House of Commons
Political and Constitutional Reform Committee

Lessons from the process of government formation after the 2010 general election

Fourth Report of Session 2010–11

Volume II
Additional written evidence

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The Political and Constitutional Reform Committee

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Written evidence

Written evidence submitted by Graham Clowes

I am submitting this comment in my personal capacity as a voter. I am only answering one question as follows:

9. What are the implications, if any, of the fact that these proposals lack a popular mandate?

Not one voter actually voted for this Government. The coalition’s programme has not been voted upon by the electorate and consequently the current Government cannot be said to have any mandate to pursue the programme they are following. This may not have been so bad had the coalition programme simply been drawn from each of the participants’ manifestos, and to a certain extent this is what happened. However, the actual programme which has been pursued subsequently has consisted of initiatives which were neither in the party manifestos or indeed the coalition’s published programme.

The result is that, at a time when the public has little confidence or respect for the political process (due in part to the expenses scandal), the current Government are bringing the system further into disrepute by pursuing a programme for which they have no mandate.

A government in Asia or Africa, who received no votes and pursued an agenda which had no mandate via the ballot box would be branded as a dictatorship or a banana republic. We would suggest they were undemocratic, but this is the situation we find ourselves in currently. The implication is that the system is being abused and is not delivering the choice of the British people. The outcome is that confidence in the British electoral system diminishes, further eroding the trust the British people have in the establishment.

I do however understand why a coalition has emerged, and appreciate that it is not viable or practical to call a re-run of an election simply because one party has failed to achieve a majority of seats. However, where a coalition emerges I believe that a standard five year term is too long. I understand that systems exist whereby a Government can be dissolved before the end of a five year term—but this is reserved for extreme situations and not within the control of the electorate. The five year term for a programme which does not have a mandate from, and potentially the confidence of, the electorate serves to undermine the integrity of the system.

The nature of any coalition government programme inevitably must be a compromise. It has to be created after an election so will not carry a mandate from the electorate. Therefore, there should be a shorter term—maybe two years. This will enable the coalition to set out its programme and begin work—it will also enable the electorate to pass its judgement on that programme. If the programme is appropriate the coalition would be re-elected, and if so a five year term would be appropriate. This would however require that the coalition proposes a joint programme and stands for election that basis. It may be that the partners in a coalition arrangement may wish to stand separately at the two year point—but if that was the case then one could argue that the coalition was not sustainable in the first place. This early election requirement would also ensure that the policies pursued by any coalition would not be too extreme.

13 September 2010

Written evidence submitted by Professor Dawn Oliver, University College London

9. What are the implications, if any, of the fact that these proposals lack a popular mandate?

As long as the proposals are put forward as being in what the proponents honestly believe to be the general or public interest, and the population will acquiesce, the lack of a mandate does not matter.

I do not consider a popular mandate to be essential for proposals for constitutional change. What is essential is that any proposals should be put forward in what the proposers honestly consider to be the public interest and should not be motivated by desires for partisan political advantage. That does not preclude a political party or MPs from proposing changes that would advantage particular sections of society: if that were not the case women would never be able to propose sex equality legislation and ethnic minorities would not be able to propose anti discrimination legislation. But the justification for reform proposals—indeed for any government policy—must be that it will promote general public interests. The mandate “principle” (not really a principle at all) is supposed to promote the public interest principle, but of course it cannot be guaranteed to do so. A mandate can indicate popular consent to a new policy, and government by consent/acquiescence is an important principle of the UK constitution. However the fact of the matter is that no government for many decades has won the votes of a majority of those who voted in an election, given the
fact that most constituencies are won on three or four etc cornered fights and the winning candidate seldom wins a majority of the votes cast. Thus winning an election does not necessarily grant a government a “mandate”.

11. Should the head of government or Cabinet require the endorsement of the House of Commons, by way of an investiture vote?

No. This would be too formal.

I consider it a positive aspect of our constitutional arrangements that politicians operate within a culture of responsibility and not just by rules, whether of a legal or purely conventional/political kind.

Compliance with a culture of responsibility/sociality is demanded by the general population and is widely reflected in press and media comment. Politicians are conscious of this. The public and press reaction to the expenses scandal illustrates this.

My understanding of general public opinion is that MPs of all parties, and any government, single party or coalition, and opposition parties ought not to act in a partisan way and ought to exercise their judgment as best they can in the public interest, honestly and without being improperly influenced by selfish considerations.

After the election it was obviously not possible for the coalition partners to insist on implementation all of their manifesto commitments. The population generally realises and accepts this. Our electorate is fairly sophisticated in these matters.

If matters such as the formation of a coalition or of a single party government required endorsement of the House of Commons, then the focus might be on the letter of the rules rather than the spirit of the constitution, which assumes inclusiveness, trustworthiness and good faith, and punishes lack of trust heavily through public opinion. That would not be right—unless and until the culture of the constitution changes so that the general interest is considered not to exist but to be a myth. There is currently no sign of such a shift.

It would not be good for the country if combinations of parties which lack a majority could prevent the formation of a new government if the previous one no longer had a majority by refusing endorsement. Eg if there were two main but minority parties and say three or four smaller ones, the position could be reached where no government could be formed because the smaller ones vetoed every permutation, seeking to bargain for special deals. For instance, if Labour had formed a government in May on the basis of an investiture vote after doing deals with the nationalist parties that their regions/nations would receive special funding, that would have been a very partisan outcome and contrary to the general interest principle.

2 October 2010

Written evidence submitted by Professor Robert Blackburn, King’s College London

Professor Blackburn is Professor of Constitutional Law, and Director of the Centre for Political and Constitutional Studies at King’s College London.

INTRODUCTION

1. Earlier this month I forwarded to the Committee my article, The 2010 General Election Outcome and Formation of the Conservative-Liberal Democrat Coalition Government, giving a history and constitutional analysis of the five days in May, when the outcome of the election was uncertain and negotiations were taking place between the political parties on the formation of the new government. In this written evidence, I offer some thoughts on the political circumstances and constitutional framework within which the events of May 2010 took place and the implications of what happened. My aim is to help inform the Committee’s deliberations and contribute to their lines of inquiry on the lessons to be learnt from what occurred.

ASPECTS AND SPECIAL FEATURES OF THE 2010 ELECTION AND ITS OUTCOME

2. The UK system of parliamentary government is majoritarian in culture. Generally under our simple plurality voting system, there is an overall majority in the House of Commons for one party, giving its leader the right to enter 10 Downing Street. Therefore, the fact of the hung Parliament and the coalition it produced is of considerable political and historical significance, and what happened in May 2010 will serve to mould ideas and expectations about the future.

3. It is almost 80 years since the last peace-time coalition was formed, and it is 65 years since the end of Winston Churchill’s coalition formed for the purposes of fighting the Second World War. It is the only coalition government to have been appointed during the reign of Queen Elizabeth II.
4. The arithmetic of the 2010 election result could hardly have thrown up a more difficult political and constitutional equation for the parties to deal with.

