected, proceedings should be complete by 1005. If the returning Speaker is defeated, Standing Orders require the House to be adjourned to the next day for a ballot.

Approbation of Speaker-elect and confirmation of rights and privileges

4. Time could also be saved by dispensing with the second visit to the Lords. Royal approbation of the Speaker elect could be conveyed by the same PC, presumably subject to some decent interval to enable it to be established that the individual concerned was indeed approved. The Speaker elect could then make the claim to the ancient and undoubted rights and privileges of the Commons and the PC could confirm them on behalf of the Monarch. **As for para 2 above, this significant change in practice would require the Monarch's assent in advance.**

Swearing-in

5. By around 1015 the Speaker would be able to take the oath and begin swearing-in. If it was important to save time there could conceivably be two “streams” either side of the “table in the middle of the said House” [Parliamentary Oaths Act 1866] rather than the conventional single stream. On that basis and given vigorous stage management swearing could probably be concluded by around 1215. Arrangements for swearing-in are for the Speaker: if forewarned the necessary detailed arrangements for an accelerated process could be in place.

Assembly prior to Queen's speech

6. To ensure co-ordination with proceedings in the Lords there could be a short suspension until a pre-arranged time, say 1230, so that the House was assembled to be bidden to the Lords for the Queen's Speech.

Queen's Speech

7. The Speech, which could be given by Commissioners rather than the Monarch, could be short and limited to telling the Commons that they will be invited to debate and vote on, for example, the formation of a government or on whom to recommend to the Queen should be appointed as Prime Minister. **The content of the Queen's Speech is the responsibility of the incumbent Prime Minister.**

Alternative

8. An alternative to paras 4–7 above might be for the Speaker elect to lead the [unsworn] House at around 1015 to the Lords to seek Royal approbation, and make the rights and privileges claim: and for the Commissioners not only to convey approbation and confirm the privileges, but also to convey to the Commons the message in para 7 above. The Speaker would then lead the House back and carry out swearing-in, which would be completed by around 1300. This is effect elides stages and still preserves one visit to the Lords.

Debate and vote

9. The House could reassemble at the conventional time of 1415. If it was intended to debate a Motion other than the conventional humble Address, or to allow for debate on a substantive amendment to the Address, informal notice of the Motion or proposed amendment should be given earlier in the day, so as to be widely circulated and made publicly available on the internet. There is a twentieth century precedent for a “substantive” Address to be moved. In the one week December 1921 session, the humble Address as moved included substantial reference to confirmation and ratification of the Articles of Agreement on Ireland, which was the sole purpose of calling this mini-Session. Until session 1890–91 it had indeed been the practice for the Address to reflect the Speech article by article. But the practice has now been firmly settled for over a century on a simple Motion for a humble Address of thanks. **The Speaker's agreement would be required for a Motion to be moved other than the standard Motion for an Address, or for selecting an amendment on the first day.**

10. Being a Monday, proceedings would normally be interrupted at 2200, if necessary by a closure to force a decision. The House would then presumably be adjourned by motion until a later date.

Prorogation

11. If the Government so wished, Parliament could then or soon thereafter be prorogued and a new session begun, with a substantive Queen's Speech. Alternatively the existing session could proceed as normal, without a legislative programme set out in a Queen's Speech, but if so desired with an eventual debate and vote on an equivalent document.

Appendix 2: Correspondence between the Chair and the Clerk of the Parliaments

Letter from the Chair to David Beamish, Clerk of the Parliaments, 10 March 2015

As you may know, the Political and Constitutional Reform Committee has been holding an inquiry into the formation of governments after a general election. The Committee has been considering the possibility of the House of Commons meeting shortly after the General Election to debate and confirm any proposed arrangements for the formation of a new administration after the election. At its meeting yesterday the Committee discussed with the Acting Clerk of the House possible arrangements for such a meeting of the House of Commons. A change to the present arrangements for the first meeting of a Parliament clearly has implications for the House of Lords. It would be helpful to us in considering any recommendations we may make to the House if you could indicate the arrangements which would in your view be necessary in order for Parliament to meet on Monday 11 May. It would be helpful to receive any response by Wednesday 18 March for circulation to the Committee. I am writing in similar terms to the Acting Clerk of the House, the Private Secretary to HM The Queen and the Cabinet Secretary.

Letter from David Beamish, Clerk of the Parliaments, to the Chair, 19 March 2015

Thank you for your letter of 10 March asking me about the implications for the House of Lords of a meeting of a new Parliament on the Monday after polling day.

