



House of Commons
Political and Constitutional
Reform Committee

**Lessons from the
process of Government
formation after the
2010 General Election**

Fourth Report of Session 2010–11

Volume I

Volume I: Report, together with formal minutes, oral and written evidence

Additional written evidence is contained in Volume II, available on the Committee website at www.parliament.uk/pcrc

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The Political and Constitutional Reform Committee

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

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Summary

The May 2010 general election resulted for the first time in more than thirty years in a House of Commons in which there was no single-party majority—commonly known as a ‘hung’ Parliament. After five days of negotiations between political parties a national coalition government was formed for the first time since the Second World War.

The process of government formation and transition generally went well, but in this Report we suggest some practical improvements and identify some areas where constitutional conventions are unclear.

Government transition depends on the party balance in the House of Commons, but Members of Parliament currently play no role in choosing a Government. A case has been argued to us for an investiture vote, along the lines of that already in place for the Scottish First Minister, whereby the House would choose a Prime Minister before he or she was appointed by the Monarch.

There appears to have been some confusion over the rights and duties of the incumbent Government and Prime Minister, in particular over when a Prime Minister should remain in office and when he or she should leave office. An incumbent Prime Minister has a duty to stay in office until a successor has been identified, as well as a right to stay in office until it is clear that he or she does not have the confidence of the House.

A coalition government’s programme, drawn up after an election, cannot have the same mandate as a party manifesto which is available to the people before they vote. A possible consequence is that Members of the House of Lords may not feel bound by the Salisbury-Addison convention. One way of addressing the lack of a direct mandate is to ensure that the House of Commons is given the opportunity to subject the Government’s proposals to full pre-legislative scrutiny.

Conventions applied restricting the activities of the incumbent Government in the periods immediately before and after the May 2010 general election. These conventions are described in detail in the draft Cabinet Manual published in December 2010. We suggest some changes to the way in which restrictions are articulated in that document. When Ministers have acted in breach of these conventions, this needs to become public knowledge, and we propose a mechanism by which this could be achieved.

1 Introduction

Inquiry

1. We launched this inquiry in order to identify the lessons from the process of government formation and transition that followed the general election in May 2010. Following the general election, no single party was able to command a majority in the House of Commons. Though they were relatively common during the period before the Second World War and could feasibly become a more frequent occurrence, hung Parliaments have been rare in post-Second World War UK history. The last time this result occurred in a UK general election was in 1974, and the last peacetime coalition Government was formed in 1931 (although, like hung Parliaments, coalition governments were not unusual in the period before the Second World War).¹² Therefore, the events of May 2010 are “of considerable political and historical significance”, and “will serve to mould ideas and expectations about the future”.³

2. During the inquiry, we heard from representatives from the Conservative, Labour and Liberal Democrat parties who took part in negotiations following the general election, from the Cabinet Secretary, and from a panel of academic experts. We also received written evidence from a wider range of experts and from Members of the House of Lords. This Report seeks to cover not only the specific lessons that can be learned from the 2010 election and its aftermath, but also a number of broader constitutional issues have arisen in the course of our inquiry.

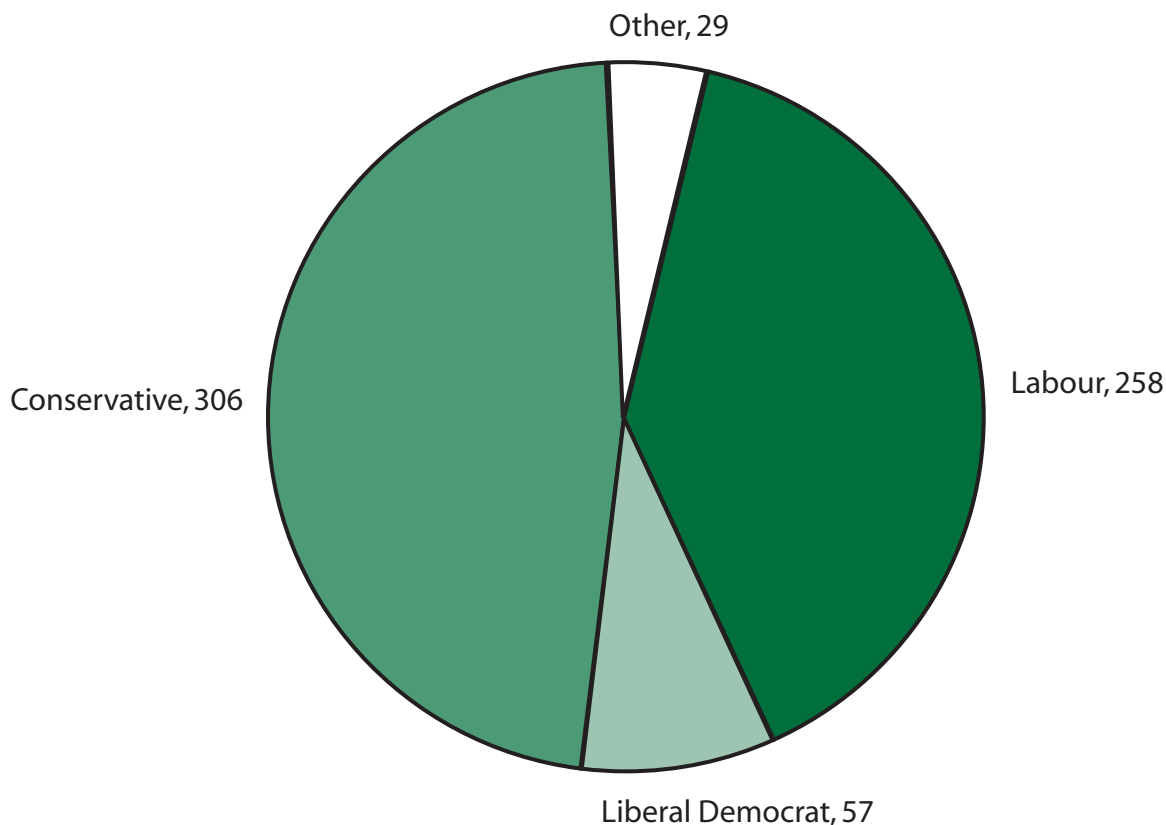
1 Ev w2 [Professor Blackburn]