UK GENERAL ELECTION RESULT, 2010

<table>
<thead>
<tr>
<th>Party</th>
<th>(a) Votes (000s)</th>
<th>(b) % vote</th>
<th>(c) Seats won</th>
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<tbody>
<tr>
<td>Conservative</td>
<td>10,703,744</td>
<td>36.1</td>
<td>306</td>
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<tr>
<td>Labour</td>
<td>8,606,518</td>
<td>29.0</td>
<td>258</td>
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<tr>
<td>Liberal Democrats</td>
<td>6,836,198</td>
<td>23.0</td>
<td>57</td>
</tr>
<tr>
<td>SNP</td>
<td>491,386</td>
<td>1.7</td>
<td>6</td>
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<tr>
<td>Green</td>
<td>284,823</td>
<td>1.0</td>
<td>1</td>
</tr>
<tr>
<td>Independent</td>
<td>229,021</td>
<td>0.8</td>
<td>1</td>
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<tr>
<td>Sinn Fein</td>
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<tr>
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<tr>
<td>Alliance</td>
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</tr>
<tr>
<td>Speaker</td>
<td>22,860</td>
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<td>1</td>
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5. This hung Parliament was of a markedly different nature to the previous occasion in February 1974, where the two main parties were virtually even—the Conservative government gaining 297 seats, to Labour’s 201—with the Liberals fielding a very small band of MPs, just 14. In 1974, because there were 23 other MPs (7 SNP, 2 Plaid Cymru, 12 members for Northern Ireland constituencies, and two independent Labour MPs), the Liberals could not offer either the Conservatives or Labour an overall working majority.

6. In 2010, by contrast, the Liberal Democrats were fielding a much larger parliamentary team of 57 seats. A figure of 326 parliamentary seats was needed for an overall majority, leaving the largest party, the Conservatives, 20 short. If the Liberal Democrats entered into an arrangement with Labour (the party with which they had the closer ideological affinity), their combined voting power in the Commons was greater than that of the Conservatives, 315 to 306. This would leave the regional and other Members holding the balance of power, though the Green and SDLP Members could be expected to vote with Labour, and the Unionists with the Conservatives. The SNP and Plaid Cymru Members would generally support Labour too, so pressures behind a “rainbow” or “progressive” alliance behind Labour remaining in office was certainly feasible.

7. The state of public opinion on events in May 2010 came against a backdrop of popular disengagement from politics, ambivalence over voting intentions, and a strong expectation that there would be a “hung” Parliament. Yet precisely what were the rules on government formation in situations of no single party gaining an overall majority in the House of Commons was the subject of widespread confusion and misunderstanding in the country and the media. In some respects this was aggravated by the Cabinet Secretary initiating novel procedures and ideas about government formation.

8. Popular expectation in the UK is that the transition of government after polling day is swift. In normal conditions the Prime Minister’s resignation and appointment of the opposition leader as successor takes place at Buckingham Palace the next morning, immediately followed by the new premier entering 10 Downing Street, minutes after the outgoing Prime Minister has left the premises with furniture vans by the back door. But in May 2010 no such immediate climax occurred, leaving the 24 hour mass media and country in a state of suspense over five days, Friday 7th to Tuesday 11th May. The 24 hour news media, a political fact of life since the 1990s, added to the sense of national drama and pressure on resolution on who would be Prime Minister.

9. A feature throughout this period was the intense confidentiality surrounding the communications and meetings between participants. There were virtually no off the record briefings to the media about the substance of the meetings or how the negotiations were going, in contrast to the normal state of affairs where the media and politics are closely intertwined. The only politicians actively involved in the negotiations who talked at all to the media beyond the formal statements or public utterances outside the Cabinet Office or other inter-party meeting places were on the Labour side.

10. A final observation to be made of the pressures wrought by public opinion and the media on government formation in 2010 relates to the televised party leaders’ debates, the first ever of their kind in the UK. Presidential in character, these high profile events served to invest the Liberal Democrat leader Nick Clegg with a far higher public profile and popularity. This will have been a key factor in David Cameron’s decision to embrace him as Deputy Prime Minister in the coalition. Indeed, so personal is Mr Clegg to the
formation of the coalition government that no provision has been made in the coalition documents, discussed below, for the appointment of a new or different Deputy Prime Minister in the event that Mr Clegg resigned, died, or was deselected as Liberal Democrat Leader.

**The Constitutional Framework for Government Formation**

11. The UK has a traditional constitution, where historical precedent tends to guide future conduct, particularly in areas where the legal basis for executive action—including government formation and prime ministerial appointment—is the royal prerogative. Therefore prior to the 2010 election a consideration of the events of February 1974, the last occasion when an electoral outcome produced no overall majority, was one way of answering the question of what were the constitutional rules under a hung Parliament in 2010.

12. A summary of what happened in February 1974 is as follows. The incumbent Prime Minister leading a Conservative government was Edward Heath, and the result of polling day on February 28, 1974, in terms of parliamentary seats won, had been Labour 301, Conservative 297, Liberal 14, SNP 7, Plaid Cymru 2, Northern Ireland parties 12, Others 2. So no party had won an overall majority, and any Labour claim to have the strongest mandate was offset by the fact that the Conservatives nationally won almost 300,000 more votes than Labour, or a 37.9% share of the total vote compared to Labour’s 37.1%.

13. Mr Heath chose to remain in office over the weekend, and proceeded to attempt to form an agreement with the Liberal Leader Jeremy Thorpe that would sustain him in government. He had meetings with Mr Thorpe at 10 Downing Street on the Saturday at 4.00 pm and on the Sunday at 10.30 pm, and indicated his preference for a coalition, with Mr Thorpe being offered a seat in Cabinet. Any possible deal foundered, however, after meetings of the Liberal parliamentary party and the Conservative Cabinet on the Monday morning, with Mr Thorpe's Liberal colleagues refusing to support any deal without a commitment from Mr Heath to enact proportional representation, and the Conservative Cabinet being unwilling to go further than offer a Speaker’s Conference on electoral reform. On Monday early evening, Mr Heath visited the Queen at Buckingham Palace to tender his resignation, and Harold Wilson was invited to form his third Labour administration.

14. Reflecting on the process that had been followed, Mr Heath in his memoirs expressed the view, “I had a clear constitutional duty to see if I was best placed to carry on that responsibility”. Rumbles of Labour disquiet and murmurings of unconstitutional conduct had emanated from some quarters in the Labour Party, but the Opposition Leader, Harold Wilson, was content with Mr Heath’s position. At Mr Wilson’s meeting with the Labour parliamentary committee on the Friday, it was, “resolved that none of us would make any news comment, claim or forecast over the weekend. The Conservatives still formed the Government. They had to decide whether to resign or seek to carry on.”

15. Stated as simply as possible, the constitutional conventions on government formation (including in situations of a hung Parliament) were and are, firstly, that the incumbent Prime Minister has the first opportunity to continue in office and form an administration; secondly, that if he is unable to do so (and resigns, or is defeated on the Address or in a no confidence motion at the meeting of the new Parliament) then the Leader of the Opposition is appointed Prime Minister; and thirdly, it is for the political parties to negotiate any inter-party agreement for government among themselves without royal involvement. This is precisely what happened in 2010, as indeed it had happened previously in February 1974.

16. During the year preceding the election in 2010, a few constitutional specialists, including myself, explained this constitutional framework in a variety of publications and sessions with the press. Thus in my letter to *The Times* on 28 November 2009, I wrote:

> Sir,

> If there is a hung Parliament after the next general election, there will be no constitutional crisis (Daniel Finkelstein, “How to stop the Queen picking the next Prime Minister”, Opinion, Nov 25; and Mark Oaten MP, “We must head off the possible constitutional crisis if the result of the next election is close”, Letter, Nov 27).

> There is already in existence an established procedure and basis for the resolution of who will be Prime Minister after a general election that produces a House of Commons with no overall majority for a single party. If this occurs after the 2010 election, the situation will be:

> — The incumbent Prime Minister has the first opportunity to continue in office and form an administration.

> — If he is unable to do so (and resigns, or is defeated on the Address at the meeting of the new Parliament), then the Leader of the Opposition is appointed Prime Minister.

