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Select Committee on the Constitution

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Constitutional implications of coalition government

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References in the footnotes to the report are as follows:

Q refers to a question in oral evidence;

witness names without a question reference refer to written evidence.

SUMMARY

The coalition Government formed in 2010 was the first at Westminster since 1945. As we approach the last year of the current Parliament, the committee decided to explore the constitutional implications of multi-party government. The conventions and practices of government and Parliament have developed under single-party governments; we examine how the existence of a coalition has changed them, and what impact that will have on future single-party Governments.

We begin by examining the constitutional principles and practices that should govern the processes following an inconclusive election. We conclude that the form and composition of the government resulting from negotiations should be resolved as quickly as possible, but there should be no fixed timetable. We recommend that civil service support and advice should be offered to negotiating parties, but it is for those parties to decide what support to take up. The right of an incumbent Prime Minister to remain in office until the identity of his or her successor is clear, but there is also an expectation, based on precedent, that he or she should do so.

We do not see benefit in the House of Commons voting on the investiture of the Prime Minister or on a coalition agreement, as was proposed to us by academic experts. The vote on the Queen's Speech is tantamount to a vote of confidence in the Government's programme; a separate vote on the investiture of the Prime Minister or on a coalition agreement would risk confusion and would be inappropriate in a system of Cabinet government.

Collective ministerial responsibility has been the convention most affected by coalition government. A coalition cannot be expected to agree on every issue; the current Government, rightly, set out in its *Programme for Government* five specific issues on which the parties would agree to differ. In reality the number of areas of disagreement has been greater, resulting on one occasion in ministers being whipped to vote in opposite lobbies, and on another in MPs on the government benches attempting to amend the Address on the Queen's Speech. Some of these issues could not have been foreseen in 2010, but the Government—and any future coalitions—should have a process whereby arrangements for the parties to differ on specific issues are collectively agreed and announced.

As regards the House of Lords, we do not consider that a coalition agreement has the status of a manifesto, or that the commitments it contains are subject to the Salisbury–Addison convention. However, commitments in such an agreement that had previously appeared in the manifestos of parties making up the coalition should be treated as subject to the convention. Moreover, the practice that the House of Lords does not normally block government bills applies to coalitions as well as single-party governments. We regret the decline in the number of senior ministers in the House of Lords under the current Government.

With the next election scheduled for 7 May 2015, planning for the last months of this Parliament should already be under way. The Government's legislative programme should be planned in such a way as to try to avoid a "wash up" at the end of the Parliament. The coalition needs to seek to ensure that collective government continues as usual in the months leading up to the dissolution of Parliament and during the election campaign. Arrangements should be made for the coalition parties to commission confidential briefings from civil servants, so that they are not disadvantaged during their manifesto-writing compared with their partners or the Opposition, who are also entitled to confidential contact with civil servants. Finally, we consider the issue of who may access (or permit access to) the papers of a previous administration, and propose a scheme that applies existing principles to the circumstances of coalition government.

Constitutional implications of coalition government

CHAPTER 1: INTRODUCTION

1. The Government formed in May 2010 was the first coalition Government at Westminster since the Second World War and the first peacetime coalition formed since 1931. Furthermore it “is the first time that we have had a coalition that has been the product of the arithmetic of the general election”.¹
2. The formation of a coalition between Conservatives and Liberal Democrats followed a general election in which no single party gained enough seats to command a majority in the House of Commons. Trends in voting behaviour, with fewer votes for the two largest parties and an increasing number of MPs representing smaller parties, make it increasingly possible that hung parliaments will recur. The number of seats held by parties other than Labour and the Conservatives increased from under 10 in elections from 1955 to 1964 to over 75 since 1997, reaching 86 at the last general election; likewise the proportion of votes cast for other parties increased from under 10% in the 1950s to over a third in 2010.²
3. The existence of a coalition Government at Westminster has created interest in how coalitions differ from single-party governments. In particular, many constitutional conventions and aspects of constitutional practice relating to Parliament and government developed under single-party rule. It is of course the case that many of the UK’s constitutional arrangements depend on conventions and precedents, not on rigid rules.³ Nonetheless these conventions and precedents usually applied under successive governments. Under the current Government there have been significant departures from constitutional practice. Some say that the British constitution is so flexible that it can absorb these departures with no difficulty. Others think that the constitution may have changed permanently because of current practice. In this report we examine which changes are likely to be permanent; and we set out certain principles which should apply to departures from particular conventions.
4. With the approach of the last year of this Parliament, we decided to investigate what impact, if any, coalition government has had on the constitution. Chapter 2 covers government formation in the event of a hung parliament. A hung parliament need not necessarily result in a coalition; it could produce a minority administration or a different, less-formal agreement between parties. Chapters 3 and 4 examine the operation of a coalition once it has been formed and produced its shared programme. Chapter 5 looks ahead to some potential effects of having a coalition in office up to a general election.

¹ Q1 (Lord Norton of Louth).

² Barber, written evidence, table 1.

³ Q88.

5. While this report draws conclusions about coalition government in general, it is primarily based on the experience in Westminster; some comparisons are made with the devolved governments of Scotland and Wales, where the legislatures are elected through proportional representation, which is more likely to produce coalitions (examples are not drawn from Northern Ireland, where the executive is constitutionally required to be a coalition). The recent coalitions in all three legislatures have been two-party coalitions, but it should not be assumed that this will be true of future coalitions; nor will the specific arrangements operating in the current UK Government automatically apply to future coalitions.
6. In this report we distinguish between the practical experience of multi-party government and its constitutional impact. For example, it is of political interest how ministers from different parties interact and share information within a department of state or in the Cabinet; but a constitutional issue arises when that interaction affects conventions on parties' access to civil service advice before an election, or the operation of collective ministerial responsibility.
7. This report does not explore the constitutional reform programme undertaken by the current coalition Government, with the exception of the Fixed-term Parliaments Act 2011. This Act has a more direct bearing on the operation of Parliament and government than other constitutional legislation on which we have reported during this Parliament.⁴
8. During this inquiry we held a preliminary seminar with constitutional experts, received written evidence and held 11 oral evidence sessions. We heard from individuals involved in the government-formation negotiations in 2010, current and former ministers in the UK Government, former first ministers and deputy first ministers in coalition administrations in Wales and Scotland, academic experts and representatives of political parties. We are grateful to all our witnesses.

⁴ See, for example, our reports on the Parliamentary Voting Systems and Constituencies Bill (7th Report, 2010–12, HL Paper 58), the Electoral Registration and Administration Bill (5th Report, 2012–13, HL Paper 51) and the Succession to the Crown Bill (11th Report, 2012–13, HL Paper 106).

CHAPTER 2: GOVERNMENT FORMATION

9. In recent decades there has been an expectation that any change of government after a UK general election will be rapid, with a new prime minister in place on the day after polling day—the “removal van” attitude to Westminster elections.⁵ In 2010 it took five days before a new prime minister was appointed at the head of a coalition government.
10. In reality there were only two immediate transitions between governments of different parties since the last hung parliament in February 1974. While Margaret Thatcher in 1979 and Tony Blair in 1997 formed majority governments immediately after the election, it took four days after the February 1974 poll before Harold Wilson replaced Edward Heath at 10 Downing Street, after it became clear that Heath could not enter into an arrangement with the Liberal party which would have enabled him to command a majority in the House of Commons. In an earlier era, Stanley Baldwin did not resign after the 1923 election until it was clear that Labour could command a majority with Liberal support, and the Conservatives could not. More recently, devolved elections in Wales and Scotland have returned coalition governments that have been the result of days, weeks or even months of negotiations—albeit in a system based on proportional representation and without the pressures facing national Governments.
11. A hung parliament need not result in a coalition. Harold Wilson led a minority government between the February and October 1974 elections, and the Scottish National Party formed a minority government after the 2007 election in Scotland, replacing a coalition government. There are also examples of governments losing their majorities and governing in a minority. Whether the apparent assumption before 2010 that minority governments would result from hung parliaments at Westminster has been replaced by a new assumption that coalition governments will be formed cannot be known until the situation occurs in future.⁶ Among our witnesses, Lord Donoughue was alone in advocating minority government over coalition.⁷ If the decision over whether to form a coalition or a minority administration arises in future, it is likely that parliamentary arithmetic and circumstances will influence actions more than precedents.
12. This chapter deals with issues that arise in the formation of a government after an election that produces a hung parliament. This process should be thought of as government-formation, rather than coalition-negotiation—a coalition is merely one of a range of possible outcomes. The possibility of inconclusive polls and the need for negotiations mean that the roles, duties and responsibilities of those involved—including the political parties, the incumbent prime minister, the civil service and the monarch—need to be carefully considered. Context is important: there are restrictions on the time available to form a government—arising from, for example, international developments and reactions in financial markets—and on the length of the Parliament.

⁵ Hazell, written evidence.

⁶ Q88.

⁷ Q5.

Fixed-term Parliaments and government-formation

13. For the purposes of this report the most significant constitutional change under the current Government has been the Fixed-term Parliaments Act 2011. This Act removed the power of the Prime Minister to advise on an early dissolution of Parliament, instead setting the date for future general elections as the first Thursday in May every five years.⁸ During the negotiations following the 2010 election, the proposal to introduce fixed-term parliaments formed an important part of the proposed agreements between the Liberal Democrats and each of the other parties. Cheryl Gillan MP, Secretary of State for Wales from 2010–12, referred to the agreement over fixed-term parliaments as “the scaffolding for the coalition-building”.⁹ David Laws MP, one of the Liberal Democrat negotiators in 2010, told us that it gave “both sides assurance that this was an enterprise that was going to last the period of time and one side would not suddenly pull the rug out from under the other after a short period.”¹⁰
14. Constitutional reforms should not bias government-formation in any particular direction: towards minority, coalition, confidence and supply, or any other arrangement. Some of our witnesses were concerned that coalition should not be treated as the default or preferred option.¹¹ Given the importance of the agreement to a fixed-term Parliament in the formation of the current Government, a question arises as to whether it might steer any future post-election negotiations towards a coalition.
15. Lord Adonis, one of Labour’s negotiators in 2010, felt that it would not:

“At the point of the formation of a government after the next election, those political options will still be completely open. They will be completely open because, if a leader of the largest party wished to form a minority government, they would be within their rights to do so and would not be able to compel the Liberal Democrats, if they were the party holding the balance, to go into government with them. This would be an entirely political judgment, which would not, in any way, as I see it, be affected by the Fixed-term Parliaments Act.”¹²
16. However, the Fixed-term Parliaments Act 2011 could affect the calculations made by a potential governing party. It significantly reduces the capacity of a Prime Minister in a coalition to call an early election at a point which suits his or her party (but which may not suit another party in the coalition). It also reduces the opportunity for a minority government to call a new election within a few months in an attempt to gain a majority in the House of Commons, as happened in 1974. This may affect government-formation negotiations by prompting parties to seek alternatives to forming a minority administration.
17. Oliver Letwin MP, one of the Conservative negotiators in 2010 and now Minister for Government Policy, told us that one of the key advantages of

⁸ Under the Fixed-term Parliaments Act 2011 it is possible to dissolve Parliament early. It requires either two-thirds of MPs to vote in favour of an early election, or the House of Commons to pass a motion of no confidence in the government, followed by no new government being formed within a fortnight.

⁹ Q67.

¹⁰ Q46.