2 Robert Hazell and Akash Paun, *Making Minority Government Work*, (Institute for Government, 2009) p12

3 Ev w2 [Professor Blackburn]

Background

3. The number of seats won by each party in the general election of 6 May 2010 was as follows.⁴



4. This meant that no single party had a majority in the House of Commons. In the days after the election, representatives of the Liberal Democrat party leadership held talks with representatives of the leadership of both the Conservative and Labour parties with a view to reaching an agreement that would result in a government being formed. Four days after the general election, on 10 May, the incumbent Prime Minister, Rt Hon Gordon Brown MP, tendered his resignation to the Queen, who invited Rt Hon David Cameron MP to form a government. The next day, the Conservative and Liberal Democrat parties reached an agreement to form a coalition government.

5. As the general election approached, on 2 February 2010, Gordon Brown asked the Cabinet Secretary to begin drafting a Cabinet Manual.⁵ On this day the then-Prime Minister announced the Cabinet Manual initiative at a public event (not to Parliament) at which he depicted it as part of a broader reform programme that could eventually lead to a 'written' constitution for the UK.⁶ The Cabinet Secretary told the Justice Committee later that month that the Cabinet Manual would be an “account of the workings of Cabinet Government” and would “consolidate the existing unwritten, piecemeal conventions that

4 The chart below includes the seat won by the Conservative party in Thirsk and Malton on 27 May 2010. The election was delayed in Thirsk and Malton due to the death of a candidate.

5 Q 167

6 “Towards a new politics”, 10 Downing Street press notice, 2 February 2010

govern much of the way central government operates under our existing constitution”.⁷ Later in the same month, in anticipation of the possibility that the 2010 general election could result in a hung Parliament, the Cabinet Office published a draft chapter from the Cabinet Manual on Elections and Government Formation (referred to in this Report as the ‘draft Cabinet Manual chapter’). This draft chapter sought to summarise the existing constitutional conventions which applied in the event of a hung Parliament.⁸ On 14 December 2010 the Cabinet Office published the full Cabinet Manual in draft for consultation (referred to in this Report as the ‘December 2010 Cabinet Manual’). The chapter on Elections and Government Formation has changed substantially from the draft published in February. We recently launched a separate inquiry into the constitutional status of the Cabinet Manual. **Our comments on the Cabinet Manual in this Report relate only to the issue of government formation. We will return in due course to wider issues raised by the Cabinet Manual.**

7 Justice Committee, Fifth Report of Session 2009—10, *Constitutional Processes Following a General Election*, HC 396, Ev 23

8 Q 175

2 Constitutional Rules and Conventions

6. Government formation takes place within a constitutional framework which is largely unwritten and based on precedent.

7. We have heard that following the May 2010 general election, constitutional processes were broadly clear and worked well.⁹ On the whole, the media demonstrated a better level of understanding of constitutional processes than some had feared. There was no evidence of panic by the public or the financial markets. Dr Ruth Fox, Director of Parliament and Government at the Hansard Society, told us that “the markets didn’t have much of a response to what was happening”,¹⁰ and the Institute for Government wrote that “[media] pressure was markedly less than many had feared”.¹¹ This is to the credit of those organisations, including the Hansard Society, the Constitution Unit at University College London and the Institute for Government, which worked in the run up to the election to increase public and media understanding of what would happen if there was a hung Parliament.