> . . . If no single party obtains an overall majority at the election, Gordon Brown is entitled to see if he can remain in office with the support of the Liberal Democrats to ward off a defeat on the Address (or no confidence motion) at the first meeting of the new Parliament. He would, of course, enter into talks about agreeing to implement some Liberal Democrat policies such as constitutional and voting reform as the price of survival in office.
But if, as the Liberal Democrat leader Nick Clegg suggested in a BBC interview (Andrew Marr Show) last Sunday, the Liberal Democrats only wish to negotiate with the party which received "the strongest mandate" at the election (it was ambiguous as to whether he meant more seats won or more national votes cast), Mr Clegg will indeed be in a position to force Mr Brown to resign and allow David Cameron into 10 Downing Street.

Robert Blackburn
Professor of Constitutional Law, King’s College London

Similarly, the constitutional position was set out in a widely distributed pamphlet co-authored by myself, a senior member of the Hansard Society, and two members of the House of Commons Library.

17. An important distinction to be drawn in interpreting the constitutional conventions on hung Parliaments is to realise that the right of an incumbent Prime Minister to remain in office and attempt to form a working Commons majority with others outside his party, does not mean or translate into a constitutional obligation upon third parties to do a deal with the incumbent Prime Minister or even to enter into any negotiations with him and his party. In other words, in 2010 it was open to Gordon Brown as incumbent Prime Minister to make overtures, but it was for the Liberal Democrat leader Nick Clegg to decide with whom he would forge an agreement for government.

18. In this context, the public statement made by Nick Clegg in a television interview on 22 November 2009 that he would regard the party with "the strongest mandate" as having won the election and therefore the one with which he would enter into negotiations first, was a highly significant political development, and indeed a portent for how the election outcome would eventually unfold in terms of the negotiations between the parties during the five days of 7th and 12th May. The emphatic way in which the Liberal Democrat leader presented his view to the public, later characterised as "the Clegg doctrine", went as follows:

Andrew Marr: Can I ask you about the opinion poll this morning, which suggests that we may be closer to a hung parliament than we all thought. Is your position that it would be the sort of morally right thing, if there was that condition, to back the party which got the biggest number of seats or votes, or what? . . . I’m asking about your sort of philosophical approach to a situation where nobody had an overall majority... Would you feel it was the right thing to offer your support first to the party which had done best?

Nick Clegg: Oh, I think it’s just an inevitable fact, it’s just stating the obvious, that the party which has got the strongest mandate from the British people will have the first right to seek to govern either on its own or reach a . . .

Andrew Marr: Well that’s not, that’s not been the case in the past…Ted Heath, for instance, as you know, discussed with the Liberal Democrats first before throwing in the towel. So we could have a situation where Gordon Brown was coming to you and saying . . .

Nick Clegg: No, I start from a very simple first principle. It’s not Gordon Brown or David Cameron or Nick Clegg, who are sort of kingmakers in British politics. It is the British people. So the votes of the British people should determine what happens afterwards. You know that is what should happen in a democracy . . . It’s whichever party—whether it’s the Liberal Democrats, Labour or the Conservatives—have the strongest mandate from the British people. It seems to me obvious in a democracy, they have the first right to seek to try and govern either on their own or with others.

THE CABINET SECRETARY’S INTERVENTION

19. Shortly before the 2010 election, the Cabinet Secretary started to prepare a Cabinet Manual describing the structure and operation of central government, including a chapter on electoral outcomes. A draft form of this chapter was shown to the House of Commons Justice Committee as evidence in its short inquiry into constitutional processes following a general election, and its content was discussed with the Cabinet Secretary Sir Gus O’Donnell at an evidence session held on 24 February 2010.

20. On hung Parliaments, the draft Manual reads,

Where an election does not result in a clear majority for a single party, the incumbent Government remains in office unless and until the Prime Minister tenders his and the Government’s resignation to the Monarch. An incumbent Government is entitled to await the meeting of the new Parliament to see if it can command the confidence of the House of Commons or to resign if it becomes clear that it is unlikely to command that confidence. If a Government is defeated on a motion of confidence in the House of Commons, a Prime Minister is expected to tender the Government’s resignation immediately . . .

21. However it appeared from other parts of the draft Manual, and became clear during the Cabinet Secretary’s evidence session with the Justice Committee, that a major purpose lying behind the new draft Manual was not simply to describe existing convention but to create new expectations and processes.
22. The first change in conventional practice desired by the Cabinet Secretary was to establish and extend the principle of a “caretaker” prime minister and government. Currently, between the public announcement of an election and polling day, a period of “purdah” has been said to exist, when the government will refrain from initiating any significant new government policy, executive action, or expenditure of public money, particularly if it represents a commitment that will bind the post-election government. Its democratic logic is essentially one of fairness: that a popular act could be seen as stealing an advantage over the other parties; and particularly if a change of government is in prospect, the decision is rightly one for the new government to take.

23. The Cabinet Secretary told the Commons Justice Committee that he wished to now extend this “discretion” on the part of a government into the post-election period “when we do not have a stable government”. This would include any period of inter-party negotiation, as in fact occurred between 7 and 11 May 2010, and could extend considerably further, not just until the meeting of the new Parliament and Queen’s Speech, but arguably for several months thereafter if a minority government’s position in the House of Commons was considered politically fragile with a real possibility of losing a confidence motion or a second general election being called.

24. The new principle drafted on Sir Gus O’Donnell’s instruction for the draft Cabinet Manual was, As long as there is significant doubt whether the Government has the confidence of the House of Commons, it would be prudent for it to observe discretion about taking significant decisions, as per the pre-election period. The normal and essential business of government at all levels, however, will need to be carried on.

25. The second change sought by the Cabinet Secretary was for the civil service to take over the hosting of any post-election inter-party negotiations. The draft Cabinet Manual included a paragraph stating:

It is open to the Prime Minister to ask the Cabinet Secretary to support the Government’s discussions with Opposition or minority parties on the formation of a government. If Opposition parties request similar support for their discussions with each other or with the Government, this can be provided by the Cabinet Office with the authorisation of the Prime Minister.

The precise details on the nature of support envisaged were unclear at the time the draft Manual was shown to the Justice Committee, with Sir Gus O’Donnell agreeing in discussions with members of the Committee that, “we have some quite difficult practical issues to sort out as to how we make this work”.

26. During the five days in May, the actual support given by civil servants from the Cabinet Office appears to have consisted of making a room available at 70 Whitehall for the Conservative-Liberal Democrat talks and serving sandwich refreshments. It is thought there may have been one civil service intervention from the Treasury in giving some factual background information. No support appears to have been given for the Labour-Liberal Democrat talks, which were held in the House of Commons, although it is believed the Permanent Secretary at the Foreign and Commonwealth Office made his office available for the private meeting held between Mr Brown and Mr Clegg during the afternoon of Sunday 9 May.

27. One net consequence of the Cabinet Secretary’s initiative was to remove 10 Downing Street as the forum for the incumbent Prime Minister’s talks with the third party, as Mr Heath had had in 1974, as well as the regional parties. Some claim the Prime Minister thereby lost a valuable psychological advantage in terms of maintaining initiative and momentum over events.

28. The Committee may now wish to establish from the Cabinet Office:

— the precise details of its support given to the negotiations;
— what instructions were issued by the Cabinet Secretary to his staff on the matter;
— what requests were made by members of the negotiating teams in all three political parties; and
— how useful members of the respective negotiating teams found the civil service support and for what purposes.