I have discussed with David Natzler the points which you raised with him following his oral evidence to your committee, and all I really need to say is that there is nothing in relation to the House of Lords which would inhibit the sort of changes your committee is considering. Oath-taking in the House of Lords at the start of a new Parliament is in practice fitted round the two Royal Commissions (one at the beginning, one for the approval of the Commons' Speaker), and the arrangements could be adjusted as necessary if the use of Royal Commissions were to be altered or diminished. Indeed, the usual arrangement whereby the Speaker is approved at the beginning of the second day would in any case have to be departed from in the event of a new Speaker being chosen, because the proceedings in the Commons would not have been completed.

In what I say above I have assumed that both Houses would first meet on the same day, and that the Lords would begin the oath-taking on that day. Any proposal to summon the two Houses for different days would, I think, introduce unnecessary constitutional difficulties.

Appendix 3: Correspondence between the Chair and the Cabinet Secretary

Letter from the Chair to Sir Jeremy Heywood KCB, Cabinet Secretary, 10 March 2015

Thank you for coming to the Committee yesterday to discuss the procedures for formation of a government after a general election.

As you will know the Committee has been considering the possibility of the House meeting shortly after the General Election on 7 May to debate and confirm any proposed arrangements for the formation of a new administration after the election.

It would be helpful to us in considering our recommendations if you could indicate the arrangements which would in the Government's view be necessary for Parliament to meet on Monday 11 May.

It would be helpful to receive any response by Wednesday 18 March for circulation to the Committee.

I am writing in similar terms to the Acting Clerk of the House, the Clerk of the Parliaments and the Private Secretary to HM The Queen.

Letter from Sir Jeremy Heywood KCB, Cabinet Secretary, to the Chair, 17 March 2015

Thank you for your letter of 10 March, following my appearance before your Committee last week, concerning the arrangements for Parliament to meet following the election.

The Fixed-term Parliaments Act 2011 provides that once Parliament has been dissolved a Proclamation setting the date for the new Parliament to meet may be issued. This requires a meeting of the Privy Council. The date contained in the Proclamation for the first meeting is subject to the advice of the Prime Minister and has customarily been announced at the time of dissolution.

Practical arrangements for the first meeting of Parliament are a matter for the Parliamentary authorities.

Appendix 4: Correspondence between the Chair and the private office of HM The Queen

Letter from the Chair to Rt Hon Sir Christopher Geidt KCB KCVO OBE, Private Secretary to HM The Queen, 10 March 2015

As you may know, the Political and Constitutional Reform Committee has been holding an inquiry into the formation of governments after a general election. The Committee has been considering the possibility of the House of Commons meeting shortly after the General Election on 7 May to debate and confirm any proposed arrangements for the formation of a new administration.

At its meeting yesterday the Committee discussed with the Acting Clerk of the House and the Cabinet Secretary possible arrangements for such a meeting of the House of Commons.

It would be helpful to us in considering any recommendations we may make to the House if you could indicate the arrangements which would in your view be necessary in order for Parliament to meet on Monday 11 May so that the House of Commons may debate the formation of a new administration.

It would be helpful to receive any response by Wednesday 18 March for circulation to the Committee.

I am writing in similar terms to the Acting Clerk of the House, the Clerk of the Parliaments and the Cabinet Secretary.

Letter from Edward Young, Deputy Private Secretary to HM The Queen, to the Chair, 16 March 2015

Thank you for your letter of 10th March, addressed to Sir Christopher Geidt, regarding the possibility of the House of Commons meeting shortly after the General Election.

It will be for the Government to determine the date for Parliament to meet after the Election. In such matters The Queen would always act on the advice of the Government of the day.

Formal Minutes

Monday 23 March 2015

Members present:

Mr Graham Allen, in the Chair

Tracey Crouch
Mark Durkan
Paul Flynn

Duncan Hames
Fabian Hamilton

Draft Report (*Government formation post-election*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 80 read and agreed to.

Papers were appended to the Report as Appendices 1, 2, 3 and 4.

Summary agreed to.

Resolved, That the Report be the Tenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[The Committee adjourned.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at www.parliament.uk/pcrc-government-formation.