8. The draft Cabinet Manual chapter was a crucial explanatory document for academics and the media.¹² However, this chapter and the revised chapter on Elections and Government Formation in the December 2010 Cabinet Manual are not entirely unproblematic, and in this chapter we address aspects of the rules and conventions around government formation which in our view require further attention.

The First Opportunity to Form a Government

9. The question of who has the first opportunity to form a government is subject to differing views. The traditional position is that “the constitutional conventions on government formation (including in situations of a hung Parliament) were and are, firstly, that the incumbent Prime Minister has the first opportunity to continue in office and form an administration”.¹³

10. The draft Cabinet Manual chapter states that “An incumbent Government is entitled to await the meeting of the new Parliament to see if it can command the confidence of the House of Commons”.¹⁴ The December 2010 Cabinet Manual adds the phrase “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”.¹⁵

9 Q 81. See also Q1 and Ev 67 [Constitution Unit].

10 Q 130

11 Ev 66. See also Q 159.

12 Ev 67

13 Ev w4 Professor Robert Blackburn at para 15

14 Cabinet Office, *Cabinet Manual Chapter 6* [draft], published with HC 396 (2009—10)

15 Cabinet Office, *The Cabinet Manual – Draft*, December 2010, para 48, available online at <http://www.cabinetoffice.gov.uk/resource-library/cabinet-manual>

11. During the election campaign and immediately after the election, Rt Hon Nick Clegg MP, the leader of the Liberal Democrat party, expressed a view on the circumstances in which he and his party would support an attempt to form a government.

12. In a television interview, Nick Clegg stated this conclusion as “whichever party gets the most votes and the most seats, if not an absolute majority, has the first right to seek to govern, either on its own or by reaching out to other parties”.¹⁶ Rt Hon David Laws MP, a member of the Liberal Democrat coalition negotiating team, explained the background to this statement as follows:

What Nick had said during the general election campaign is that, whichever party had the largest number of seats and votes—we assumed that it would be the same, but obviously it could have been different—we would talk to them first, because we thought it would look very odd to the public if we went into talks first with the party that had just appeared to have lost power.¹⁷

13. This appears to contradict the traditional constitutional convention, and “may have misled people into thinking that he was asserting constitutional doctrine”.¹⁸ Nick Clegg’s comment is also included as a footnote to the December 2010 Cabinet Manual which may suggest that it has set a precedent for future elections where there is no overall majority.¹⁹

14. Both the constitutional convention and Nick Clegg are right in different ways. The constitutional right need not be reflected in the political reality of a political party’s choice of negotiating partner. Professor Robert Blackburn, Director of the Centre for Political and Constitutional Studies, King’s College London, states this clearly in his written evidence:

An important distinction to be drawn in interpreting the constitutional conventions on hung Parliaments is to realise that the right of an incumbent Prime Minister to remain in office and attempt to form a working Commons majority with others outside his party, does not mean or translate into a constitutional obligation upon third parties to do a deal with the incumbent Prime Minister or even to enter into any negotiations with him and his party.²⁰

15. The December 2010 Cabinet Manual provided greater clarity on the extent to which an incumbent government has a right to stay in office to see whether it can command the confidence of the House of Commons. However, the inclusion of the comments made in May 2010 by the Leader of the Liberal Democrat party may suggest that this view will carry weight in future.

16 Ev 70 [Constitution Unit]

17 Q 11

18 Ev 70 [Constitution Unit]

19 Cabinet Office, *The Cabinet Manual – Draft*, December 2010, page 26

20 Ev w5

When should a Prime Minister resign?

16. Closely linked to the question of who has the first right to form a government is the question of when an incumbent Prime Minister should resign once it becomes clear that his position is unsustainable.

17. As discussed above, in the event of a hung Parliament, an incumbent Prime Minister (and government) has a right to remain in office to see whether or not he can form a government which commands the confidence of the House of Commons. There is precedent for this as in 1974, the last time that there was a hung Parliament, the incumbent Prime Minister Edward Heath remained in office for four days after the general election “because he wished to ascertain whether there was any reasonable prospect of him being able to command a majority in the House of Commons before deciding whether or not to resign”.²¹ The last Prime Minister to exercise his right to meet the new Parliament and be defeated was Stanley Baldwin in 1924.²²

18. Distinct from this is the duty of the Prime Minister to ensure that the Monarch is not without an advisor, and therefore to remain in office until the identity of his successor is clear. Under current constitutional conventions, the Prime Minister does not have a duty to remain in office until the nature of the next government is clear or until the next government is ready to take office, only until a successor as Prime Minister can be found. Evidence from the Hansard Society states that