29. Supporting the ideas of the Cabinet Secretary on transition of government arrangements were modifications made under the authority of the royal prerogative to the meeting of the new Parliament. The date for the first meeting of the newly elected Parliament in 2010 was put back one week longer than had been normal under post-1945 constitutional practice. The principal reason for this change, certainly as it was perceived by the media briefed by the civil service, was to facilitate post-election negotiations in the transition of government.

MR BROWN’S “CONSTITUTIONAL BIND”

30. As stated above, the idea of the Cabinet Secretary was that the incumbent Prime Minister should remain in 10 Downing Street as a “caretaker” as long as it took for negotiations leading to a new government and agreed policy programme for office to be concluded. Although originally suspicious of civil service interference, during the five days of negotiations Mr Clegg came to enthusiastically adopt the Cabinet Secretary’s views. As expressed shortly after the election.
I come from the perspective that if you’re trying to do something very unusual, which is of course creating a coalition in a political culture such as ours which isn’t used to coalition, this is very unusual. We were doing it in an extraordinarily compressed timetable. In most other countries where they negotiate coalitions, they take months to do it. We were doing it in a matter of hours and days when everyone was pretty tired after the election campaign. So suddenly to be told out of the blue the Prime Minister was going to you know march off to Downing Street and say, “I’m fed up with this. You know I’m going to throw the towel in and I’m going to you know march off into the distant horizon”, I thought was not the right way of going about things.

31. However our political culture, and the popular expectations of the media and country during the five days in May, was not yet ready or primed for this “caretaker” idea. Gordon Brown found himself in an extremely difficult position of personal and professional embarrassment on Tuesday 11 May, once it had become clear the Opposition Leader would become the new Prime Minister. The combination devised by the Cabinet Secretary of displacing Number 10 as the central forum for resolving who would form the next administration, and encouraging the opposition parties to take as long as they wanted in finalising a policy deal, left Mr Brown in a constitutional bind. Some of the mass circulation press were being vitriolic in presenting their view to the public. “Whitehall property scandal—squatter holed up in No 10—Man, 59, refuses to leave house in Downing Street”, ran one of The Sun’s front pages during the five days. It was this factor, above all, that motivated Gordon Brown to resign abruptly on Tuesday evening, May 11, even though it seems the Cabinet Office, and Buckingham Palace officials taking their lead from the civil servants, were putting him under some pressure to remain in post until the next day or even longer.

THE POLITICAL PARTIES AND THEIR LEADERS

32. One further noteworthy aspect of the five days of negotiations was the role of internal party procedures. The Conservative and Labour leaders were procedurally free to negotiate as they thought fit, consulting only those they wished to do for tactical advice.

33. The Liberal Democrat Leader, Mr Clegg, alone was bound by party rules on the matter, which were—Conference notes the absence of specific constitutional provisions which clearly define the Party’s approach to gaining positive consent to proposals for an important change in strategy or positioning: agrees that:

(i) in the event of any substantial proposal which could affect the Party’s independence of political action, the consent will be required of a majority of members of the Parliamentary Party in the House of Commons and the Federal Executive;

(ii) unless there is a three-quarters majority of each group in favour of the proposals, the consent of the majority of those present and voting at a Special Conference convened under clause 6.6 of the Constitution; and

(iii) unless there is a two-thirds majority of those present and voting at that Conference in favour of the proposals, the consent of a majority of all members of the Party voting in the ballot called pursuant to clause 6.11 or 8.6 of the Constitution.

Thus under party rules, there was this “triple lock” of constraints binding Mr Clegg before entering into any agreement with another party. The resolution governing the procedure was passed by the Liberal Democrat Party Conference in 1998, at which time there were concerns among activists about its then Leader Paddy Ashdown’s ideas for closer relations with Tony Blair’s New Labour government.

THE COALITION PARTNERS’ AGREEMENTS FOR GOVERNMENT

34. On the substance of the post-election agreements between the Conservative and Liberal Democrat leaderships, four documents were published in May, shaping how the coalition government would operate, two dealing with policy, two with process. Collectively, these documents and the accompanying statements made by the party leaders represent the constitutional principles and working arrangements for the Conservative-Liberal Democrat coalition government.

35. The first of these, published as a simple seven page stapled document on 11 May, was launched by the two party leaders at their media conference the day after taking office. It set out the issues that needed to be resolved between the two parties in order to establish a “strong and stable government”, and said it would be followed in due course by a final Coalition Agreement, covering the full range of policy including foreign, defence and domestic policy issues not covered in the preliminary document. Eight days later on 20 May, a HM Government document gave the further elaboration on the parties’ agreements, entitled, The Coalition: Our Programme for Government.

36. The Coalition Agreement reads and looks like an election manifesto, although its moral authority in terms of representing a democratic mandate for government is open to debate which the Committee may wish to explore with some specialists in political philosophy.
37. The nature and procedures for the Conservatives and Liberal Democrats joint working arrangements were finalised between the party leaders last, and is contained in a document entitled, *Coalition Agreement for Stability and Reform*. It needs to be read alongside the fourth key document of the coalition, the new revised version of the Ministerial Code. Whilst the Stability and Reform document goes to the heart of the political partnership of the two parties, the Code has a more formal status so far as the Cabinet Office and machinery of government is concerned.

38. The Stability and Reform agreement is a concise, three page summary of essential working arrangements, under the headings of “composition of the government”, “collective responsibility”, “functioning of the government”, and “support for the government in Parliament”. At the crux of the power relationship between the parties and their respective leaders lies the constitutional fact that the Prime Minister has the executive powers of the royal prerogative at his disposal. These include the key powers of ministerial appointment, transfers, and dismissals; public appointments, including peerages in the second chamber; and control over the agenda and arrangement of Cabinet proceedings. Unsurprisingly therefore, consultation processes with the Deputy Prime Minister feature strongly throughout the Stability and Reform agreement.

39. More complex and politically sensitive is precisely how disagreements are to be managed and resolved, and how each party leader (particularly the Deputy Prime Minister) will deliver the support of his party in parliamentary votes crucial to the life of the coalition government. The well-known principles of collective Cabinet responsibility—confidentiality of proceedings and the public appearance of unanimity—are emphatically endorsed in the Coalition Agreement for Stability and Reform. They are stated to apply “unless explicitly set aside”, and this is mirrored in the new version of the Ministerial Code. The agreement takes into account, however, that demands for collective responsibility must be matched by allowing ministers to present their views and be involved in relevant consultations and discussion.

40. Carefully constructed machinery has been created by the two party leaders to sustain the coalition and swiftly resolve any issues between the two parties. The most senior component in this is the “Coalition Committee”, which has the status of being a formal Cabinet Committee. It is co-chaired by David Cameron and Nick Clegg, and comprises an equal number of Cabinet members from each party. It meets weekly, or as required. Below it is the Coalition Operation and Strategic Planning Group, which is designated an informal working group (not a Cabinet sub-committee), comprising four members, two from each party.

41. Across the new structure of Cabinet Committees established by the Prime Minister, each Committee has a chair from one party and a deputy chair from the other party, and if any unresolved issues arise between members of the different parties on any of the Committees, they are to be referred to the Coalition Committee.

42. So too, the Coalition Agreement for Stability and Reform carefully sets out the principles aimed at securing support for the coalition government in Parliament. “Ministers will be responsible for developing and maintaining a constructive dialogue with Members of both Parliamentary Parties”, the agreement reads, and “the two Parties will aim to ensure support for Government policy and legislation from their two Parliamentary Parties, except where the Coalition Programme for Government specifically provides otherwise”. The document provides that any exceptions allowing dissent must be specifically agreed by the Coalition Committee and Cabinet.