¹¹ For example, Lord Donoughue (Q1).

¹² Q95. Similarly, Oliver Letwin MP did not feel that it would constrain government formation (Q133).

having a fixed-term Parliament was that it allowed governments to plan for five years, and therefore to think long term.¹³ On the other hand, Lord Falconer of Thoroton, the Opposition Spokesman on Constitutional Affairs and Adviser on Planning and Transition into Government, said:

“I would seek to change the Fixed-term Parliaments Act for two reasons. Five years is too long; the natural rhythm of our electoral system is four years, with the ability to extend. Secondly, it is too rigid. There should be much greater flexibility about when there are elections.”¹⁴

Time for government formation

18. The five days taken to form a coalition in 2010 were quick by the standards of multi-party government formation in other European countries.¹⁵ While the coalition’s full *Programme for government* was not published until two weeks after the election, broad agreement on policy and the structure of the government was reached within those five days.
19. Our witnesses were grateful to the then Cabinet Secretary (now Lord O’Donnell) for his work in preparing the Cabinet Manual and briefing the press about the potential for a period of negotiations following polling day.¹⁶ However, many felt that five days was too short a period and that there was undue pressure, particularly from the media and speculation about the reaction of financial markets, to resolve the shape of the next government immediately. Lord Adonis told the committee that the negotiators “felt under massive pressure to get everything done PDQ”.¹⁷
20. Oliver Letwin MP was the only witness to suggest that the time taken should be shorter than the five days taken in 2010. He said that parties would have just spent an election campaign scrutinising other parties’ programmes, and that no more information would emerge about each party’s policy positions during longer negotiations.¹⁸
21. It would not be appropriate for a period for post-election negotiations to be prescribed by convention, let alone by statute. The length of time taken will depend on the number of seats won by each party in the Commons, the number of administrations that are potentially viable, and relevant political, social, economic or other circumstances. Many witnesses thought it should be made clearer to the parties, the media and the public that it may take time to form a government after a hung parliament. This should be an easier task at the next general election than before the 2010 poll. That said, there may be an expectation, which would be unfounded, that five days is the length of time allowed and that a longer period is undue or unconstitutional.
22. **Five days should not be taken as a template period for government formation. Governments should be formed as promptly as possible; no more or less time should be taken than is required to produce a government able to command the confidence of the House of**

¹³ Q133.

¹⁴ Q130.

¹⁵ It was, though, one day longer than the time needed to form a minority Labour administration in February–March 1974, when Conservative–Liberal negotiations failed.

¹⁶ For example, Lord Adonis (Q98).

¹⁷ Q98.

¹⁸ Q139.

Commons. It is important that the public and, particularly, the media are better informed about this matter.

23. The first date by which it becomes constitutionally significant whether a government has or has not been formed is the debate on the Queen's Speech. It is at this point that it is determined whether a government has the confidence of the House of Commons; if it does not, a different administration must be formed or a new election held.
24. Although there must be a government in time to draw up the first Queen's Speech, that does not mean that the same government will continue in power for the rest of the Parliament, nor even the rest of the session. What is required is simply that the Queen's Speech is approved by the House of Commons. It could be that at the time parties are still negotiating and so agree to support a short Queen's Speech while the negotiations continue. It would be possible for those parties, a different combination of parties or a single party to form a government later. If no government appeared likely to be formed by the time of the Queen's Speech, the first meeting of Parliament could be postponed by a proclamation by the monarch.¹⁹
25. Even firm deadlines do not remove the potential for ongoing coalition negotiations. The National Assembly for Wales is required to nominate a First Minister within 28 days of an election. Following the 2007 poll, Rhodri Morgan was nominated as First Minister while negotiations for a coalition not including Mr Morgan's Labour party were ongoing; the coalition that eventually took office comprised Labour and Plaid Cymru. This course of events does not appear to have caused any constitutional problems in Wales.
26. The date of the first meeting of Parliament after a general election has varied in recent decades. Following a recommendation by the House of Commons Modernisation Committee in 2007,²⁰ the period between election day and the first meeting of Parliament was extended from six days in 2005 to 12 days in 2010.²¹ In a hung parliament, this longer period would allow more time for government formation. **We recommend that a 12-day gap between a general election and the first meeting of a new Parliament should be the preferred choice following future general elections.**

The role of the incumbent Prime Minister

27. In February 2010 the Cabinet Office produced a draft chapter of the Cabinet Manual on elections and government formation, which was scrutinised by the House of Commons Justice Committee.²² A full draft Manual was published in December 2010, incorporating a revised version of that chapter, and the final version was published in October 2011. In our report on the December 2010 draft Cabinet Manual we recommended that the Manual should distinguish between the right of the Prime Minister to remain in office until a successor is named and the duty to do so, and that it should note that

¹⁹ Erskine May, *Parliamentary practice*, 24th edition (2011), p 146. The postponement may not be for more than 14 days from the date of the proclamation.

²⁰ Modernisation Committee, *Revitalising the Chamber* (1st Report, Session 2006–07, HC 337), para 39.

²¹ The first two or three days in a new Parliament are spent on oath taking and the election of a Speaker of the House of Commons. The Queen's Speech usually occurs in the week after the first meeting of a new Parliament.

²² Justice Committee, *Constitutional processes following a general election* (5th Report, Session 2009–10, HC 396).

there is uncertainty about this duty.²³ Changes were made to the final Cabinet Manual to reflect these points. The relevant section now reads:

“2.8 Prime Ministers hold office unless and until they resign. If the Prime Minister resigns on behalf of the Government, the Sovereign will invite the person who appears most likely to be able to command the confidence of the House to serve as Prime Minister and to form a government.

2.9 ... the incumbent Prime Minister ... at the time of his or her resignation may also be asked by the Sovereign for a recommendation on who can best command the confidence of the House of Commons in his or her place.

2.10 The application of these principles depends on the specific circumstances and it remains a matter for the Prime Minister, as the Sovereign’s principal adviser, to judge the appropriate time at which to resign, either from their individual position as Prime Minister or on behalf of the government. Recent examples suggest that previous Prime Ministers have not offered their resignations until there was a situation in which clear advice could be given to the Sovereign on who should be asked to form a government. It remains to be seen whether or not these examples will be regarded in future as having established a constitutional convention.

2.12 ... 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.”

28. There is continuing debate about whether there is a duty on the Prime Minister to remain until a successor can be chosen. Some witnesses called for greater clarity as to whether the Prime Minister has a right or a duty to remain,²⁴ and stressed the importance of continuity of government during the transition from one administration to another.²⁵
29. Peter Riddell, director of the Institute for Government, and Lord Adonis each hypothesised a scenario after the 2010 election in which Gordon Brown had resigned on the day after the election, potentially leading to a minority administration being formed by David Cameron as the coalition-negotiation period would have been curtailed.²⁶ Lord Adonis said that this could have risked a period without government:

“What could have been the eventuality, ... à la Alec Douglas-Home in 1963, is that David Cameron might have said to the Queen, “I am not sure if I can form a government.” The realistic situation on that Friday, depending on what the Liberal Democrats did, is that he might not have been able to form a government. We might have been in a situation

²³ Constitution Committee, *The Cabinet Manual* (12th Report, Session 2010–12, HL Paper 107), para 59.

²⁴ Barber, para 4.6; Riddell, para 10; Q90.

²⁵ Q53; Hazell, written evidence.

²⁶ Riddell, para 11.

where we had several days where we essentially did not have a government.”²⁷

30. Professor Robert Hazell, Director of the Constitution Unit at University College London, recommended that the Cabinet Manual should state more clearly “that there is a duty on the Prime Minister to remain in office until it is clear who should be appointed in his place”, as this would allow constitutional experts and election commentators to explain why the Prime Minister was remaining in office if the situation in 2010 was repeated.²⁸
31. **While there is no established duty on an incumbent Prime Minister after a hung parliament to remain in office until a new government can be formed, precedents have created an expectation that the Prime Minister will remain until a successor can be identified. The Cabinet Manual should emphasise this expectation and it is important that the public and the media be informed of the reasons underlying it.**

The role of the civil service

32. Before the 2010 election the then Prime Minister, Gordon Brown MP, announced that, in the event of a hung parliament, the civil service would be available to support negotiations between the parties.²⁹ In the event the parties used the civil service only for certain logistical support.
33. Experience is different in the devolved governments of Scotland and Wales, where the civil service has provided greater support in negotiations. Witnesses who had been part of government-formation negotiations in Scotland and Wales told us that the involvement of the civil service was useful, but had its limitations. Such negotiations were inherently political and needed to be conducted in an environment in which politicians felt able to speak honestly.³⁰ For some this precluded civil service presence;³¹ for others the inclusion of officials (able to commission information from departments) allowed the discussions to be supported with a firm evidence base. The principle seems to have developed that full civil service support is offered but the extent to which it is used is for the negotiators to decide.³²
34. Having civil service support can provide benefits for politicians. We were told that in Scotland and Wales the civil service provided factual information that was particularly helpful to parties that had not been in government before. Ieuan Wyn Jones, Plaid Cymru’s leader in 2007, told us that civil service support was “invaluable” from his perspective.³³ Mr Jones also told us that:

“There is another advantage: if you have had civil servants as part of the negotiating team ... to give advice—once you are then in government, implementing it is a bit easier, because they have been part of the

²⁷ Q90.

²⁸ Hazell, written evidence.

²⁹ “Civil servants to help in deadlock”, *The Independent*, 31 March 2010.

³⁰ QQ55 and 134.

³¹ For example, David Laws was unhappy with the support given in negotiations in Scotland in 1999 and had an official replaced; this appears to have shaped his view about civil service support in Westminster negotiations in 2010 (Q104).

³² Q111.

³³ Q103.

discussions. If they told you in advance, ‘You now have a policy that is workable’, it is very difficult for them to turn around and say, ‘You cannot do it.’”³⁴

35. Lord McConnell of Glenscorrodale, First Minister of Scotland from 2001–07, found that the continuity of civil service involvement from pre-election contacts to post-election negotiations was an advantage.³⁵ However, Lord Stephen, Deputy First Minister of Scotland from 2005–07, described a change in Scotland: “In 1999 there were policies that the civil servants described as unworkable, which were enacted and delivered in the coalition government. 1999 was a difficult experience; by 2003, there was none of that negativity or misinformation.”³⁶
36. It should be emphasised that the involvement of the civil service in this way following UK general elections is subject to approval from the Prime Minister. The Cabinet Manual states:

“If the Prime Minister authorises any support it would be focused and provided on an equal basis to all the parties involved, including the party that was currently in government.”³⁷
37. Given the importance of civil service support being available for government-formation negotiations, it is questionable whether such support should be in the gift of the Prime Minister. There is potential for an incumbent Prime Minister to seek to disadvantage other parties in negotiations by denying them the option of civil service support, however unlikely that may be in practice.
38. Two characteristics of civil service support that should be maintained are equal treatment of all parties and the impartiality of the civil service. Instructions for civil servants were issued in 2010 in the event of support being requested by the parties. As in Scotland and Wales, a civil servant or small group of officials would be assigned to each party in the negotiations: “The civil servants working with each party may help to clarify the nature and scope of the information being requested by a political party, but will ensure that such discussions do not amount to policy advice.”³⁸ Where information was requested by negotiation teams, the civil servants would commission factual briefing from relevant departments for the negotiators. This information would be supplied to any negotiators requesting it, but would be shared with other parties only if they also requested the same information.³⁹
39. There are risks to the use of the permanent civil service in political negotiations. Dr Andrew Blick, Lecturer in Politics and Contemporary History at King’s College London, warned that the involvement of civil servants raised “questions involving to whom civil servants are accountable

³⁴ Q105.