The incumbent Prime Minister had a constitutional obligation to stay in Downing Street until such time as the political position was clear as to who could form a government... Our constitutional system does not provide for a formal period of transition and therefore political clarity takes precedence over subjective perceptions of readiness.²³

19. In May 2010, Gordon Brown was under conflicting sets of pressure in what Professor Blackburn calls a “constitutional bind”.²⁴ It seems that “the Cabinet Office, and Buckingham Palace officials taking their lead from the civil servants, were putting him under some pressure to remain in post until the next day or even longer”.²⁵

20. Since the election Gordon Brown has been criticised for resigning prematurely. For example, David Laws said in oral evidence that “he ... eventually lost patience a few hours before it would have been ideal”.²⁶ The Deputy Prime Minister said in a television interview following the election that he “thought it was not the right way of going about things” for him “suddenly to be told out of the blue the Prime Minister was going to ... march off to

21 Q 66

22 Ev 70

23 Ev 64

24 Ev w6

25 Ev w7

26 Q 23

Downing Street and say, ‘I’m fed up with this. You know I’m going to throw the towel in and I’m going to... march off into the distant horizon’”.²⁷

21. However, Gordon Brown was also facing media accusations that he was a “squatter” in Downing Street, creating pressure for him to resign earlier than he did.²⁸

22. Gordon Brown resigned at a constitutionally appropriate time. He did not have a constitutional obligation to remain in office for longer, nor to resign sooner.

23. This is because, as the Institute for Government explain:

He left at the point when it had become evident that he could not remain in power, and that David Cameron was the only political leader able to form a government that could command confidence in the House of Commons, although it remained uncertain whether that might be through minority government with ‘supply and confidence’ support from other parties or formal coalition.²⁹

24. The December 2010 Cabinet Manual states that

The incumbent Prime Minister is not expected to resign until it is clear that there is someone else who should be asked to form a government because they are better placed to command the confidence of the House of Commons and that information has been communicated to the Sovereign.³⁰

25. The December 2010 Cabinet Manual also states that “The Government... 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”.³¹

26. The December 2010 Cabinet Manual goes some way to clarifying this issue. However, it is interesting that following its publication, media commentators have interpreted the Manual as suggesting that “the situation whereby the losing prime minister can force the formation of a new government by offering his or her resignation before a coalition is fully formed should not occur again” and that “this is designed to prevent the power vacuum that existed when Gordon Brown suddenly gave up and quit”.³² This is not how the passages quoted above read to us, but it indicates that it would be helpful if the Cabinet Manual were more explicit on this point. Greater clarity could also be brought to the distinction between the right of a Prime Minister to continue in office to face a confidence vote in the House of Commons, the duty of the Prime Minister to ensure that the Sovereign is not without an advisor, and the obligation upon the Prime Minister to resign when it is clear that someone else is better placed to command the confidence of the House of Commons.

27 Ev w7

28 Ev 70

29 Ev 66

30 Cabinet Office, *The Cabinet Manual – Draft*, December 2010

31 As above

32 ‘Civil service rewrites conventions on when PM should resign in hung parliament’, *The Guardian*, 14 December 2010; ‘The Cabinet Manual - No more Gordo-style quitting or squatting?’, *PoliticsHome*, 14 December 2010

27. **There needs to be clear and well-understood published guidance about when an incumbent Prime Minister should resign and when he has a duty to remain in office, in particular whether this extends to a duty to remain in office until there is clarity as to the form of an alternative Government, as opposed to simply the name of an alternative Prime Minister. Reaction to the events of May 2010 suggests that more detailed guidance was needed then. Reaction to the revised text in the December 2010 Cabinet Manual suggests that it may not go far enough.**

Appointment of the Prime Minister

28. Currently, when a Prime Minister resigns, he or she advises the Queen on whom she should appoint as the next Prime Minister. The established convention seems to be that the Monarch is not obliged to take the advice of the outgoing Prime Minister, and may take advice from other sources, although if the resignation of a Prime Minister follows a general election in which another party has won a single majority in the Commons, there will be in practice no question about who should become the new Prime Minister. This person is then asked by the Monarch to form a government. An alternative to this arrangement would be to introduce an investiture vote.

29. An investiture vote has been described by the Institute for Government as “a formal vote among MPs on who should be invited to form the new government”.³³ With an investiture vote, while the ultimate power to appoint the Prime Minister would remain with the Monarch, the power to propose a name would move from the incumbent Prime Minister to the House of Commons. By way of a parallel, section 46 of the Scotland Act provides for the Scottish Parliament to nominate one of its members for appointment by the Queen as First Minister.