**CONCLUDING THOUGHTS**

43. Some key political and constitutional lessons to be learnt from the process of government formation at the 2010 election are that:

- In the event of a hung Parliament, it is the political leaders in consultation with their parties (under specific party procedures, where applicable) who by negotiation determine who will be Prime Minister and form the government.

- The House of Commons has no direct role in formalising a new administration, which is a royal prerogative act of the monarch. The Committee may wish to consider whether a formal vote of confidence should now take always place in the Commons, consistent with the proposal for this procedure in the event of a censure motion and alternative government taking office under the terms of the Fixed-term Parliaments Bill [Bill No 64 of 2010–11].

- The monarchy accepts that it has no proactive role to play in government formation, though it closely follows events in order to offer any support necessary, including the ceremonial acts of receiving the resignation of the outgoing prime minister and inviting his/her successor to take office and form an administration.

- The Cabinet Secretary has taken the initiative in developing constitutional practice on government formation. His purpose is to encourage negotiating parties to establish a detailed policy programme for government, whilst maintaining a caretaker government in office whilst the negotiations are conducted. However, the process by which this initiative was, and is, being conducted is questionable.
44. The Committee may therefore wish to consider:

(a) whether it should inquire into the changes and whether they were shown to be necessary or desirable;

(b) whether the pre-election preparations for implementing the Cabinet Secretary’s changes were adequate or need improvement in a similar future situation, for example in the quality of support given to the incumbent Prime Minister in the role as “caretaker”, and in developing public expectations about transition of government arrangements; and

(c) whether it is intended that the Cabinet Manual is a public document of constitutional authority; and if so, whether the degree of public consultation outside Whitehall has been sufficient, and whether as a process for reform this should now be developed further by a cross-party parliamentary body such as the Committee itself and/or by a minister responsible to Parliament.

9 October 2010

Written evidence submitted by Professor Matthew Flinders, University of Sheffield and Dr Felicity Matthews, University of York

1. Westminster-style government is based upon several key principles, including centralised power; a strong executive; and clarity in relation to the direction of public policy, and the responsibility of specific politicians. The resilience of the “Westminster model” has been reinforced by the stability of the two-party system of single party government throughout the post-war period, as power oscillated between Conservative and Labour.

2. Whilst the two main parties’ share of the popular vote has declined since 1970, forms of government such as minority and coalition have remained deviant from established governing norms. Hung parliaments are rare and, prior to 2010, the last general election to produce a hung parliament was in February 1974, which was the first result without a clear-cut winner since 1929.

3. Indeed, the UK now provides an exceptional case, and is the only parliamentary democracy in North America, Europe and Australasia to have produced a coalition at its most recent election despite having a simply majority electoral system.

4. The limited experience of alternative forms of government at the national level means that there are few lessons that can be learned by looking into Westminster’s past. However, the existence of different forms of government at the sub-national level offers important lessons regarding the practicalities of coalition government.

5. Devolution ushered in a tier of governance that was forged upon minority or coalition government within a Westminster model of government, which means that the emergence of a coalition government at the national level in 2010 is not quite as novel for the established political parties as some people may have thought.

6. What is critical about the experience of coalition and minority governments at the devolved level is the manner in which the cultures, assumptions and values of majoritarianism appear to have been maintained by key actors. Indeed, there is also evidence that the preference for coalition has been driven by the desire to avoid the pitfalls associated with minority rule and to reinforce the capacity to of the executive to govern vis-à-vis the legislature.

7. The experience of devolution therefore reveals a certain path dependency whereby parties and individuals have tended to approach the new constitutional structures with the instincts and views that were honed within national (or local) majoritarian politics.

8. At Westminster, the coalition between the Conservative Party and Liberal Democrats was agreed in the middle of May 2010, and although the legislative programme was set out in the Queen’s Speech, within a fortnight the House of Commons immediately moved into the summer recess. It has only been in recent weeks, therefore, that the realities of coalition government have begun to come to the fore as ministers start to focus on reforming their respective bureaucratic networks.

9. As such it is simply too early to assess what difference coalition politics has had on the culture and practices of Whitehall and Westminster with any precision or certainty. And yet the nature of executive politics has clearly changed and many long-standing myths about the nature of coalition politics have been pierced. Five key aspects of coalition formation and governance that the Committee may wish to focus upon are: speed; endurance; cohesion; support; and, transformation.

10. Speed—What was particularly marked about the post-election coalition negotiations was the speed at which an agreement was brokered. The average period of coalition formation in Western Europe is 23 days; but after the UK general election a broad agreement was reached within five days, and a Programme for Government as published within 14 days of the general election. Such rapidity is therefore at odds with dominant understandings concerning weeks of uncertainty and confusion.
11. Endurance—The coalition government has already outlasted many predictions. Not only are politicians from the two parties managing to co-operate and abide by the convention of collective responsibility, but they actually seem to be enjoying the challenge. At the base of this relationship lies a coalition agreement in which the Conservative Party is clearly the dominant partner. Research suggests that 43.3% policy statements in the Programme for Government were solely attributable to the Conservative manifesto; whereas 22.7% of the pledges appeared solely in the Liberal Democrat manifesto and only 19.7% appeared in both parties’ manifestos. This means that a total of 63.0% policy commitments can be traced directly to the Conservatives original manifesto plans.

12. However, the Programme’s pledge to hold a total of 29 policy reviews and five commissions over the course of the Parliament—and the opportunities for abstention that affords the Liberal Democrats in key policy areas, such as university tuition fees—is a tacit acknowledgement of the significant differences that still exist amongst the two parties.

13. Cohesion—The broad distribution of portfolios and positions across coalition partners is key to internal cohesion and stability. The Liberal Democrats have been substantially over-represented within government, being awarded a total of 24 ministerial positions and five seats in Cabinet; and despite only having a share of 8.8% of parliamentary seats, the Liberal Democrats have secured a disproportionately large share of 19.5% of ministerial positions across government. The implications of such over-representation require further examination.

14. Issues of proportionality notwithstanding, each coalition party can be seen as a veto player that can maintain the status quo against the demands of coalition partners; and the coalition may result in more stability in terms of internal governance arrangements, as the introduction of an extra veto-player will reduce the frequency of Cabinet reshuffles. In turn, the dispersal across parties of positions within individual departments may bestow “watchdog” powers upon junior ministers, with the capacity to keep their coalition partners in check; and it will be interesting to determine whether, over time, these ministers exercise their veto capacity over their superiors.

15. Support—The civil service have been forced to clarify certain roles and relationships, and generally adapt rapidly to a change in political circumstances; and it is difficult to avoid the conclusion that, despite opinion poll evidence that consistently pointed towards a hung parliament, the civil service was under-prepared for the experience of coalition.

16. What is particularly noteworthy about the institutional architecture supporting the coalition is the lack of conflict resolution mechanisms. The main formal arena for resolving tensions is the Coalition Committee, but this has not (as yet) been tested. The lack of conflict helps explain the apparent lack of focus on formalised conflict resolution mechanisms, or any apparent understanding that to establish mechanisms of this nature is an act of mature governance, rather than weakness and failure.

17. The civil service is therefore being forced to adapt and respond to the demands of coalition government. This may be a challenge for civil servants for whom serving the government of the day has for them meant dealing with the politicians of only one party. Ministers, too, will need to accept that “their” officials will be in regular contact with coalition partners.