³⁵ Q104. This view is confirmed by the Scottish Government’s former permanent secretary, Sir John Elvidge, in *Northern Exposure: Lessons from the first twelve years of devolved government in Scotland* (2011), p 14.

³⁶ Q105.

³⁷ Para 2.14.

³⁸ Civil Service Support to Coalition Negotiations, Annex B: Government Formation Negotiations—arrangements for provision of factual information, para 4.

³⁹ *Ibid.*, paras 4–9; Q117.

when assisting negotiations”; a question also arises as to whether their advice would be subject to Freedom of Information requests.⁴⁰

40. **We recommend that, as in 2010, administrative support and factual briefings should be offered to parties involved in government-formation negotiations after future general elections. It is for the parties to decide what level of support they take up. We further recommend that the Government commit in advance of the next general election that this support will be given, rather than leaving the decision to the Prime Minister at the time of the election.**

The role of the monarch

41. One element of the transition in 2010 that participants and observers were satisfied about was the role of the monarch. The Queen was not involved in the process other than in the formal resignation and appointment of Prime Ministers. This level of detachment of the monarch from the political negotiations should be maintained; we were told that even the perception of personal influence over the process might be damaging to the monarchy.⁴¹
42. The Cabinet Manual does not specifically preclude the monarch’s involvement in negotiations; rather it states that the sovereign “would not expect to become involved”, and that those involved should keep the Palace informed.⁴² Her Majesty’s private secretary was kept fully informed by Downing Street about what was happening,⁴³ as was his predecessor after the February 1974 election.⁴⁴

⁴⁰ Blick, para 29.

⁴¹ Blick, paras 13–14.

⁴² Para 2.13.

⁴³ See Andrew Adonis (Lord Adonis), *5 Days in May: The Coalition and Beyond* (2013).

⁴⁴ Robert Armstrong (now Lord Armstrong of Ilminster), “Events leading to the resignation of Mr Heath’s administration on 4 March 1974”.

CHAPTER 3: THE GOVERNMENT AND ITS PROGRAMME

43. Before the 2010 election the Conservative and Labour parties did not publicly discuss what might happen in the event of a hung parliament. That was understandable: both parties campaigned to secure an overall majority. However, the facts that the coalition was formed in private negotiations after the public had voted and that the resulting coalition agreement had not been put before the public have led some to argue that coalition government formed on this basis is not as democratically legitimate as single-party government. It is said that no-one voted for a coalition.⁴⁵
44. The major parties in Westminster have made clear that they will each put forward their own manifestos for the next election. As such, any future coalition is likely to be formed through post-election negotiations producing a new government programme that has not been put before the electorate. Two proposals were made to us by academic experts on Parliament and the constitution for how any shortfall in democratic legitimacy from this process of post-election government formation could be countered. In this chapter we examine them.

Proposal for a prime ministerial investiture vote

45. The first proposal is that one of the first items of business of the House of Commons in a new Parliament should be a vote to invest the new Prime Minister. If the Commons actively nominates the Prime Minister then, it is argued, that person will have clear legitimacy to form a government.
46. Similar processes are already followed in Scotland and Wales. After an election to the Scottish Parliament or the National Assembly for Wales the Parliament or the Assembly has 28 days to nominate someone as the First Minister. The person so nominated is recommended to Her Majesty by the relevant Presiding Officer. Failure to nominate a First Minister within the 28 days results in another election.⁴⁶
47. Professor Hazell suggested that an investiture vote would “clearly [demonstrate] that the Prime Minister commands the confidence of the new Parliament.”⁴⁷ He argued that voting at a general election was in effect a two-stage process: voters elect members of the House of Commons, and the House of Commons then decides who shall form a government. He argued that an investiture vote would make that two-stage process clearer.⁴⁸ In the context of a hung parliament, the need for a vote to invest a Prime Minister would set a timetable by which the shape of the new government should be clear.
48. A prime ministerial investiture vote would be a significant change to the UK’s constitutional processes for forming a government. At present, after a general election the Queen calls on the person who appears best placed to command the confidence of the House of Commons. When there is a single-

⁴⁵ QQ30–31.

⁴⁶ The processes are set out in section 46 of the Scotland Act 1998 and section 47 of the Government of Wales Act 2006. A First Minister has always been nominated in time after the four elections to each legislature since devolution.

⁴⁷ Hazell, written evidence.

⁴⁸ Q17.

party majority, that is straightforward. When there is not, the matter may become more difficult. The first test of whether a Prime Minister has the confidence of the Commons is at the vote on the Queen's Speech after an election.⁴⁹ A prime ministerial investiture vote would, in effect, make that vote the test of confidence, rather than the vote on the Government's programme set out in the Queen's Speech. Although defeat on the latter would not automatically lead to a general election (under the terms of the Fixed-term Parliaments Act 2011), it provides a strong signal of Parliament's confidence in the government. An investiture vote would also reduce further any remaining prerogative of the monarch over who becomes Prime Minister after an election.⁵⁰

49. If an investiture vote were established, it would presumably be required after every general election, regardless of the election result. A process would be needed to govern what would happen were the Commons to refuse to nominate a Prime Minister; in such instances it might be that a second general election would follow, as in Scotland and Wales.⁵¹ Where a party had won a clear majority at an election and the identity of the next Prime Minister was clear, an investiture vote might alter the current practice of a change in Prime Minister the day after the election. Where the Opposition won an election with a majority it might, in effect, mean a defeated Prime Minister would stay in No. 10 for perhaps a fortnight after an election.⁵² Professor Hazell acknowledged that a departure from the "removal van" attitude ... might prove uncomfortable" where there was a clear victory for the opposition party.⁵³ The public might struggle to understand why a Prime Minister who had lost an election was able to stay in office when the identity of the next Prime Minister was clear.
50. Another disadvantage of having an investiture vote is that it would be a significant step towards a presidential style of government. Prime Ministers are constitutionally *primus inter pares*, and are in post as part of a collective government rather than in their own right. Parliament's confidence in the Prime Minister cannot constitutionally be distinguished from its confidence in the Government he or she leads.
51. A further complication of the proposal for an investiture vote is that there could be a situation where an incumbent Prime Minister's party lost an election; a new Prime Minister took office; that new Prime Minister lost an investiture vote; so a third Prime Minister would take office within the space of around 10 days.⁵⁴

⁴⁹ Technically, a motion is proposed by the Government proposing an humble Address to Her Majesty thanking her for the Gracious Speech. In the House of Commons, amendments are proposed to the motion. At the end of the four- or five-day debate on the Queen's Speech, the motion as a whole is voted on. Defeat on that motion has been considered an expression of no confidence in the Government, and so led to either the resignation of the Government or a general election. The latter is no longer automatically possible under the Fixed-term Parliaments Act 2011, so the constitutional status of the Queen's Speech may be unclear.

⁵⁰ Professor Hazell told us that the Royal Household were keen to stress that the monarch does not possess any remaining discretion (Q17).

⁵¹ As the Fixed-term Parliaments Act 2011 made the process for dissolving Parliament exclusively statutory, an Act of Parliament would be needed to effect such a change.

⁵² Q19.

⁵³ Hazell, written evidence.

⁵⁴ A similar point was made by Lord Falconer of Thoroton (Q125).

52. **We do not recommend the creation of an investiture vote for a Prime Minister after an election. It would result in our system of government becoming more presidential and would be a step away from the principle that the Government as a whole should command the confidence of the House of Commons.**

Proposal for Commons approval of coalition agreements

53. A related question is whether a coalition government's programme should, in future, be put to the House of Commons for approval.
54. Were this proposal to materialise there would need to be clarity as to what document future coalitions put forward for approval. In 2010 three documents were produced: a five-page coalition agreement was produced immediately following the formation of the Government. A more detailed 30-page *Programme for government* followed two weeks later. There was also a short *Coalition agreement for stability and reform*, which covered procedural matters.
55. Lord Donoughue, Head of the No. 10 Policy Unit from 1974 to 1979,⁵⁵ told us that “the coalition agreement has not been approved by the electorate” so should be put before Parliament “for approval and amendment”.⁵⁶
56. It is argued that approval of a coalition agreement by the House of Commons would in effect be a public test of whether MPs support the formation of the coalition.⁵⁷ Such approval may be considered particularly important when a coalition agreement forms the detailed plan for government policy: the Minister for Government Policy, Oliver Letwin MP, told us that the coalition agreement is implemented “extraordinarily carefully”, with officials going through “month by month every item on it to see how far we have progressed”.⁵⁸ He said that he would have no objection to putting a coalition agreement before the House of Commons, though in 2010 the result would probably have been predictable. Witnesses did not feel that the House of Lords should be invited to approve a coalition agreement.⁵⁹
57. Other witnesses questioned what would be gained by subjecting future coalition agreements to a Commons vote. A vote on a new government's first Queen's Speech has the effect of being a vote on whether the Commons approves of the government's programme.⁶⁰ Lord Norton of Louth, Professor of Government at the University of Hull, said, “the key point is whether the Government maintains the confidence of the House of Commons”.⁶¹ If there

⁵⁵ Between 1974 and 1979 there was a majority government, a minority government and the Lib-Lab pact.

⁵⁶ Q1.

⁵⁷ In 2010, Liberal Democrat parliamentarians voted in private on joining the coalition; Conservative MPs did not. It has been reported that Conservative MPs would vote if coalition negotiations took place following a future election (see “Conservative MPs will vote on joining second coalition”, *The Daily Telegraph*, 18 December 2013).

⁵⁸ Q138. In subsequent written evidence, Mr Letwin set out how the Government reports on this progress, both publicly and internally.

⁵⁹ For example, Q11.

⁶⁰ Subsequent Queen's Speeches may of course contain measures not foreshadowed in a coalition agreement. In addition, as mentioned in the previous chapter, it is possible that government-formation negotiations would not have concluded by the time of the first Queen's Speech of the Parliament. In this situation, the vote on the Speech clearly cannot be taken as an endorsement of the government that emerges at the end of negotiations.

⁶¹ Q11.

were to be a vote on a coalition agreement, it is unclear what the status of votes on a Queen's Speech would be. For example, there would be uncertainty if a coalition government had its coalition agreement approved by the House of Commons at the start of a Parliament, but then lost a vote on their its Queen's Speech.

58. It is also unclear what would happen if a vote on a coalition agreement were lost by a government. A general election could not immediately follow: under the Fixed-term Parliaments Act 2011 an election is triggered only if the Commons passes a motion expressly stating that the House has no confidence in Her Majesty's Government, and then a fortnight elapses without a new government being formed.⁶² It is conceivable that a coalition agreement could be rejected, but that the House would, in a subsequent vote, express its confidence in the government. It is also possible that a coalition agreement could be rejected because the Commons disliked one element of it, rather than because it disapproved of the coalition as a whole. Another possibility is that an amendment might be passed disapproving of one measure in a coalition agreement. If that measure was crucial to securing a deal between the parties, what would happen next?
59. Even if a coalition agreement was approved, it could not bind members as to how they voted subsequently on individual measures.⁶³ So approval of the package as a whole could not be assumed to be approval of all of its parts—though doubtless government whips would from time to time suggest to potentially rebellious members that they had already supported a measure by voting to approve a coalition agreement.
60. **A vote of the House of Commons on the Queen's Speech is a well-established and effective means of determining whether that House has confidence in the government of the day generally, and whether it supports its legislative programme in particular. The vote on a coalition government's first Queen's Speech acts as a vote on whether the House of Commons has confidence in the coalition or not. We do not think that a vote on future coalition agreements would improve the constitutional position; it could serve only to confuse matters. Accordingly we do not consider it desirable that future coalition agreements should be put to the House of Commons for a vote.**

⁶² The wording for this motion is prescribed in section 2(4) of the Act.