30. There are arguments for and against introducing an investiture vote in the UK.

31. At present, there is no transparent link between the results of a general election and the formation of a government. A general election returns a House of Commons, and a Prime Minister can only govern if he can command the confidence of the House. But the Queen chooses a Prime Minister after a general election on the basis of how her advisers think the newly elected House will vote, without asking the House first. This is partly a matter of history, partly to allow a Government to begin work without waiting for the House to meet, and partly because the results of elections are often clear. Currently the first test of whether a government and its Prime Minister can command the confidence of the House after a general election is towards the end of the debate on the Queen’s speech. Rt Hon Oliver Letwin MP, a member of the Conservative coalition negotiating team, now Minister of State in the Cabinet Office gave the opinion that he considered it to be a “thinkable arrangement”.³⁴ The Institute for Government argued in their written evidence for the introduction of an investiture vote.³⁵ It has been argued to us that an investiture vote would be more comprehensible to the general public, and would demonstrate that the

33 Ev 67

34 Q 89, Q 90

35 Ev 67

government has the confidence of the Parliament that the people have just democratically elected.³⁶

32. Government witnesses, however, questioned the added value that an investiture vote would bring, the Cabinet Secretary commenting that “it’s a question about what does it add?”³⁷ and Oliver Letwin suggesting that it would be unlikely to be “transformingly different”.³⁸ An investiture vote would certainly seem to have more obvious value following a general election that has produced a hung Parliament, yet most elections since the Second World War have resulted in a clear single-party majority.

33. It has been put to us that an investiture vote would also reduce the risk of the Monarch being drawn into the political process of determining who is best placed to form a government following an election producing a hung Parliament.³⁹ While all efforts are currently made to prevent the Monarch being drawn into the process, under the current constitutional conventions a risk remains that a monarch could appear to have intervened if someone was asked to form a government who was subsequently shown not to enjoy the confidence of the House of Commons.

34. It is obvious that an investiture vote would need to take place quickly. It is equally obvious that it could not take place quickly enough to keep step with recent changes of government, even that in 2010. Parliament does not normally meet until the Wednesday following a Thursday election. Members may not sit or vote in the House before taking the Parliamentary oath, other than to elect a Speaker. The statutory penalty for any Member who attempts to do so is that “his seat shall be vacated in the same manner as if he were dead”.⁴⁰ The first sitting day is reserved for the election of the Speaker; three sitting days are then normally set aside for the oath to be taken. Altogether, this means that if current practice were continued, the first opportunity that the House would have to hold an investiture vote would be nearly two weeks after the election.⁴¹ Even if this timetable were to be compressed, an investiture vote would cause some delay in any transition between administrations. There are arguments for and against such a delay, but it would certainly be a change in practice that goes against current political expectations.

35. There are arguments both for and against the idea of an investiture vote after a general election in which the House of Commons would choose a Prime Minister before he or she was appointed by the Monarch. It is an idea that we may wish to consider further in future.

36 Ev 67 [Institute for Government]; Ev 72 [Constitution Unit].

37 Q 223

38 Q 90

39 Ev 67

40 Parliamentary Oaths Act 1866

41 Ev 73 [Constitution Unit]

3 Practical aspects of government formation

36. This chapter addresses two practical lessons that might be learned from the events of May 2010.

Timing

37. Academic experts agree that “the five-day government formation period in May 2010 was ... remarkably short compared to many other western democracies”.⁴² Those involved in negotiations following the general election told us, however, that five days, on this occasion, was sufficient to conclude an initial coalition agreement without significantly affecting its quality.⁴³ A long history of immediate transitions between administrations created expectations of a swift process, and there were fears that financial markets would suffer if there was a long period of uncertainty about the identity and form of the next government.⁴⁴

38. Several witnesses told us that the experience of May 2010 means that in future, the period of government formation could take a little longer if necessary without a sense of crisis emerging in the media or the financial markets.⁴⁵ We hope that this would be the case where a future general election results in a hung Parliament. Lord Adonis, a member of the team appointed by Gordon Brown to negotiate with the Liberal Democrats, envisaged a situation whereby politicians from the three main parties agreed not to begin negotiations until the Monday following a general election on a Thursday. He told us that

If the three major party leaders had agreed, if they had come out on the Friday and said collectively, ‘Hey, look, we’re all absolutely shattered and exhausted, none of us have slept for a week, we do need to recover and consult with our colleagues before we start these negotiations, and we’re not going to start them until Monday’, it might have been possible to have proceeded in that way.⁴⁶

This seems to us to be a sensible approach.