18. Transformation—To date the coalition has been able to minimise tensions through the creation of commissions of inquiry, task forces or simply delaying difficult decisions. This cannot continue indefinitely as the scale of the financial pressures on the government make hard choices inevitable at some point. And yet achieving “more for less” is incredibly difficult and this was underlined by the Public Accounts Committee’s November 2010 report, which found that the three per cent efficiency savings that were included in the 2007 Comprehensive Spending Review had not been realised (PAC 2010).

19. Whether the nature of coalition politics will continue in the current high-trust low-blame vein, or veer back towards a more majoritarian low-trust high-blame model of political behaviour under the pressure of the coalition government’s attempt to eliminate the massive budget deficit within the course of the current parliament (ie by 2015), remains unclear.

10 November 2010

Written evidence submitted by Baroness D’Souza, Crossbench Convenor, House of Lords

Many thanks for your letter of 28 October on the Salisbury-Addison convention and I am happy to respond.

1. As I am sure you are aware the Cross Benches do not act as a group and therefore there is no collective view. Furthermore, the Cross Benches are not party to, nor bound by, the Salisbury-Addison convention. However I have asked a number of colleagues for their thoughts and, as you can imagine, they vary considerably. I hope it is helpful to summarise these views?
2. The Convention cannot logically apply since the Coalition Agreement differs from both the Liberal Democrat and Tory manifestos and thus were NOT voted for by the electorate. A compromise solution put by some is that the convention should apply only to those bills which can be shown to be in similar terms in both manifestos.

3. The opposite view, the Coalition Government was in fact voted by the electorate if only by denying any one party an overall majority and therefore expressing a preference for some sort of coalition. This has empowered the Government to draw up an Agreement and thus the Salisbury-Addison convention applies.

4. The above option is favoured by many as a practical means of enabling the Government to define bills to which the convention would apply. This has led to a more philosophical discussion the main points of which are as follows:

- The Wakeham Commission Report (January 2000) explained that there is “a deeper philosophical underpinning for the Salisbury Convention which remains valid……where the electorate has chosen a party to form a Government, the elements of that party’s general election manifesto should be respected by the second chamber. More generally, the second chamber should think very carefully before challenging the clearly expressed views of the House of Commons on any issue of public policy.” (Para 4.21)

- Given that the Coalition Government commands a majority in the Commons and since there is no manifesto for the Coalition Government, the convention should apply to the programme for government.

- While it is true that this programme has not been put to the people, to focus on the absence of a manifesto for the Coalition Government is to ignore the “philosophical underpinning” and to allow the House of Lords to ignore political realities in the Commons.

- The Salisbury-Addison convention is just that—a convention which can develop. Circumstances change and adaptations based on the political realities of the Coalition Government have to seek to respect the basic principles that have always been embodied by the convention.

7 November 2010

Written evidence submitted by Baroness Royall of Blaisdon, Leader of the Opposition, House of Lords

1. The Salisbury-Addison Convention is, broadly, the means by which the elected government of the day secures, in general terms, and subject to amendments passed during the legislative process, its legislative programme as set out for the electorate in the general election manifesto of the political party which forms the government.

2. Since the convention was developed in the late 1880s, the Convention has been subject to discussion and definition. Perhaps the most authoritative recent delineation of the convention was set out in the Joint Committee on Conventions, chaired by Lord Cunningham of Felling, as follows (HL Paper 265-I Para 99):

“99. The Convention which has evolved is that: In the House of Lords: A manifesto Bill is accorded a Second Reading; A manifesto Bill is not subject to ‘wrecking amendments’ which change the Government’s manifesto intention as proposed in the Bill; and A manifesto Bill is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the Bill or any amendments the Lords may wish to propose.’”

We broadly accept and agree with this delineation.

3. The Joint Committee also noted the attempts over time to define what constitutes a manifesto Bill, and we note its decision (Para 113) not to recommend that such a definition be attempted.

4. The Joint Committee also noted that any further material reform would call into question the current conventions of the House—which would in our view include the Salisbury-Addison convention (Para 9.2):

“If the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called into question, codified or not. Given the weight of evidence on this point, should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again.”

5. We strongly agree with this conclusion of the all-party joint committee of both Houses of Parliament. We believe that the proposals for further reform of the House of Lords which are currently being considered by the coalition government with the intent of bringing forward shortly a Bill to reform the Lords should indeed prompt a further examination of the conventions between the Houses. We believe that the best means of this examination would be a Joint Committee of both Houses.
6. Our principal reason for supporting this proposal, and its application now, is that we believe that the establishment a wholly—or partially-elected House of Lords would put the conventions between both Houses immediately into play. Indeed, we believe that the advent of a wholly—or partially-elected House would very quickly see the current conventions between the two Houses disappearing.

7. This process would certainly include—indeed, it would centre upon—the Salisbury-Addison Convention. So our first contention in relation to the Convention as it currently stands is that if the coalition government is successful in bringing about further reform of the House of Lords, then the Salisbury-Addison convention, unless re-addressed as proposed by the Joint Committee, might well have relatively little future.

8. Unless or until such reform is secured by the coalition government, though, the question of the Salisbury-Addison Convention remains. Our view too, though, is that the formation of the coalition government is already fundamentally changing the nature and operation of the House of Lords, and the relationship of the House of Lords to the House of Commons.

9. While not completely operating as a full convention, it is unquestionably the practice and indeed the explicit policy in relation to the House of Lords over many recent years that no-one political party should have an overall majority. Without this practice, the House of Lords cannot properly carry out its major function—to act as a revising chamber, with the clear and correct role of scrutinising, amending and improving legislation.

10. The balance of the composition of the House of Lords prior to the 2010 election broadly supported this practice. In nominal terms, Labour held 30% of the total House of Lords votes, the Conservative Party 26%, the Crossbenches 26% and the Liberal Democrats 10%. This has led to a House which, though unelected, in effect was equivalent to a parliamentary chamber which, looking at experience around the world, had been elected on a proportional basis. No single party had a majority. To get legislation through, a governing party had to win the agreement with one or another groups in the Lords. Not agreement by politics, but agreement on the issues concerned. So issues proceeded by consensus. Legislation was subject to proper scrutiny, amendment and improvement. The House was both able to carry out its principal function, as a revising chamber, and did so.

11. The advent of the coalition has fundamentally altered this balance, and so threatening the core role of the House. The two parties in the coalition in the Lords now have a nominal combined membership of 272, compared to 234 for Labour alone. While actual votes on individual days may of course differ from these totals, it is clear that the coalition now has a permanent, built-in majority in the Lords over Labour, with which it can push through its legislation.

12. We as an Opposition have so far managed to secure some victories in the division lobbies through presenting our case successfully to individual peers beyond our party. We will continue to adopt and pursue this strategy wherever possible. But we believe that the advent and operation of the coalition in the Lords is placing the role of the House of Lords as revising chamber beyond the reach of the House. We strongly believe that the coalition must not, and must not be allowed to, use its majority in the House of Lords to thwart this role, and to turn the House of Lords into a rubber stamp for the House of Commons.

13. We believe that both these issues—the impact of further reform in the House, and the impact of the advent of the coalition—are highly significant not only in themselves, but as the governing context for consideration of the operation now of the Salisbury-Addison Convention.

14. The coalition government seeks to argue that the establishment of their government does not affect the Salisbury convention. Indeed, Lord Strathclyde, the coalition government’s Conservative Leader of the House in the Lords has said that Labour in the Lords “will need to remember, as we always did in opposition, that the unelected House must not challenge the clear mandate of the elected one.” (House Magazine, No 1358 Vol 36 Oct 4, 2010)

15. This has not always been the view of the senior members of the coalition government in the Lords. Lord Strathclyde, in a lecture given in 1999 as Leader of the Opposition in the Lords, entitled Redefining the Boundaries between the Two Houses, argued that most of the conditions that gave rise to the Salisbury doctrine had gone, saying: “Some might therefore conclude that the doctrine itself, as originally conceived, has outlived its usefulness. I would be less dogmatic. Certainly it needs to be re-examined in the new conditions that arise.” While he argued for the primacy of the elected House, he also said of the House of Lords: “But, equally, it should always insist on its right to scrutinise, amend and improve legislation.”