⁶³ Q11.

CHAPTER 4: OPERATION OF GOVERNMENT AND PARLIAMENT UNDER COALITION

61. In this chapter we examine how coalition government operates in practice. We consider in particular the convention of collective ministerial responsibility, the process for reaching collective agreement, the process for appointing ministers and how having a coalition government affects the House of Lords. Although many of the examples cited in this chapter occurred in the current coalition, our conclusions and recommendations also apply to any future coalition government.

Collective ministerial responsibility

62. At the core of the convention of collective ministerial responsibility is that the government collectively accounts to Parliament for its policies, decisions and actions. The convention developed in the 18th century as a means of preventing royal interference with the business of government; by presenting a united face the government prevented the monarch from reacting to unfavourable policies by singling out ministers for condemnation. Since then collective responsibility has developed and is viewed by many as in practice requiring the government to present a collective front to the public and the media.⁶⁴
63. There are two sides to how the convention operates. First, it involves government policy being developed collectively—that is, in cabinet committees and, for important decisions, in the Cabinet itself—using established processes. The convention traditionally is thought to require discussions on policy formulation to be confidential, such that ministers can express their views frankly and test the robustness of a policy proposal. The second side to the convention is that, once a decision is reached, it is binding on and supported by all ministers.⁶⁵ This means that ministers must speak and vote in favour of the policy in Parliament, and must not dissent from it publicly. A minister who feels unable to support government in a policy or decision is normally expected to resign. This convention has been under strain in the recent past.
64. Collective responsibility features in the Ministerial Code⁶⁶ and the Cabinet Manual.⁶⁷ The *Coalition agreement for stability and reform*, drawn up in May 2010, sets out how collective responsibility applies currently:

“2.1 The principle of collective responsibility, save where it is explicitly set aside, continues to apply to all Government Ministers. This requires:

(a) an appropriate degree of consultation and discussion among Ministers to provide the opportunity for them to express their views frankly as decisions are reached, and to ensure the support of all Ministers;

⁶⁴ Q23.

⁶⁵ The Ministerial Code provides that collective responsibility also extends to parliamentary private secretaries (PPSs) to the extent that they are expected to support the government in all important divisions in Parliament, and that any PPS who votes against the government cannot retain his or her position (para 3.9).

⁶⁶ May 2010, paras 1.2.a and 2.3–2.4.

⁶⁷ 1st edition (October 2011), paras 4.1–4.4.

- (b) the opinions expressed and advice offered within Government to remain private;
- (c) decisions of the Cabinet to be binding on and supported by all Ministers;
- (d) full use being made of the Cabinet Committee system and application of the mechanisms for sharing information and resolving disputes set out in this document.

There are certain standard exceptions to the principle of consultation—the Chancellor’s Budget judgements, quasi-judicial decisions and opinions of the Law Officers in particular. Budget judgements will require consultation with the Chief Secretary; when the Prime Minister is consulted the Deputy Prime Minister should also be consulted.”

65. It is notable that the principle of collective responsibility has been considered sufficiently important and conducive to good government that it has been followed scrupulously by the devolved administrations in Scotland and Wales—in both single-party and coalition governments.⁶⁸ In Scotland, the relationship between Cabinet collective responsibility and access to information is explicitly recognised in the Scottish Ministerial Code and in its own guide to collective decision-making:

“The Scottish Government operates on the basis of collective responsibility. This means that all decisions reached by the Scottish Ministers, individually or collectively, are binding on all members of the Government. It follows from this that every effort must normally be made to ensure that every Minister with an interest in an issue has a chance to have his or her say—in an appropriate forum or manner—before a decision is taken. It also means that the Scottish Ministers should have access to all the information held by the Government which they require in connection with their duties either as a Minister with specific functional responsibilities or as a member of a Government which accepts collective responsibility for the actions of all its members”.⁶⁹

66. The convention of collective responsibility is constitutionally important for two main reasons. First, the process of collective decision-making within government makes it more likely that better decisions are reached. The need to consult and compromise means that policy can be more nuanced or better crafted. The second reason is that it enables Parliament to hold the government as a whole responsible for its policies, decisions and actions. Ministers cannot absolve themselves of responsibility for a policy by claiming other ministers decided it. So when, for example, a minister is being questioned in Parliament, Parliament can expect to be informed of the agreed government position. Collective responsibility also imbues a government (and, indeed, Parliament) with authority; when the discipline it imposes is departed from, that authority is undermined.
67. The operation of collective responsibility has ancillary benefits. It means, at least in theory, that the government speaks with one voice to the public and the media, thus preventing accusations of being divided. It requires governments to act as a team. It means that, when a decision has been

⁶⁸ Q107.

⁶⁹ *The Scottish Executive: a guide to collective decision-making*, June 2002, para 1.2.

reached, the civil service (and others affected) can go about implementing it safe in the knowledge that the decision will not be reversed unless there is a collective decision to do so.⁷⁰ It also means that the monarch can act on ministerial advice knowing that the advice represents the collective view of the government. The convention has been broadly adhered to by single-party governments, although it is not unknown for policy differences between ministers to be expressed publicly.⁷¹

Agreements to differ

68. The Ministerial Code, Cabinet Manual and *Coalition agreement for stability and reform* all state that the principle of collective responsibility applies “save where it is explicitly set aside”. Before 2010 there had been three occasions when collective responsibility was formally set aside—known as agreements to differ. The first was in 1931 over tariff reform, when there was a coalition government. The second was in 1975 during the referendum campaign on membership of the (then) European Economic Community, when the Labour government agreed that ministers could, outside Parliament, argue against the government position. The third was in 1977, when the Labour government agreed that ministers could vote in Parliament against legislation creating direct elections to the European Parliament. On all three occasions the Cabinet collectively agreed that collective responsibility should be set aside in respect of the particular issue.
69. The current Government’s *Programme for government* specified five areas where the parties to the coalition might adopt different positions:
- the AV referendum (both parties would be whipped to support the bill for a referendum, “without prejudice to the positions parties will take during such a referendum”);
 - university funding (arrangements would be made for Liberal Democrat MPs to abstain, if the Government’s response to Lord Browne of Madingley’s report was one the party could not accept);
 - the renewal of Trident (“Liberal Democrats will continue to make the case for alternatives”);
 - nuclear power (the *Programme* provided for a Liberal Democrat spokesman to speak against the relevant National Planning Statement, but for Liberal Democrat MPs to abstain); and
 - a tax allowance for married couples (where provision would be made for Liberal Democrat MPs to abstain on the relevant budget resolutions).

Departures from collective responsibility in the current Parliament

70. Arguably the most contentious departure from collective responsibility without a formal agreement to differ in the current Parliament occurred in early 2013, when Conservative and Liberal Democrat parliamentarians, including ministers, voted in opposite lobbies on an amendment to the Electoral Registration and Administration Bill. The amendment delayed the review of parliamentary constituency boundaries that was due to occur under

⁷⁰ Q121.

⁷¹ Q23.

the Parliamentary Voting System and Constituencies Act 2011—a policy that was in the coalition agreement. The Deputy Prime Minister had announced in summer 2012 that he would instruct Liberal Democrats to vote against the boundary review after the House of Lords Reform Bill was withdrawn due to an apparent inability to obtain a Commons majority for a programme motion on it. The decision by the Deputy Prime Minister to support the amendment was not taken by the Government collectively.

71. This issue arouses strong opinions. David Laws MP, a Minister of State at the Cabinet Office, explained to us that where parties make agreements and one side of the coalition then diverts from those agreements, “that can have consequences for other areas of agreement. That is what we saw in the Lords [reform] versus boundaries issue ... I do not think either coalition party would say that the other can simply walk away from serious commitments made during the coalition talks without there being consequences.”⁷² Lord Strathclyde, the Leader of the House of Lords from 2010–13, described the decision to delay the boundary review as “an outrage ... extraordinary behaviour.”⁷³ He thought that the coalition agreement had been that the boundary review would take place in return for there being a referendum on introducing the Alternative Vote: “To see this stymied, pulling the rug away from us at the last moment ... was a terrible and dirty trick. I am trying to find the right words to describe it; ‘dirty trick’ does not quite emphasise it strongly enough.”⁷⁴ Lord Falconer of Thoroton said:

“We were delighted that the Deputy Prime Minister led the Liberal Democrats into the position he did in relation to the boundary review, but it was wholly undermining of the process by which you should conduct yourself within government. It was done unilaterally, it was done having specifically agreed to the measures, and it was done in a way that refused to accept the authority of the Prime Minister and the rest of the Government in flagrant breach of an agreement.”⁷⁵

We do not seek to arbitrate between these views; we merely note that this was a high-profile and significant departure from the convention of collective responsibility. No minister resigned over the matter; nor, as we understand it, did the Prime Minister ask any minister to resign.

72. There have been other occasions where ministers from the two coalition parties have expressed different views. For example, on the day that the Leveson report was published in 2012, the Prime Minister and the Deputy Prime Minister made separate statements in the House of Commons in response to it. In that case, there was no collective government position on how to respond to the report, so it may be thought that the convention of collective responsibility did not apply.⁷⁶
73. In the debate on the Queen’s Speech in 2013, Conservative MPs tabled an amendment regretting “that an EU referendum Bill was not included in the Gracious Speech”.⁷⁷ This was the first time since 1946 that MPs from a

⁷² QQ47–48.

⁷³ Q83.

⁷⁴ Q83.

⁷⁵ Q127.

⁷⁶ Q47. There now appears to be a collective government position on regulation of the press.

⁷⁷ HC Deb, 15 May 2013, col 699.

government party had tabled an amendment to the Address in reply to the Queen's Speech, expressing their disagreement with the Government's position.⁷⁸ When the amendment was put to a division, the Prime Minister gave Conservative MPs a free vote on it, effectively allowing members of the Government to vote against the collective position set out in the Speech. In the event, 116 Conservative MPs voted for the amendment and only one voted against it; the amendment was defeated by 277 votes to 130; no Conservative ministers voted in the division, but several parliamentary private secretaries voted for the amendment.⁷⁹ Dr Stephen Barber, Reader in Public Policy at London South Bank University, said that, "the acquiescence by the Prime Minister to allow ministers to vote 'against' provisions in the Queen's Speech ... is constitutionally more serious" than the division between coalition partners over the boundary review amendment to the Electoral Registration and Administration Bill.⁸⁰ This is because of the role of the Queen's Speech as a vote of confidence in the Government (albeit the Fixed-term Parliaments Act 2011 means it could not now itself prompt an early election); previously any minister who declined to support the government on the Queen's Speech would have been expected to resign.