Monday 23 February 2015

Question number

Professor Robert Hazell, Constitution Unit, University College London, and
Dr Catherine Haddon, Institute for Government

[Q1-31](#)

Monday 9 March 2015

David Natzler, Acting Clerk of the House of Commons, and **Paul Evans**,
Clerk of Journals

[Q32-60](#)

Rt Hon Annette Brooke OBE MP, Chair, Liberal Democrat Parliamentary
Party, and **Baroness Brinton**, President, Liberal Democrats

[Q61-74](#)

John Cryer MP, Chair, Parliamentary Labour Party

[Q75-101](#)

Sir Jeremy Heywood, Cabinet Secretary and Head of the Civil Service

[Q102-142](#)

Mr Graham Brady MP, Chair, 1922 Committee

[Q143-159](#)

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page at www.parliament.uk/pcrc-government-formation. GFE numbers are generated by the evidence processing system and so may not be complete.

- 1 Richard Harrison ([GFE0001](#))
- 2 Dr Petra Schleiter and Valerie Belu ([GFE0002](#))
- 3 Institute for Government ([GFE0003](#))
- 4 Professor Robert Hazell ([GFE0004](#))
- 5 Rt Hon Lord Morris of Aberavon ([GFE0006](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee's website at www.parliament.uk/PCRC-publications.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

First Report	Parliamentary Voting System and Constituencies Bill	HC 422
Second Report	Fixed-term Parliaments Bill	HC 436 (Cm 7951)
Third Report	Parliamentary Voting System and Constituencies Bill	HC 437 (Cm 7997)
Fourth Report	Lessons from the process of Government formation after the 2010 General Election	HC 528 (HC 866)
Fifth Report	Voting by convicted prisoners: Summary of evidence	HC 776
Sixth Report	Constitutional implications of the Cabinet Manual	HC 734 (Cm 8213)
Seventh Report	Seminar on the House of Lords: Outcomes	HC 961
Eighth Report	Parliament's role in conflict decisions	HC 923 (HC 1477)
Ninth Report	Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010–12	HC 1477 (HC 1673)
Tenth Report	Individual Electoral Registration and Electoral Administration	HC 1463 (Cm 8177)
Eleventh Report	Rules of Royal Succession	HC 1615 (HC 586)
Twelfth Report	Parliament's role in conflict decisions—further Government Response: Government Response to the Committee's Ninth Report of Session 2010–12	HC 1673
Thirteenth Report	Political party finance	HC 1763

Session 2012–13

First Report	Recall of MPs	HC 373 (HC 646)
Second Report	Introducing a statutory register of lobbyists	HC 153 (HC 593)
Third Report	Prospects for codifying the relationship between central and local government	HC 656 (Cm 8623)
Fourth Report	Do we need a constitutional convention for the UK?	HC 371 (Cm 8749)

Session 2013–14

First Report	Ensuring standards in the quality of legislation	HC 85 (HC 611)
Second Report	The impact and effectiveness of ministerial reshuffles	HC 255 (HC 1258)
Third Report	Revisiting Rebuilding the House: the impact of the Wright reforms	HC 82 (HC 910)

Fourth Report	The role and powers of the Prime Minister: the impact of the Fixed-term Parliaments Act 2011 on Government	HC 440 (HC 1079)
Fifth Report	Pre-appointment hearing: The Chair of the House of Lords Appointments Commission	HC 600
Sixth Report	Introducing a statutory register of lobbyists: Government Response to the Committee's Second Report of Session 2012–13	HC 593
Seventh Report	The Government's lobbying Bill	HC 601 (HC 801)
Eighth Report	Parliament's role in conflict decisions: an update	HC 649
Ninth Report	House of Lords reform: what next?	HC 251 (HC 1079)
Tenth Report	The Government's lobbying Bill: follow up	HC 891 (HC 535)
Eleventh Report	Impact of Queen's and Prince's consent on the legislative process	HC 784 (HC 224)
Twelfth Report	Parliament's role in conflict decisions: a way forward	HC 892
Thirteenth Report	Fixed-term Parliaments: the final year of a Parliament	HC 976 (HC 874)
Fourteenth Report	Constitutional role of the judiciary if there was a codified constitution	HC 802

Session 2014–15

First Report	Role and powers of the Prime Minister	HC 351
Second Report	A new Magna Carta?	HC 463
Third Report	Pre-appointment hearing: Registrar of Consultant Lobbyists	HC 223
Fourth Report	Voter engagement in the UK	HC 232 (HC 1037)
Fifth Report	Revisiting the Cabinet Manual	HC 233
Sixth Report	Voter engagement in the UK: follow up	HC 938
Seventh Report	Consultation on A new Magna Carta?	HC 599
Eighth Report	What next on the redrawing of parliamentary constituency boundaries?	HC 600
Ninth Report	Constitutional implications of the Government's draft Scotland clauses	HC 1022
Tenth Report	Government formation post-election	HC 700