16. His deputy in the Lords, and the Leader in the Lords of the Liberal Democrats, Lord McNally, argued in 2005 that the design of the Salisbury Convention was even by then no longer appropriate: “The Salisbury convention”, Lord McNally, the leader of the Liberal Democrats in the Lords, argued in a debate in the Lords on 26 January 2005, “was designed to protect the non-Conservative government from being blocked by a built-in hereditary-based majority in the Lords. It was not designed to provide more power for what the late Lord Hailsham rightly warned was an elective dictatorship in another place against legitimate check and balance by this second Chamber.” (HoL Hansard 26 Jan 2005 Vol 668 Col 371). In a later debate Lord McNally went on to say: “I do not believe that a convention drawn up 60 years ago on relations between a wholly hereditary Conservative-dominated House and a Labour Government who had 48% of the vote should apply in the same way to the position in which we find ourselves today.” (HoL Hansard 17 May 2005)
Vol 672 Col 20). Lord McNally has also in the past described the “traditional plea to the Salisbury convention” as “the last refuge of legislative scoundrels” (Cited in “Parliament”, by Philip Cowley, in Blair’s Britain ed. Anthony Seldon CUP 2007)

17. Lord Strathclyde’s formulation, “that the unelected House must not challenge the clear mandate of the elected one” is a reasonable shorthand version of the Salisbury Convention. But it fundamentally rests on the concept of a “clear mandate”. A clear mandate is given when a political party presents its proposed platform and programme to the electorate, ahead of a general election. The most usual form of this in the party’s general election manifesto. From this stem individual policies and proposals, including individual proposals for legislation. From this in turn comes the concept, utilised in the Joint Committee’s delineation of the Salisbury convention, of a “manifesto Bill”. While the Joint Committee was understandably chary about trying to define a manifesto Bill, it is axiomatic from the term that the idea behind the Bill must have been contained in the election manifesto from a political party seeking to be elected to government and subsequently being elected to government.

18. This brings us to the first of the substantive points on the Salisbury convention we would wish to make in relation to the current coalition government. Both the parties which were likely to be able to form a government on their own, the Labour Party and the Conservative Party, presented manifestoes to the electorate as part of their general election campaign in 2010. So too did the Liberal Democrats, though every piece of polling evidence and electoral history over the past 100 years suggested that the party would be unlikely to be able to form a government on their own. One of the effects of the television debates which were such a prominent, notable and novel feature of the 2010 general election campaign was to put aside these key differences between the three main parties and in effect to present the three parties as equivalent, with the policies and the proposals of all three parties being given broadly equal time and consideration.

19. In one respect, the outcome of the election was starkly clear. Our party, the Labour party, lost. We were in government. We are no longer in government. However difficult for us as a party, that is a clear outcome.

20. But no other outcomes of the election were as clear. Neither the Conservative Party nor the Liberal Democrats secured enough seats to form a government. Neither the Conservative Party nor the Liberal Democrats received a mandate from the electorate to put their manifestoes into practice.

21. Post-election discussions and negotiations between the two parties led to the formation of a coalition government. But the coalition government was precisely a post-election formation. The coalition government could not and did not have a pre-election manifesto which set out its policies and programme. Leaving aside the product of any post-election discussions, what the two parties had which had been presented to the electorate were their two separate manifestoes—neither of which had received the endorsement of the electorate in the form of sufficient seats to form a government.

22. Accordingly, it follows that neither political party has a clear mandate for a manifesto Bill based on the manifesto it put forward at the general election. The only conceivably clear mandate for a manifesto Bill the coalition government could have based on the manifestos from each of the constituent party forming the coalition would be where either of the two parties forming the coalition had put forward policy proposals in their own manifestos which were in line with policy proposals put forward by the other party forming the coalition.

23. So we believe that where a proposal from the coalition government was contained in both of the 2010 general election manifestos from the political parties forming the coalition, that proposal would rightly be subject to the Salisbury convention.

24. Equally, proposals from the coalition government which were only in the 2010 general election manifesto from one of the political parties forming the coalition would not be subject to the Salisbury convention.

25. The second point about the Convention and the coalition government relates to proposals based on the policy agreements contained in the coalition’s programme for government. In relation to this point, we believe the position of the Convention is equally clear.

26. Regardless of the difficulty of defining conventions, including the Salisbury-Addison convention, and of defining manifesto Bills, as set out in the Joint Committee’s report, it is clear that the convention rests on the manifestos of political parties standing in the election and hoping to form a government.

27. It is equally clear that whatever was in the manifestos put forward in the 2010 general election by the two parties which, when the election was over, went on to form a government, nothing that the discussions which led to the formation of the coalition government or the subsequent policy agreements which were set out in the coalition government’s policy programmes for government—initial and full—had at any time been put before the electorate, either as manifestoes or indeed in any other form. So the programmes for government agreed by the two parties forming the coalition fail the fundamental test for the application of the Salisbury convention: that they have been put before the electorate, usually in the form of a manifesto, and so have a clear mandate for proposals which will then form a manifesto Bill.

28. Accordingly, we believe that any proposal from the coalition government stemming only from the post-election agreements reached by the parties forming the coalition would not be subject to the Salisbury convention.
29. Equally, we believe that any proposal from the coalition government stemming from the post-election agreements reached by the parties forming the coalition which had also been contained in both of the manifestos from the parties forming the coalition would be subject to the Salisbury convention.

11 November 2010

Written evidence submitted by Rt Hon Gordon Brown MP

Thank you for your letter of 19 October 2010.

My comments are as follows:

— I have no personal information on the civil service’s role in “organising the coalition meetings” other than what has been stated publicly by the Permanent Secretary to the Cabinet.

— The papers documenting what role the civil service had in this period, and in particular the Cabinet Manual referred to by the Head of the Civil Service in his evidence, should be made available to the Committee

— I believe that as much information on procedures as can be made available should be in the public domain, and be subject to proper consideration by Parliament and the public.

On conventions and rules, I have said I favour a fixed term Parliament; an elected house of Lords; and I am of the view that we should make progress on moving towards a properly codified constitution.

Rt Hon Gordon Brown MP

29 November 2010

Written evidence submitted by Mervyn King, Governor, of the Bank of England

Thank you for your letter of 3 December, which asks a number of questions about the background to the formation of the Government following the May election. My answers to your specific questions are given below. You might also refer to the transcripts of the relevant parts of the hearings of the House of Commons Treasury Committee on 28 July and 25 November, which covered these issues in some depth.

1. Did you have input in the process of government formation after the general election in May 2010? If so, what was your role?

I had no input to the process of government formation after the general election.

2. Did you have conversations with representatives from the Conservative or Liberal Democrat parties during the process of government formation or shortly before?

I had no conversations or meetings with any political party representatives during the election campaign. I made no public speeches or appearances, and gave no off-the-record talks.

In the weekend immediately following the election (8–9 May) I spoke with the then Chancellor, Alistair Darling, concerning the crisis in Greece and a meeting of ECOFIN, at which he represented the United Kingdom. He also asked me to accept a call from George Osborne, in which we discussed only the position that the United Kingdom should adopt at the ECOFIN meeting. I had no other conversations with any other members of the future Coalition government until after the Coalition was formed; nor was I asked to take part in any. I also spoke with the Prime Minister, Gordon Brown, on the evening of Sunday 9 May about the crisis in Greece.