74. In other instances, senior ministers in both parties have expressed differing views over matters such as immigration from the European Union, the European Court of Human Rights, future welfare reform and proposals for a "mansion tax". In some of those cases ministers were setting out policies of their parties (as distinct from the Government), with the objective of indicating the likely programme of that party in future parliaments.
75. Our witnesses were united in believing that collective responsibility should apply in coalition governments.⁸¹ There was a consensus that departures from collective responsibility should be rare and should only take place after a process had been followed. However, almost all witnesses recognised that the two parties would from time to time seek to distinguish themselves to the electorate.
76. Lord Falconer of Thoroton thought that departures from collective responsibility weaken "the authority of the Prime Minister and the Government. It makes members of the Government think not 'What is best for the Government?', but 'What is best for my faction or me in the Government.' That is hugely damaging."⁸² Dr Felicity Matthews, Lecturer in Governance and Public Policy at the University of Sheffield, thought that the specific issues for which collective responsibility would be set aside should be clearly specified and agreed in advance. She said the "ad hoc suspension of collective responsibility erodes stability".⁸³ Dr Andrew Blick said that the setting aside of collective responsibility "should not be treated as though [it is] a permanently available option ... There is a real danger that suspensions of collective responsibility could come to be regarded as the easier alternative to difficult policy discussions."⁸⁴ Instead, he argued they should be used only

⁷⁸ "If the Queen's Speech is amended, the Prime Minister must resign", *New Statesman*, 10 May 2013.

⁷⁹ PPSs are expected to support the Government's position in Parliament; see footnote 65.

⁸⁰ Barber, written evidence, para 3.6.

⁸¹ For example, QQ47 and 70; Jones, para 5.1.

⁸² Q126.

⁸³ Matthews, para 11.

⁸⁴ Blick, para 21.

when every other possible means of reaching collective agreement had been exhausted; at that point the Cabinet as a whole should agree to differ, with the setting aside of collective responsibility time-limited and ministers bound by clear rules as to how they expressed their views.⁸⁵

77. **Collective responsibility has served our constitution well. It promotes collective decision-making and ensures Parliament is able to hold the Government effectively to account for its actions, policies and decisions. It should continue to apply when there is a coalition government.**
78. **We recognise that the parties in a coalition government will not automatically agree on everything; from time to time they will differ. However, it is incumbent on ministers to seek to reach a collective view on issues wherever possible. Having reached a collective view, it is essential that they can be held to account for it. Given its constitutional importance, the setting aside of the convention of collective responsibility should be rare, and only ever a last resort.**
79. **Where it is clear that no collective position can be reached on an issue, a proper process should be in place to govern any setting aside of collective responsibility. Such setting aside should be agreed by the Cabinet as a whole and be in respect of a specific issue. Ordinarily it would be for a specified period of time; rules should be set out by the Prime Minister governing how ministers may express their differing views. This process should be drawn up by the Prime Minister and Deputy Prime Minister for the remainder of this Parliament, and should be set out in future coalition agreements.**

Cabinet committees and the Quad

80. When the coalition Government came into office, arrangements were put into place to ensure that there were formal processes for collectively agreeing policy between the parties. As regards the establishment of cabinet committees, their membership and terms of reference were agreed jointly by the Prime Minister and the Deputy Prime Minister. The chairs and deputy chairs of cabinet committees would always be from separate parties. The Prime Minister and the Deputy Prime Minister would both have a full and contemporaneous overview of the business of government, with each having the power to commission papers from the Cabinet Secretariat.
81. A Coalition Committee was also established. This is a cabinet committee composed of six Conservative ministers and six Liberal Democrat ministers. Its terms of reference are to manage the business and priorities of the Government, and to oversee implementation of the coalition agreement. The chair or deputy chair of any cabinet committee has a right to refer an issue to the Coalition Committee. Thus it was envisaged that the Coalition Committee would be the main forum for resolving disputes between the parties. To that end Oliver Letwin MP assumed that it would meet frequently.⁸⁶

⁸⁵ Blick, para 22.

⁸⁶ Q136.

82. In fact the Coalition Committee has reportedly met only twice.⁸⁷ That is largely because its role has been displaced by the Quad—the informal name for meetings between the Prime Minister, Deputy Prime Minister, Chancellor of the Exchequer and Chief Secretary to the Treasury. David Laws described the Quad “almost as an inner Cabinet ... [sorting] out many of the thorniest issues.”⁸⁸ The Quad is, where appropriate, supplemented by other ministers; and it sits alongside more routine bilateral meetings between the centre of government and departments. It has, though, been criticised as the coalition version of “sofa government”.⁸⁹

Ministerial appointments

83. Ministers are appointed by the Queen, acting on the royal prerogative following the advice of the Prime Minister. Under single-party government the Prime Minister has complete discretion over which parliamentarians he or she makes ministers, and when they are dismissed; the constraints are political considerations within the governing party. Under a coalition, the Prime Minister’s powers in this area are openly constrained by the “dual” leadership of the Government.⁹⁰ This “dual” leadership is unusual, as deputy prime ministers (when the position has been filled at all) have tended also to hold other Cabinet-level portfolios rather than having a cross-government remit and chairing cabinet committees.⁹¹ By contrast the *Coalition agreement on stability and reform* sets out that “the Prime Minister and Deputy Prime Minister should have a full and contemporaneous overview of the business of Government.”⁹² The current Deputy Prime Minister therefore has a formal role far beyond that held by his predecessors in single-party governments. It remains to be seen whether this precedent will influence the position of future deputy prime ministers in other governments.
84. The initial allocation of ministerial portfolios in 2010 was agreed between the Prime Minister and the Deputy Prime Minister. This took place after the coalition had been formed and the initial coalition agreement drawn up. David Laws MP told us that a lesson of coalition-forming from Scotland and elsewhere was that policy should be agreed before the apportionment of jobs, as otherwise negotiators “might be tainted by which party was offering them the plummiest job.”⁹³ Ministerial positions were allocated in approximate proportion to the sizes of the two parliamentary parties in the House of Commons.
85. The *Coalition agreement for stability and reform* provided that future allocations of ministerial posts would be based on that proportion, and that the Prime Minister would nominate Conservative ministers and the Deputy Prime Minister Liberal Democrat ministers. Any changes to the allocation of portfolios between the parties must be agreed between the Prime Minister

⁸⁷ Q113.

⁸⁸ Q52.

⁸⁹ Q71.

⁹⁰ Q2.

⁹¹ The previous coalition Deputy Prime Minister, Clement Attlee, was Secretary of State for Dominion Affairs after his appointment as Deputy Prime Minister (1942–43), but thereafter served only in the latter role and (like Mr Clegg) as Lord President of the Council.

⁹² Para 3.3.

⁹³ Q52.

and the Deputy Prime Minister, and no Liberal Democrat minister could be removed without “full consultation” with the Deputy Prime Minister.⁹⁴

86. In most departments there is a mix of Liberal Democrat and Conservative ministers. When the coalition was first formed there were five departments with no Liberal Democrat ministers; now there are three. David Laws MP told us that the Liberal Democrats had made an active decision to pursue breadth of ministerial representation across departments rather than depth: he said that to have focused ministers in a handful of departments would be “to colonise bits of a government and ... be very detached from other areas. If we had been detached from major departments such as the Treasury, there would have been much more risk of the coalition parties parting company”.⁹⁵
87. There have been anecdotal examples of a secretary of state being unhappy with the appointment of a junior minister from another party in his or her department.⁹⁶ However, we were told that this has happened in single-party governments, and usually takes place for political reasons.⁹⁷ Although it may seem courteous and conducive to harmonious working to consult a secretary of state before moving a junior minister into his or her department, the constitutional position is that it is for the Prime Minister to decide which ministers are appointed in which departments.
88. **It is clear that the powers of a Prime Minister to make and dismiss ministers under a coalition are significantly constrained. The *Coalition agreement for stability and reform* provides that the ultimate advice to the Queen on who to appoint or dismiss still comes from the Prime Minister. That is in keeping with constitutional practice. Other arrangements for appointing ministers are more a matter of politics than of constitutional principle.**

The House of Lords

89. The existence of a coalition government affects the way that the House of Lords functions. In recent years no political party has had a majority of members of the House as a whole, or of the party-political members. Currently, Conservative and Liberal Democrat peers combined have a majority of party-political peers⁹⁸ but not an overall majority in the House when the non-affiliated members and the Crossbench peers are included.⁹⁹ This is particularly significant due to the influence of Crossbenchers. Baroness Royall of Blaisdon, the Leader of the Opposition in the House of Lords, told us of her concern that the existence of a political majority for the Government in the House of Lords meant that it potentially “is now a House

⁹⁴ The *Coalition agreement for stability and reform* does not provide guidance on the procedure for the coalition parties to agree machinery of government changes. There have not been any substantial changes of this sort since 2010. In 2010 we recommended that parliamentary scrutiny of machinery of government changes should be enhanced: see *The Cabinet Office and the Centre of Government* (4th Report, Session 2009–10, HL Paper 30), paras 214–17.

⁹⁵ Q52.

⁹⁶ Q52.

⁹⁷ Q22.

⁹⁸ At the time of writing the majority was 85, including peers who take a party whip other than from the three main parties.

⁹⁹ At the time of writing those members who do not take the Conservative or Liberal Democrat whip have a majority of 138 over those who do. However, differing levels of turnout amongst various groups means that such statistics do not necessarily reflect the likelihood of government victories or defeats.

that simply rubber stamps the programme of the Government”, rather than revising and scrutinising legislation.¹⁰⁰ This has not always been borne out by recent by recent experience.¹⁰¹

90. Lord Strathclyde anticipated before the 2010 election that he might be the Leader of the House in a government with a small majority in the Commons, and that his life “would be extremely difficult.” In the event, he thought that having a coalition made the job in the Lords “marginally easier, although the House of Lords adjusted in order to take coalition into account and remained as effective as it always has been.”¹⁰² Professor Hazell observed that the House of Lords was a chamber in which governments of any party did not have a majority, “so it is used to the fact that the government has to construct a coalition of support for each bill.”¹⁰³
91. There are currently 26 ministers and whips in the Lords. Of these, seven are Liberal Democrats. There is only one member of the Lords in the Cabinet (the Leader of the House), though another member of the Lords attends Cabinet.¹⁰⁴ There has been a gradual increase in the number of peers in government posts over the last 35 years, though this is concomitant with an increase in the overall number of ministers.¹⁰⁵ There is a statutory limit on the number of ministerial salaries¹⁰⁶ and nearly a third of ministers who are peers (eight out of 26) are unpaid. There are only three ministers of state in the Lords—fewer than at any time in the last 35 years. Lord Strathclyde said he had hoped that there would be an adjustment to the lack of senior ministers in the Lords over the course of the Parliament—in fact there has been a decline.¹⁰⁷
92. The relative lack of senior ministers in the House of Lords has two main consequences. First, it means that ministers taking business through the Lords often lack autonomy to take decisions in response to concerns expressed by the House. Instead they have to go up the ministerial hierarchy before securing a change of policy. Secondly, it means that the voice of the House of Lords within departments, the Cabinet and the government as a whole is lessened. **We regret the decline in the number of senior ministers in the House of Lords under the coalition Government.**

The House of Lords and the coalition programme

93. The Salisbury–Addison convention is the name given to an understanding reached in 1945 between the then Leader of the House, Viscount Addison, and the then Leader of the Opposition, Viscount Cranborne (later the fifth

¹⁰⁰ Q121.