The role of the civil service and the Cabinet Secretary

39. Following the result of the election, the Cabinet Secretary, Sir Gus O’Donnell, offered civil service support on the same basis to all political parties for negotiations to form a government. This is a new development.⁴⁷ In the event, however, the civil service provided only very limited support for the negotiations that took place. David Laws explained that

42 Ev 66 [Institute for Government].

43 Q 84; Q 74; Q 15

44 Q 120 [Professor Hazell]

45 For example Q 127 [Professor Hazell], Q 130 [Dr Fox]

46 Q 75

47 Ev 65 [Institute for Government]; Ev 68 [Constitution Unit].

Gus also did offer to support the negotiations.... But, here, our parties decided that we would do the talks direct, that we did not need the civil servants in the room and, therefore, they left and the talks only took place with the negotiating teams and some note takers.⁴⁸

Oliver Letwin suggested to us that being able to “meet the man” (the Cabinet Secretary) to receive “advice about the constitutional proprieties” was “extremely helpful”, and that as a result he had not needed to refer to the draft Cabinet Manual chapter on elections and government formation.⁴⁹

40. The Cabinet Office has published the internal guidance issued by the Cabinet Secretariat on 6 May 2010 on civil service support to coalition negotiations. The December 2010 Cabinet Manual contains similar guidance.⁵⁰ We welcome the publication of this guidance and the spirit of the guidance, that the civil service should remain impartial and be limited to providing factual information, logistical support and constitutional advice.⁵¹

41. In light of the fact that coalition negotiations took place successfully between political parties in May 2010 without significant input from civil servants, the Government may wish to consider whether such extensive support should be offered in future. The greater the involvement of the civil service in coalition negotiations, the harder it is likely to be to maintain the appearance of impartiality. For example, following the Cabinet Secretary’s comment to the BBC that he had told politicians after the 2010 general election that “pace was important, but also the more comprehensive the agreement the better”,⁵² the Chair of the Select Committee on Public Administration suggested to him that he had “put public pressure on political parties to form a long term coalition”.⁵³

42. It is important that the civil service should not only act impartially, but appear to act impartially, and therefore any public statements that could be interpreted as suggesting that the civil service has had a political impact should be avoided.

43. We welcome the inclusion in the December 2010 Cabinet Manual of guidance on civil service support to government formation negotiations. We recommend that final guidance should take pains to protect civil servants from accusations of political interference, taking account of the fact that much of the support on offer in 2010 was not taken up.

48 Q 20

49 Q 118

50 Cabinet Office, *The Cabinet Manual – Draft*, December 2010

51 <http://www.cabinetoffice.gov.uk/media/421449/coalition-negotiations.pdf> Annex A

52 *Five days that changed Britain*, BBC

53 Oral Evidence taken before the Public Administration Committee on Thursday 28 October 2010

4 The Programme for Government

44. An initial coalition agreement was created by the Conservative and Liberal Democrat parties on 11 May, five days after the election.⁵⁴ Nine days later on 20 May, the Government published a more detailed document entitled *The Coalition: Our Programme for Government*, which outlined the Government's substantive policies.⁵⁵ On 21 May, the Government published the *Coalition Agreement for Stability and Reform*, an operational document setting out "the basis upon which the Conservative and Liberal Democrat Parliamentary Parties will jointly maintain in office Her Majesty's Government".

45. We are not concerned here with the content of the Programme for Government, but rather with its constitutional status. We may consider as part of a future inquiry the operations of coalition government, as opposed to the processes by which that Government came into being.

Status of the coalition agreement

46. It has been suggested that the coalition Government's programme for government lacks a popular mandate because it was created after the general election and therefore the electorate had no opportunity to vote on it.⁵⁶ According to Professor Blackburn, "its moral authority in terms of representing a democratic mandate for government is open to debate".⁵⁷

47. However, the majority of our evidence does not suggest that the programme for government lacks legitimacy because of this.

48. We agree, for two reasons. The first is that, as submitted by Professor Dawn Oliver, Emeritus Professor of Constitutional Law at University College London,

no government for many decades has won the votes of a majority of those who voted in an election, given the fact that most constituencies are won on three or four etc cornered fights and the winning candidate seldom wins a majority of the votes cast. Thus winning an election does not necessarily grant a government a 'mandate'.⁵⁸

49. The second reason is that a coalition government has no opportunity to put its programme to the people. As Dr Catherine Haddon, a Research Fellow at the Institute for Government, told us: "I don't know how it would work in practicality. You can't then re-have the election on the basis of voting for the coalition agreement."⁵⁹

54 *Conservative Liberal Democrat coalition negotiations, Agreements reached*, 11 May 2010