After the Coalition was formed and George Osborne had been appointed as Chancellor, I had a conversation with George Osborne on the morning of Wednesday 12 May, in which he outlined the contents of the Coalition agreement on economic matters. On Saturday 15 May, I spoke by phone with the Deputy Prime Minister, Nick Clegg, at his request. As I explained in evidence to the Treasury Committee on 28 July, I said nothing in that call that I had not already said in public, most recently at the Inflation Report press conference on 12 May.

In line with standard civil service practice, I held occasional meetings with Opposition parties ahead of the election to provide technical advice on aspects of their programmes relevant to the responsibilities of the Bank. On that basis, between January 2009 and the start of the election in April 2010, I had five meetings with the Shadow Chancellor, George Osborne—who was sometimes accompanied by the Leader of the Opposition David Cameron, and sometimes not. And I had two meetings with Vince Cable, who was once accompanied by Nick Clegg. All of these were carried out according to the normal conventions governing meetings helping to prepare Opposition parties in the run-up elections. As such, the occurrence of each meeting was notified to the Chancellor’s office. At no stage did I offer any advice on the composition of any measures designed to reduce the government deficit, in terms of spending and taxation.
3. *Are there limitations on what you as Governor of the Bank of England should say or do during a period of government formation? If so, what are those limitations?*

Yes, there are substantial limitations. The account set out above is, I believe, wholly consistent with them.

4. *Are the representations made in David Laws’ book accurate and if not, can you give an accurate account?*

I obviously cannot vouch for the veracity of comments about events in which I was not a participant. But neither quotation suggests any meeting took place. My views on the need for a credible deficit reduction plan had however been made very clear, and in public, as far back as March 2009. I said nothing in private meetings that went beyond those public comments.

I hope these answers help with your enquiry. I have copied this reply to Andrew Tyrie MP, as Chair of the Treasury Committee.

8 December 2010

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**Written evidence submitted by Rt Hon George Osborne MP, the Chancellor of the Exchequer**

I am grateful for your letter of 1 December, which I received here in the Treasury on 7 December, regarding the Committee’s inquiry into the constitutional and practical issues relating to government formation and transition following this year’s General Election.

I have sought to answer the questions you raise below, though you will of course appreciate that, by longstanding convention, I have not had nor sort access to official papers relating to previous administrations. I have therefore not seen any official records of the specific events you refer to.

With regard to your questions:

1. *What process of consultation took place between the political parties on this matter?*

   The then Chancellor—the Rt Hon Alistair Darling MP—called me on Sunday 9 May ahead of the meeting of European Finance Ministers. The purpose of the call was to brief me on latest market developments and the proposals the UK expected to be brought forward at the Finance Ministers’ meeting. Mr Darling had also sanctioned the Permanent Secretary to the Treasury to brief me directly earlier that morning. This duly happened.

2. *Precisely what objection did you raise?*

   While I made clear my appreciation that Mr Darling remained the Chancellor and was therefore privy to the details and specifics of what were ongoing and fast-moving negotiations, I noted that we were, at that point, in a period of election purdah. In light of that, I cautioned against committing the UK to proposals that have a lasting effect on the UK’s public finances.

3. *Did you come to any agreement with your predecessor as to the strategy to be employed for the meeting of European Finance Ministers on 9 May?*

   The purpose of the phone call was not to reach agreement, but for Mr Darling to consult me on the course of action he proposed. Given he was still Chancellor of the Exchequer at that point, representing the UK in a dynamic negotiating environment, it was for him to reach decisions. He did this, aware of my views.

16 December 2010

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**Written evidence submitted by Rt Hon Alistair Darling MP**

I refer to my e-mail of 22 December in reply to Graham Allen’s letter of 1 December.¹ I understand the Committee has not yet concluded its inquiry and I can therefore add the following in relation to the meeting of the European Council of Finance Ministers which was held in Brussels on 9 May last year.

Firstly, it’s important to recall the circumstances of that meeting. Once again there was real concern that if the European Council of Finance Ministers didn’t reach a decision in relation to support for the weaker economies in the Eurozone area, then the markets would have had a real go at both Portugal and Spain as well as Greece. The meeting was urgent and decisions had to be reached by the time markets opened on the Monday morning.

This meeting was arranged at very short notice. I took the view that the United Kingdom had to be represented notwithstanding the fact that the General Election had been held on the previous Thursday and that whilst the outcome was inconclusive, it was more likely than not that a new Government would be in place within a few days.

¹ Not printed.
At all times I sought my officials’ advice and I was advised that the Cabinet Secretary had expressed the view that the Government remains in place until such time as a new Government is formed.

That said, I was conscious of the fact that I was going to attend the meeting in Brussels at a time when it was very possible that a different government would be in place within a few days. I therefore made a point of talking to both George Osborne on behalf of the Conservatives and to Vince Cable on behalf of the Liberal Democrats prior to the meeting taking place.

Both George Osborne and Vince Cable made the point that I remained the Chancellor of the Exchequer. Both were happy to be informed as to what was likely to happen at the meeting but that their view was that I was still the Chancellor they were not offering an opinion as to what I should do.

Briefly, I explained to both George Osborne and Vince Cable (in separate telephone conversations) that there was a real concern about the position with regard to Portugal and Spain as well as Greece. I said that there had been two recent G7 calls which demonstrated that this was an international concern and that the United States was particularly exercised.

Indeed, the matter had been discussed at an IMF meeting in Washington during the General Election campaign which I had attended representing the United Kingdom. I further explained that the real problem was there was no consensus or clarity across Europe or the Eurozone as to what should happen. I went on to explain that the Commission was still meeting as was the European Central Bank. Action from the latter on liquidity and support and other efforts were likely to prove insufficient and that whilst the IMF would make facilities available, it was necessary for further support measures to be agreed and announced before the markets opened.

There were two proposals. One was £60bn worth of support to Euro area countries building on existing facility available to non Euro area members but which would not currently require IMF involvement. I said that my view was the IMF had to be involved.

The second proposal was a larger European stabilisation fund with an unspecified amount which would apply to the Euro area only.

I explained that I had made it clear in a telephone conversation with Commissioner Rehn (responsible for this area) that the UK could not be part of this and that there could be no question of a residual liability.

This is very important. Throughout the meeting repeated attempts were made by the Commission and others to get the United Kingdom to contribute to this fund. Had we not been there we could well have been forced to contribute either directly or indirectly.

A question did arise as to whether or not it was open to the United Kingdom to abstain due to election purdah. However, the proceedings were subject to QMV and as I said in the House of Commons in the debate on the Loans to Ireland Bill on 15 December, for us to have abstained would have meant we would have been outvoted anyway but we would have lost our influence in the other matters which would be regarded as important such as the possible contribution to the European Stabilisation Fund.

I have replied at some length as I think it is important that the Committee should understand that both the issues at stake and the reason that I took the decisions that I did. We were not committed to the European Stabilisation Fund but we did agree to the £60bn worth of support to the Euro area countries building on the existing facility which had been available to non Euro area countries.

Finally, for the sake of completeness, the package that we agreed in relation to Greece on that day did not involve contribution from the United Kingdom.

Whilst there is no formal obligation to consult, I believe that it is a matter of courtesy that it was right to ensure that the then Opposition was fully informed.

If the Committee would like any further information then I would be happy to provide it.

17 January 2011