¹⁰¹ At the time of writing the Government had been defeated in the House of Lords 86 times in this Parliament. (Figure from <http://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-govtdefeats/>.)

¹⁰² Q74.

¹⁰³ Hazell, para 12.

¹⁰⁴ Baroness Warsi, the Senior Minister of State.

¹⁰⁵ In 1970 there were 20 peers in government posts; in 2012 there were 26. Over that period the total number of government posts increased from 105 to 121. See House of Commons Library Standard Note, *Ministers in the House of Lords* (SN/PC/05226, 15 November 2012).

¹⁰⁶ Schedule 1 to the Ministerial and other Salaries Act 1975 limits the number of ministerial salaries to 109. There are currently 121 ministers and whips, meaning 12 are unpaid. Schedule 2 to the House of Commons Disqualification Act 1975 limits the number of (paid or unpaid) ministers in the House of Commons to 95.

¹⁰⁷ Q76.

- Marquess of Salisbury). It provided that the House of Lords would not block government bills which implemented a commitment made in the Labour party's manifesto at the 1945 election. Labour won that election with a majority of 156; Conservative peers had a significant majority amongst those members of the Lords who took a party whip.
94. In 2006 the Joint Committee on Conventions noted that the Salisbury–Addison convention had been largely observed since 1945 and concluded that it had evolved in such a way that in the House of Lords a manifesto bill is accorded a second reading, is not subject to “wrecking amendments” and is passed and sent (or returned) to the House of Commons in reasonable time.¹⁰⁸
 95. Between 1945, when the convention was formulated, and 2010 there was no coalition government. Now that there is, questions arise as to whether the convention applies; and if so in what form. It cannot be said that any one party's manifesto has been given a mandate through that party getting a majority. Nor is it axiomatic that the coalition agreement can be considered a substitute for a manifesto in considering whether the convention should apply to any particular measure: in the words of Viscount Cranborne in 1945, the understanding applied to those measures which have been “definitely put before the electorate”.
 96. Shortly after the general election, Baroness Royall of Blaisdon expressed her view that the convention did not apply to the coalition agreement. The then Leader of the House argued that it did, because the agreement had the support of a majority in the House of Commons, and most of the measures in it were in the respective manifestos.¹⁰⁹ In evidence to us Lady Royall stated that the convention did not apply to a measure such as the Health and Social Care Bill, because it was neither in the coalition agreement nor the parties' manifestos. However, she did not question the existence of the convention generally, and said that it would be important in future in enabling governments with a mandate to get their legislation through.¹¹⁰
 97. Several witnesses drew attention to the practice noted by the Joint Committee on Conventions whereby the House of Lords will usually give a second reading to any government bill.¹¹¹ Professor Hazell said that “the convention has come to apply to all bills, and not just to bills mentioned in manifestos ... in allowing government bills a second reading, the Lords are acknowledging the democratic legitimacy of the elected chamber.”¹¹² Lord Norton of Louth also acknowledged the development of the convention in that way,¹¹³ as did Lord Falconer of Thoroton.¹¹⁴ It follows that this practice applies to governments of whatever form.
 98. **We conclude that the Salisbury–Addison convention—whereby bills foreshadowed in a government's manifesto are given a second reading**

¹⁰⁸ Joint Committee on Conventions, *Conventions of the UK Parliament* (Session 2005–06, HL Paper 265, HC 1212), para 99

¹⁰⁹ HL Deb, 8 November 2010, col 8.

¹¹⁰ Q122.

¹¹¹ *Op. cit.*, para 100.

¹¹² Hazell, para 13.

¹¹³ Q9.

¹¹⁴ Q122.

in the Lords, are not subject to wrecking amendments and are passed in reasonable time—does not, strictly speaking, apply to measures in a coalition agreement. This is because a coalition agreement cannot be said to have a mandate from the electorate in the way that a manifesto can.

99. **However, if all parties in a coalition made the same or a substantially similar commitment in their manifestos, then they should be entitled to the benefit of the Salisbury–Addison convention in respect of that commitment.**
100. **We recognise that a practice has evolved that the House of Lords does not normally block government bills, whether they are in a manifesto or not. There is no reason why this practice should not apply when there is a coalition government.**

CHAPTER 5: END OF THE PARLIAMENT

101. Coalition government is likely to bring a different character to the final months of a Parliament. Instead of a single party governing and setting out its collective vision for a further term in office, a coalition that remains together until polling day will contain parties which will set out their individual manifestos while continuing to govern together. This has implications for politicians, for the civil service and for Parliament; it also has implications for good government, and therefore for the public, if the issues are not resolved. These are issues that the political parties and the Government need to start thinking about now.

Pre-election contact between parties and civil service

102. It is established practice that civil servants make contact with the main opposition parties in the run-up to a general election.¹¹⁵ The purpose of this contact is to enable civil servants to understand proposed policies for their department and to allow conversations between shadow ministers and civil servants about organisational structures and proposed changes to take place.¹¹⁶
103. The existence of a coalition government complicates the pre-election contacts convention in several ways. Having two of the main three parties at Westminster in government could mean that those parties have an advantage over the single opposition party. Symmetry in access to information is important for fairness and to maintain the impartiality of the civil service.¹¹⁷ Lord Butler of Brockwell, Cabinet Secretary from 1988–98, favoured “widening” opposition access to civil service advice, to provide a “level playing field” for the parties.¹¹⁸
104. The existence of a coalition may also serve to undermine access to information by the governing parties, particularly the smaller party or parties. Even where ministerial portfolios of a smaller party are spread across the government, there may be some departments in which it does not have a ministerial presence. Without a minister in a particular department, a smaller party is at a disadvantage in formulating relevant policy beyond the next election, as it lacks the capacity to commission work from within the department and is not eligible for pre-election contact with the department’s civil servants.
105. Even where a smaller party has ministers in a department, its access to information may be restricted. As Peter Riddell put it:

“In most departments, the Liberal Democrat minister is in a relatively junior position, covering a relatively narrow brief—with relatively few cases where a Conservative minister is in a junior position. While he or she may be consulted on wider-ranging issues affecting a department, this varies, largely depending on the attitude of the Secretary of State.

¹¹⁵ Prior to the 2005 and 2010 elections this contact began at the start of the calendar year before the last year in which the general election could be held (January 2005 and January 2009 respectively). With the Fixed-term Parliaments Act 2011 in place this contact may be expected to occur closer to May 2015.

¹¹⁶ Cabinet Manual, para 2.21.

¹¹⁷ Q115; Fox, written evidence.

¹¹⁸ Q117.

But such a Liberal Democrat minister can only ask for civil service briefings on his or her own portfolio, while a Conservative Secretary of State can, of course, seek briefings across the range of a department's activities. This imbalance restricts the scope of a junior partner to prepare for a general election compared with the senior partner."¹¹⁹

106. There is a need to set clear arrangements for pre-election access to information. There are two options available to the Government.
107. The first option is to allow ministers of any rank to commission confidential briefings from across a department's remit. At present such briefings may be provided only with the permission of the secretary of state, who may see the briefing. When planning for an election, junior ministers may not want ministerial colleagues from another party to see this material.¹²⁰ Therefore, if this option were chosen, a junior minister would be able to request factual information from beyond his or her area of responsibility without the secretary of state being privy to that briefing; equally the secretary of state could request briefing about that junior minister's area of policy without the junior minister seeing the information.
108. The alternative option is to treat all major parties on the same basis, with coalition ministers on the same footing as shadow ministers. This was the approach in Scotland in 2003 and 2007; it "allowed the coalition parties to engage with the civil service without concerns about propriety on either side".¹²¹ There may be practical implications, though, as it could constrain the capacity of ministers to receive briefings from their own officials. If briefings on matters beyond the next election are restricted to this common pre-election briefing process, would officials be able to brief ministers on long-term issues?
109. **We recommend that ministers should be able to commission confidential briefings from officials within their departments for the purpose of developing policy for the next Parliament without those briefings being disclosed to ministers from their coalition partners. Arrangements should be put in place in those departments where one party has no ministers to allow for briefing to that party. The Official Opposition should be granted pre-election contact with the civil service in the normal way. These arrangements should be added to the next edition of the Cabinet Manual.**

The election campaign

110. Both parties to the coalition Government have committed themselves to remaining in office together until the next general election.¹²² This means there will be two parties running the Government together while campaigning against each other. This would be in contrast to previous coalitions at Westminster, which have either run for re-election as coalitions, as with the wartime coalition in 1918 led by David Lloyd George and the National Government in the 1930s, or split up prior to a general election, as

¹¹⁹ Riddell, para 4. Professor Hazell made a similar point in his written evidence.

¹²⁰ Hazell, written evidence.

¹²¹ Elvidge, *Northern Exposure*, p 14.

¹²² For example, "Mid-term review: Coalition remains committed to deficit reduction; Cameron and Clegg insist coalition is "steadfast and united"", *The Independent*, 7 January 2013.

when the Labour party left the wartime coalition following VE Day in 1945, precipitating the July 1945 general election. It has been clearly stated by both parties in the current Government that they will run on their own platforms at the next general election, apparently while also remaining in Government together. This raises questions for the political parties and for the operation of government. Thought needs to be given to how ministers and civil servants should act during the period before the poll.

111. Although this situation would be unprecedented in Westminster, there are precedents in the devolved legislatures. In Scotland and Wales coalitions have remained in office together up to polling day.
112. The issue can be seen as an extension of the problems around collective responsibility set out in chapter 4. During the election campaign, the same person may present differing messages in his or her two capacities as a party spokesperson and as a government minister. Likewise two ministers from the same government department may present differing policies—potentially each different from the agreed position of the coalition. This has implications for both elements of collective responsibility: the internal working of government and the presentation of a collective government position.
113. How collective ministerial responsibility will be managed during the election campaign is unclear.¹²³ This will present slightly different problems in the month-long “purdah” period after the dissolution of Parliament and in the weeks (or months) leading up to dissolution.¹²⁴ During the “purdah” period, government continues but controversial or long-term decisions are avoided. As the Cabinet Manual states: “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 ... If decisions cannot wait they may be handled by temporary arrangements or following relevant consultation with the Opposition.”¹²⁵
114. Prior to the dissolution of Parliament, parties may seek to demonstrate their particular achievements and priorities in a period when the Government is still able to undertake new initiatives and actions. Beyond the advice to observe discretion, the Cabinet Manual does not provide guidance over how responsibility and accountability will operate during purdah in a coalition.
115. Lord McConnell of Glenscorrodale stressed the need for continuing dialogue between coalition ministers during the election campaign: “dialogue between the two leaders in a situation where they are constantly debating with each other in public is still going to be important during the election campaign.”¹²⁶
116. In both Scotland and Wales, specific ministers or advisers were appointed to monitor what their party colleagues were saying about their coalition partners. The experience in these elections was that it tended to be coalition backbenchers, rather than ministers, who attacked the policies of coalition

¹²³ Hansard Society, written evidence.

¹²⁴ When section 14 of the Electoral Registration and Administration Act 2013 is commenced, the timing of the dissolution of Parliament will be scheduled to take place 25 working days before the scheduled election (rather than 17). Therefore, the next dissolution is scheduled to be on 8 April 2015, a month before polling day.

¹²⁵ Cabinet Manual, para 2.29.