55 HM Government, *Our Programme for Government*, May 2010

56 For an example see Ev w1.

57 Ev w7

58 Ev w1

59 Q 149

50. However, there remains a distinction between policies contained in a coalition government's programme for government and those contained in a manifesto. Oliver Letwin agreed that a manifesto and a coalition agreement are:

completely different kinds of document... it is at least open to voters to read the manifesto and that some voters—maybe a higher proportion of those making up their mind than those already settled in their convictions—do read manifestos, or read summaries of manifestos, or read summaries of the manifestos in the newspapers and elsewhere. Therefore, at least I think one can say that some of the main lines of the manifesto probably have some influence on the outcome of a general election...The coalition agreement manifestly can't because it isn't in existence at the time of a general election. It is a totally different status of document.⁶⁰

51. A policy contained in a coalition agreement does not have the same mandate as a manifesto pledge, except where the policy was reflected in the manifestos of both parties to the coalition. In the case of a pledge which was contained in one coalition party's manifesto, the popular mandate in support of it was not enough to give that party a majority. Where policies are included in a coalition agreement that were not included in the manifesto of any party to a coalition government, these carry the same authority as a non-manifesto policy adopted after an election by a single-party government.

52. This seems to us to have two consequences. The first is that a coalition government has a duty to ensure that Bills and other decisions which originate from policies in the programme for government are subjected to rigorous scrutiny by Parliament, and that Parliament is given sufficient opportunity to carry out this scrutiny. As Dr Ruth Fox from the Hansard Society told us,

given that [Bills originating from the programme for government] are not manifesto Bills, there is also, it seems to me, an onus on the Government in terms of bringing forward its legislation to ensure that it does so in a way that allows for maximum scrutiny of those issues.⁶¹

This sees parliamentary scrutiny as a form of compensation for a democratic gap.

53. We have previously expressed our commitment to pre-legislative scrutiny, especially for Bills of legal and constitutional sensitivity.⁶² **By its nature, the policies of a coalition government have not been endorsed by the people. This makes full pre-legislative scrutiny and proper consultation on those policies all the more important.**

54. The second consequence is that **Members of the House of Lords may not feel bound to apply the Salisbury-Addison convention to policies contained in a coalition government's programme for government.**

55. The Joint Committee on Conventions published a report in 2006 which articulated the Salisbury-Addison convention as follows:

60 Q 114

61 Q 157

62 Political and Constitutional Reform Committee, Second Report of Session 2009/10, *Fixed Term Parliaments Bill*

The Convention which has evolved is that:

In the House of Lords:

A manifesto Bill is accorded a Second Reading;

A manifesto Bill is not subject to “wrecking amendments” which change the Government’s manifesto intention as proposed in the Bill; and

A manifesto Bill is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the Bill or any amendments the Lords may wish to propose.⁶³

56. The Joint Committee also recommended against attempting to define what constitutes a manifesto Bill.⁶⁴

57. It is for individual Members of the House of Lords to decide whether to apply this convention to Bills which originate from the coalition Government’s programme for government. We have sought the views on this matter of the Leaders of the main political parties in the House of Lords, as well as the Convenor of the Independent Crossbench Peers. However, we received a range of opinions from a number of witnesses and no definitive consensus has emerged.⁶⁵ Baroness Royall, Leader of Her Majesty’s Official Opposition in the House of Lords, has argued that these cannot rightly be called manifesto Bills.⁶⁶ Robert Hazell argued in oral evidence that the convention actually applies to all government Bills.⁶⁷

58. There is some academic debate as to whether the Salisbury-Addison convention continues to exist.⁶⁸ We will return to this issue in detail when we examine the Government’s proposals to reform the House of Lords.

59. Doubts about the applicability and even existence of Salisbury-Addison, as discussed above, draw attention to the centrality of conventions to the operation of the UK political settlement, and the confusion that can sometimes surround them. This informality is associated with the un-codified nature of the UK constitution, another issue to which we shall return.

Internal Party Processes

60. We heard evidence about the Liberal Democrat party’s internal “triple lock” arrangement for agreeing to a coalition (or other) arrangement.⁶⁹ David Laws described this as “a process of approval that required the parliamentary party, our federal executive,

63 HC 1212-I (2005—06), Para 99

64 HC 1212-I (2005—06), Para 113

65 Ev w10 [Baroness D’Souza]; Ev w11 [Baroness Royall of Blaisdon]

66 Ev w11

67 Q 156

68 Ev 64

69 Q 8

which is the sovereign party body, and ultimately a special conference having to sign off on the agreement⁷⁰. We note that the Labour and Conservative parties do not have such an arrangement in place. **It is for the political parties to decide if they wish to review their internal procedures in light of the events of May 2010.**