¹²⁶ Q107.

partners.¹²⁷ Lord McConnell and Rhodri Morgan both contrasted their coalitions with the more party-political Government in Westminster, particularly the tendency of each party to claim individual ownership of specific policies rather than collective authorship.¹²⁸ This suggests that the problems of maintaining collective ministerial responsibility might be greater for the UK Government than in previous Scottish and Welsh coalitions.¹²⁹

117. As with collective responsibility in general, any divergence of views between ministers has implications for the work of the civil service. This is particularly the case where ministers in a department advocate future policies that differ from the government position. Greater clarity will be needed in a coalition government than for a single-party administration about when a minister is speaking as a member of the government and when he or she is the party's spokesperson.
118. Civil servants are issued with guidance when a general election is called. The 2010 guidance restricted their work for ministers to resolving issues that could not be deferred until after polling day and to providing factual briefing. They were not to provide arguments, policies or costings for use in political campaign debates.¹³⁰ With most departments containing ministers from both coalition parties, there is also a question about information-sharing within departments and the wider government. This is likely to require guidance to be issued to civil servants before an election when a coalition is in power on how to support ministers of different parties.
119. **Although few important decisions are taken during the “purdah” period before a general election, constitutional conventions about the business of government—including collective decision-making and collective responsibility—must continue to apply. Appropriate guidance should be issued to civil servants.**

Fixed-term Parliaments and the “wash up”

120. Once a general election has been called, Parliament usually continues to meet for two to four days to dispose of unfinished business before it is dissolved. This typically involves several bills being passed swiftly. Other bills might be lost altogether, and some passed with various provisions omitted. Governments seek the co-operation of the opposition in this process.¹³¹ This period of rapid legislating is known as a “wash up”.
121. The “wash up” process has been controversial, particularly in 2010 when the conventions around it were thought to have been strained by the inclusion of controversial bills and by their timetabling.¹³² It has been argued that the process “restricts parliamentary scrutiny and marginalises backbenchers, minor parties and crossbench peers.”¹³³ This committee was critical of the

¹²⁷ Akash Paun and Stuart Hallifax (Institute for Government), *A game of two halves: how coalition governments renew in mid-term and last the full term* (2012), p 59.

¹²⁸ Q107.

¹²⁹ This may be exacerbated by the fact that responsibility for certain controversial areas (such as the EU and immigration) are reserved to the Westminster Government.

¹³⁰ Cabinet Office, General Election Guidance, 6 April 2010.

¹³¹ Q85.

¹³² Ruth Fox and Matt Korris, “Reform of the Wash up: Managing the Legislative Tidal Wave at the End of a Parliament”, *Parliamentary Affairs*, vol 63(3), July 2010, pp 558–69.

¹³³ Ruth Fox and Matt Korris, *Making Better Law: reform of the legislative process from policy to Act* (2010), p 40.

inclusion of constitutional legislation—the Constitutional Reform and Governance Bill—in the 2010 “wash up”.¹³⁴

122. Under the Fixed-term Parliaments Act 2011 a general election is scheduled on the first Thursday in May every five years.¹³⁵ The Act has had the side-effect of producing a pattern of regular sessions running from roughly May to May, rather than the previous pattern of November prorogations often matched with May or June elections, resulting in short and long sessions either side of a general election.¹³⁶ The Cabinet Manual states that a “wash up” may occur prior to an early election and includes it in the timetable for such a poll, but not for a scheduled election.¹³⁷

123. When asked about the prospects for a “wash up” in this Parliament, Lord Strathclyde told us:

“In theory, there should be no wash up; the Government should have brought forward legislation in a timely manner, passed by the House of Commons, and we should be able to agree it by a month or five weeks before general election day ... I wonder if it will be quite as clean as that. Anyway, this is the law of unintended consequences. By having a fixed date, you do not know what is going to happen. There may be a terrorist outrage or an economic issue that requires legislation—not emergency legislation but legislation—to be done relatively quickly in the winter before a general election. I suspect there may still need to be a wash up period.”¹³⁸

124. The Fixed-term Parliaments Act 2011 should allow any government (whether coalition or single-party) to plan sufficiently well to avoid having a “wash up”. We acknowledge that there may be certain items of legislation that require expedition before an election, such as a short Finance Bill or legislation in response to an emergency. We recognise that there may be other unfinished business which it is prudent to dispose of before Parliament dissolves. **While we agree with Lord Strathclyde that there should be no need for a “wash up” to take place before a scheduled election in a fixed-term Parliament, a more limited “wash up” than in the past may still take place. The Government should introduce legislation in the final session of the Parliament in good time for it to be passed on a normal timetable before Parliament is dissolved.**

Access to papers of a previous administration

125. There is a well-established convention that ministers of a current administration may not generally see documents of a former administration of a different political party. The convention was articulated in 1980 in a written answer by the then Prime Minister:

¹³⁴ Constitution Committee, *Constitutional Reform and Governance Bill* (11th Report, Session 2009–10, HL Paper 98).

¹³⁵ The Act also makes provision for an early election: see chapter 2.

¹³⁶ The first session of the current Parliament ran for two years, from May 2010 to May 2012. This was described by the then Leader of the House of Commons as necessary to enable a “smooth transition” from autumn to spring prorogations (HC Deb, 13 September 2010, 33–34WS).

¹³⁷ Cabinet Manual, para 2.26 and annex.

¹³⁸ Q85.

“An incoming Minister should not have access to any minutes or documents written by a predecessor of a different party other than those which were published or put in the public domain by that predecessor; nor should he be told, whether directly or by access to departmental papers which would tell him exactly what his predecessor had said. Moreover, it may be equally important to withhold papers which show the advice given by officials to the previous Minister even though there may be no indication on them of his views.”¹³⁹

126. The statement embodies a balance between access to information in order to maintain continuity of government and the withholding of information from ministers where it could be used to discredit a predecessor of a different party. Where other information is required, the 1980 statement indicates that the approval of the former minister in question must be sought.¹⁴⁰
127. The purpose of the convention is to maintain the confidentiality of civil service advice and government policy-making. It allows ministers to set out their views and request briefing in the knowledge that members of a subsequent government will not have access to them or make them public. Where exceptions to the rule are considered, the “guiding line must be to avoid embarrassment to previous ministers.”¹⁴¹
128. The convention is clear as far as the papers of successive single-party governments are concerned. However, there is uncertainty over how it would apply to the papers of a coalition government. Lord O’Donnell suggested that the formation of a future Labour–Liberal Democrat coalition could lead to uncertainty over access by Liberal Democrat ministers to papers from the Conservative–Liberal Democrat Government:
- “There are various ways you could solve it. You could drop the convention ... It is going to be a problem and it is the kind of problem that is much better sorted out now than waiting until we have the issue and then confronting it ... All the answers I have come up with have serious drawbacks.”¹⁴²
129. The same issue could arise in other circumstances, such as a single-party government where the party had formerly been in a coalition, or a coalition in which one of the parties had previously formed a single-party government.
130. This issue, like other consequences of coalition government, does not appear to have been considered by either the current Government or the Opposition. Lord Falconer of Thoroton told us as much, and stated that his initial response was that he expected the convention to function as normal.¹⁴³ So did Oliver Letwin MP, who said that his conversations in government had been conducted on the presumption that a future government made up of

¹³⁹ HC Deb, 24 January 1980, cols 305–7W. The statement is quoted in full in Cabinet Office, *Directory of Civil Service Guidance*, vol 2, 2000, pp 8–9.

¹⁴⁰ In 1983 the then Prime Minister set out a more stringent criterion for access (see HC Deb, 17 January 1983, cols 29–30W). In this version the Prime Minister of a previous government, or the current leader of the same party, must be consulted before papers of that government are made available to ministers, even if they are from the same party. However, it is the 1980 version that is reproduced in guidance.

¹⁴¹ HC Deb, 24 January 1980, col 306W.

¹⁴² Q116.

¹⁴³ Q129.

one or more other parties would not have access to the current Government's papers.¹⁴⁴

131. **We recommend that the convention on access to the papers of a previous administration should be retained. Its application needs adapting, though, to account for coalition governments:**

- **Where a coalition is renewed following an election, the convention should function as for a re-elected single-party government.**
- **Where one party in government was previously in a coalition, they should be able to access papers of ministers from their party, but to access departmental papers of ministers from their former coalition partner party they must obtain permission from the relevant minister or the leader of that party.**
- **Any party entering government (whether in a coalition or not) from opposition should require the permission of the relevant ministers or party leader (or leaders) to access the papers of the previous administration.**

¹⁴⁴ Q140.

CHAPTER 6: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

132. Five days should not be taken as a template period for government formation. Governments should be formed as promptly as possible; no more or less time should be taken than is required to produce a government able to command the confidence of the House of Commons. It is important that the public and, particularly, the media are better informed about this matter. (Paragraph 22)
133. We recommend that a 12-day gap between a general election and the first meeting of a new Parliament should be the preferred choice following future general elections. (Paragraph 26)
134. While there is no established duty on an incumbent Prime Minister after a hung parliament to remain in office until a new government can be formed, precedents have created an expectation that the Prime Minister will remain until a successor can be identified. The Cabinet Manual should emphasise this expectation and it is important that the public and the media be informed of the reasons underlying it. (Paragraph 31)
135. We recommend that, as in 2010, administrative support and factual briefings should be offered to parties involved in government-formation negotiations after future general elections. It is for the parties to decide what level of support they take up. We further recommend that the Government commit in advance of the next general election that this support will be given, rather than leaving the decision to the Prime Minister at the time of the election. (Paragraph 40)
136. We do not recommend the creation of an investiture vote for a Prime Minister after an election. It would result in our system of government becoming more presidential and would be a step away from the principle that the Government as a whole should command the confidence of the House of Commons. (Paragraph 52)
137. A vote of the House of Commons on the Queen's Speech is a well-established and effective means of determining whether that House has confidence in the government of the day generally, and whether it supports its legislative programme in particular. The vote on a coalition government's first Queen's Speech acts as a vote on whether the House of Commons has confidence in the coalition or not. We do not think that a vote on future coalition agreements would improve the constitutional position; it could serve only to confuse matters. Accordingly we do not consider it desirable that future coalition agreements should be put to the House of Commons for a vote. (Paragraph 60)
138. Collective responsibility has served our constitution well. It promotes collective decision-making and ensures Parliament is able to hold the Government effectively to account for its actions, policies and decisions. It should continue to apply when there is a coalition government. (Paragraph 77)
139. We recognise that the parties in a coalition government will not automatically agree on everything; from time to time they will differ. However, it is incumbent on ministers to seek to reach a collective view on issues wherever possible. Having reached a collective view, it is essential that they can be held

to account for it. Given its constitutional importance, the setting aside of the convention of collective responsibility should be rare, and only ever a last resort. (Paragraph 78)

140. Where it is clear that no collective position can be reached on an issue, a proper process should be in place to govern any setting aside of collective responsibility. Such setting aside should be agreed by the Cabinet as a whole and be in respect of a specific issue. Ordinarily it would be for a specified period of time; rules should be set out by the Prime Minister governing how ministers may express their differing views. This process should be drawn up by the Prime Minister and Deputy Prime Minister for the remainder of this Parliament, and should be set out in future coalition agreements. (Paragraph 79)
141. It is clear that the powers of a Prime Minister to make and dismiss ministers under a coalition are significantly constrained. The *Coalition agreement for stability and reform* provides that the ultimate advice to the Queen on who to appoint or dismiss still comes from the Prime Minister. That is in keeping with constitutional practice. Other arrangements for appointing ministers are more a matter of politics than of constitutional principle. (Paragraph 88)
142. We regret the decline in the number of senior ministers in the House of Lords under the coalition Government. (Paragraph 92)
143. We conclude that the Salisbury–Addison convention—whereby bills foreshadowed in a government’s manifesto are given a second reading in the Lords, are not subject to wrecking amendments and are passed in reasonable time—does not, strictly speaking, apply to measures in a coalition agreement. This is because a coalition agreement cannot be said to have a mandate from the electorate in the way that a manifesto can. (Paragraph 98)
144. However, if all parties in a coalition made the same or a substantially similar commitment in their manifestos, then they should be entitled to the benefit of the Salisbury–Addison convention in respect of that commitment. (Paragraph 99)
145. We recognise that a practice has evolved that the House of Lords does not normally block government bills, whether they are in a manifesto or not. There is no reason why this practice should not apply when there is a coalition government. (Paragraph 100)
146. We recommend that ministers should be able to commission confidential briefings from officials within their departments for the purpose of developing policy for the next Parliament without those briefings being disclosed to ministers from their coalition partners. Arrangements should be put in place in those departments where one party has no ministers to allow for briefing to that party. The Official Opposition should be granted pre-election contact with the civil service in the normal way. These arrangements should be added to the next edition of the Cabinet Manual. (Paragraph 109)
147. Although few important decisions are taken during the “purdah” period before a general election, constitutional conventions about the business of government—including collective decision-making and collective responsibility—must continue to apply. Appropriate guidance should be issued to civil servants. (Paragraph 119)
148. While we agree with Lord Strathclyde that there should be no need for a “wash up” to take place before a scheduled election in a fixed-term

Parliament, a more limited “wash up” than in the past may still take place. The Government should introduce legislation in the final session of the Parliament in good time for it to be passed on a normal timetable before Parliament is dissolved. (Paragraph 124)

149. We recommend that the convention on access to the papers of a previous administration should be retained. Its application needs adapting, though, to account for coalition governments: (Paragraph 131)

- Where a coalition is renewed following an election, the convention should function as for a re-elected single-party government.
- Where one party in government was previously in a coalition, they should be able to access papers of ministers from their party, but to access departmental papers of ministers from their former coalition partner party they must obtain permission from the relevant minister or the leader of that party.
- Any party entering government (whether in a coalition or not) from opposition should require the permission of the relevant ministers or party leader (or leaders) to access the papers of the previous administration.

APPENDIX 1: LIST OF MEMBERS AND DECLARATION OF INTEREST

The members of the committee that conducted the inquiry were:

Lord Crickhowell
Lord Cullen of Whitekirk
Baroness Falkner of Margravine
Lord Goldsmith
Lord Hart of Chilton
Lord Irvine of Lairg
Baroness Jay of Paddington (chairman)
Lord Lang of Monkton
Lord Lester of Herne Hill
Lord Lexden
Lord Powell of Bayswater
Baroness Wheatcroft

Declaration of interest

The following interest was declared:

Baroness Falkner of Margravine

Member of the Liberal Democrats Federal Executive, which was formally required to approve the coalition agreement.

A full list of members' interests can be found in the Register of Lords' Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at www.parliament.uk/hlconstitution and available for inspection at the Parliamentary Archives (020 7219 5341).

Evidence received by the committee is listed below in order of receipt and in alphabetical order. Those witnesses with * gave both oral and written evidence. Those with ** gave oral evidence and did not submit written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

**	QQ1–13	Lord Donoughue
**		Professor Lord Norton of Louth
*	QQ14–29	Dr Ruth Fox
*		Professor Robert Hazell
*		Mr Barry Winetrobe
**	QQ30–43	Lord Morgan
**		Rt Hon. Lord Steel of Aikwood KT KBE
**	QQ44–57	Rt Hon. David Laws MP
**	QQ58–73	Rt Hon. Paul Burstow MP
**		Rt Hon. Cheryl Gillan MP
**		Tim Loughton MP
**	QQ74–87	Rt Hon. Lord Shutt of Greetland OBE
**		Rt Hon. Lord Strathclyde CH
**	QQ88–99	Rt Hon. Lord Adonis
*	QQ100–110	Mr Ieuan Wyn Jones
**		Rt Hon. Lord McConnell of Glenscorrodale
*		Rt Hon. Rhodri Morgan
**	QQ111–120	Rt Hon. Lord Butler of Brockwell KG GCB CVO
**		Lord O'Donnell GCB
**		Lord Stephen
**	QQ121–131	Rt Hon. Lord Falconer of Thoroton
**		Rt Hon. Baroness Royall of Blaisdon
*	QQ132–140	Rt Hon. Oliver Letwin MP

Alphabetical list of all witnesses

**	Rt Hon. Lord Adonis
	Dr Stephen Barber
	Dr Andrew Blick
**	Rt Hon. Paul Burstow MP

** Rt Hon. Lord Butler of Brockwell KG GCB CVO
** Lord Donoughue
** Rt Hon. Lord Falconer of Thoroton
* Dr Ruth Fox
** Rt Hon. Cheryl Gillan MP
* Professor Robert Hazell
* Mr Ieuan Wyn Jones
** Rt Hon. David Laws MP
* Rt Hon. Oliver Letwin MP
** Tim Loughton MP
Dr Felicity Matthews
** Rt Hon. Lord McConnell of Glenscorrodale
** Lord Morgan
* Rt Hon. Rhodri Morgan
** Professor Lord Norton of Louth
** Lord O'Donnell GCB
Rt Hon. Peter Riddell CBE
** Rt Hon. Baroness Royall of Blaisdon
** Rt Hon. Lord Shutt of Greetland OBE
** Rt Hon. Lord Steel of Aikwood KT
** Lord Stephen
** Rt Hon. Lord Strathclyde CH
* Mr Barry Winetrobe

APPENDIX 3: CALL FOR EVIDENCE

The House of Lords Select Committee on the Constitution, chaired by Baroness Jay of Paddington, is announcing today an inquiry into the constitutional implications of forming and maintaining coalition governments. The committee invites interested organisations and individuals to submit written evidence as part of the inquiry.

Written evidence is sought by Friday 30 August 2013. Public hearings are expected to be held from October 2013. The committee aims to report to the House, with recommendations, before the end of the current session in spring 2014. The report will receive a response from the Government and is expected to be debated in the House of Lords.

In recent decades the nature of party politics in the UK has changed considerably. Political party membership has declined (both in real terms and as a proportion of the electorate), and the number of votes cast for parties other than Conservative and Labour has increased. The 2010 general election produced a hung parliament, and the first peacetime UK coalition government since the 1930s. It may be that government otherwise than by a single party with a Commons majority will become more common in future; the constitutional implications of this change, however, have not been fully explored.

The Constitution Committee has therefore decided to conduct an inquiry into the constitutional implications of coalition government. The committee intends to consider three aspects of coalition government in particular.

First, the committee will explore the role of collective ministerial responsibility.¹⁴⁵ This doctrine plays a central role in allowing Parliament to hold the Government to account for their decisions, and in allowing the Government to maintain the confidence of the House of Commons, without which they cannot legitimately exercise power. Whilst there have been “agreements to differ” under single-party governments,¹⁴⁶ the incidence of such disagreements is more likely under a coalition. These can be announced at the outset of a coalition, as in the case of the renewal of Trident,¹⁴⁷ or can occur ad hoc, as with the amendment to the Electoral Registration and Administration Act 2013 to delay the constituency boundary review. The ramifications of such disagreements for the doctrine of collective responsibility are unclear.

Secondly, the committee is interested in the way democratic legitimacy is secured, and electoral mandates expressed, under coalition governments. The classic model of legitimacy in a parliamentary democracy is that the Government’s right to exercise executive authority stems from the confidence of the House of Commons, which in turn is a recognition of popular acceptance of the governing party’s proposals as contained in its manifesto. In the context of coalition government in a hung parliament, however, there is by definition no electoral acceptance of a single party’s agenda. This raises a number of questions about the practices and procedures which should be adopted to secure democratic legitimacy.

¹⁴⁵ The Cabinet Manual defines the doctrine as meaning that “all government ministers are bound by the collective decision of Cabinet, save where it is explicitly set aside, and carry joint responsibility for all the Government’s policies and decisions” (para 4.2).

¹⁴⁶ Most recently the agreement to differ over the 1975 referendum on remaining in the European Community.

¹⁴⁷ *The Coalition: Our Programme for Government* (2010), p 15.

Finally, the committee will explore the manner in which the executive is internally organised in a coalition. In particular, questions arise around the exercise of certain royal prerogatives under a multi-party government, such as the appointment of ministers, and around the structure and operation of the Cabinet and its committees.

The committee would welcome written submissions on any aspect of this topic, and particularly on the following questions:

Overview: the constitutional framework

- (1) To what extent are the UK's existing constitutional conventions and practices unsuitable in the context of a coalition government?
- (2) What are the constitutional merits and demerits of coalitions compared to other means of forming a government in a hung parliament, such as minority governments or supply and confidence arrangements?
- (3) What lessons can be learned from the practices of other parliamentary democracies, including the devolved administrations in Scotland and Wales?

Collective ministerial responsibility

- (4) Does the doctrine of collective responsibility require adjustment in the modern era? If so, in what way?
- (5) How, if at all, does the doctrine need to be altered to allow Parliament to hold coalition governments properly to account?
- (6) How does the doctrine interact with the Fixed-term Parliaments Act 2011? In particular, what is the impact of the reduction in potential confidence votes in the House of Commons?
- (7) In what circumstances should the Government be able to suspend collective responsibility? When and how should such a suspension be announced? What should be the consequences of a suspension?

Democratic legitimacy and electoral mandates

- (8) What is the status of coalition agreements, and how do they interact with party manifestos?
- (9) How, if at all, should the format of manifestos be changed to reflect the likelihood of hung parliaments? In particular, is there a case for parties specifying in their manifestos which of their commitments are intended to be non-negotiable?
- (10) Should the main political parties seek to agree before a general election the processes they will follow in the event of a hung parliament? In particular, should the parties aim to agree on the length of time allowed for inter-party negotiations? If so, what should that length of time be?
- (11) What is the proper role for the civil service in the inter-party negotiations following a general election resulting in a hung parliament?
- (12) How does the role of the House of Lords change when there is a coalition government?

- (13) How (if at all) does the Salisbury–Addison convention apply in a hung parliament? How does the convention interact with manifestos and coalition agreements in these circumstances?

The internal organisation of the government in a coalition

- (14) What constitutional principles should govern the royal prerogative of appointing ministers, and the allocation of ministerial portfolios, under a coalition?
- (15) What is the constitutional status of the office of Deputy Prime Minister in a coalition? In particular, what formal and/or informal control should the Deputy Prime Minister exercise over those royal prerogatives conventionally exercised by the Prime Minister alone?
- (16) What special considerations should be given to the cabinet committee system under a coalition?
- (17) What constitutional issues arise when there are ministers from different parties within an individual department?

You need not address all these questions. The committee would welcome other relevant views which you think the committee should be aware of.

The deadline for written evidence is Friday 30 August 2013.