5 Pre-election and post-election activity

Background

61. Traditionally the term ‘purdah’ has been used to describe the convention that government activity is subject to restrictions during an election campaign. The General Election Guidance issued to civil servants before the 2010 general election and published by the Cabinet Office describes these restrictions in the following manner:

...it is customary for Ministers to observe discretion in initiating any new action of a continuing or long-term character. Decisions on matters of policy on which a new Government might be expected to want the opportunity to take a different view from the present Government should be postponed until after the Election, provided that such postponement would not be detrimental to the national interest or wasteful of public money.⁷¹

The same guidance describes restrictions on public appointments and communications activities. Similar guidance, applying to the work of the UK civil service in the month before local elections and elections in the devolved administrations, states that “announcements on non-devolved matters could have a bearing on the devolved elections. Ministers will be aware of the potential sensitivities in this regard and might decide, on advice, to postpone making controversial announcements until after the elections”.⁷²

62. The Justice Committee made extensive recommendations in this area towards the end of the last Parliament.⁷³ The Cabinet Secretary told us that the draft chapter of the Cabinet Manual on elections and government formation had been reviewed in light of these comments.⁷⁴ The December 2010 Cabinet Manual suggests that new guidance will be issued to Ministers and civil servants each time there is an election.⁷⁵

Name of convention

63. The Justice Committee found that “the term ‘caretaker’ is clearer and more meaningful than ‘purdah’ and should be used in formal guidance”.⁷⁶ In fact ‘purdah’ traditionally refers to restrictions on government announcements, and ‘caretaker’ has been used to describe restrictions on other government activity, and so to use ‘caretaker’ to describe both would be misleading.⁷⁷ The Cabinet Secretary also raised objections to the term ‘caretaker’ in

71 General Election Guidance: <http://www.cabinetoffice.gov.uk/media/354815/2010electionguidance.pdf>

72 Elections to the Scottish Parliament, the National Assembly for Wales, and Local Elections in England: Guidance on Conduct for Civil Servants in UK Departments, http://www.cabinetoffice.gov.uk/media/cabinetoffice/propriety_and_ethics/assets/electionsguidanceforukofficials.pdf

73 Justice Committee, *Constitutional Processes Following a General Election*

74 Ev 76 [Sir Gus O’Donnell]

75 Cabinet Office, *The Cabinet Manual – Draft*, December 2010

76 Justice Committee, *Constitutional Processes Following a General Election*, para 13

77 Q 132 [Professor Robert Hazell]

written evidence.⁷⁸ The December 2010 Cabinet Manual refers to “restrictions on government activity”, which seems to us to be clear, accurate and easily understood.⁷⁹

Defining restrictions

64. The draft Cabinet Manual chapter explains that restrictions apply between the announcement of an election and polling day, and that these restrictions continue to apply after a general election in the event of a hung Parliament.⁸⁰ The application of the restrictions beyond the election is a new constitutional development, rather than a reflection of a pre-existing convention.⁸¹

65. The December 2010 Cabinet Manual provides significantly more detail in this area. It makes clear that restrictions apply “in the run-up to an election, immediately afterwards if the result is unclear, and following the loss of a vote of confidence”.⁸² It also sets out that a government should during these periods defer

taking or announcing major policy decisions; entering into large/contentious procurement contracts or significant long-term commitments; and making some senior public appointments and approving Senior Civil Service appointments.⁸³

66. **We welcome the clarification and further detail of restrictions on government activity set out in the December 2010 Cabinet Manual.** However, we remain concerned on two specific points.

67. First, the December 2010 Cabinet Manual states that in a period after an election producing a hung Parliament, or after a successful vote of no confidence,

the Government would be able to announce its policy intentions—including policies it might hope to include in the Queen’s Speech—since restrictions on announcements that would be inappropriate during an election campaign need no longer apply.⁸⁴

68. We are concerned that announcements by the Government in such circumstances could be used to party-political advantage, even if no election has been announced or is in obvious prospect.

69. Secondly, in any period where there is doubt as to whether a government can command the confidence of the House of Commons, the restrictions on government activity should be more stringent and limit a government to only its day-to-day running and urgent and essential decisions. These more stringent restrictions would apply after a general election where there was no overall majority and after a vote of no confidence.

78 Ev 77

79 Cabinet Office, *The Cabinet Manual – Draft*, December 2010, para 67

80 Cabinet Office, *Cabinet Manual Chapter 6* [draft]

81 Justice Committee, *Constitutional Processes Following a General Election*, Q 100

82 Cabinet Office, *The Cabinet Manual – Draft*, December 2010

83 As above

84 As above

70. We recommend that the Cabinet Manual should be amended to:

- a) reflect that restrictions on public announcements apply not only in the weeks before an election but also in situations where there is doubt as to who can command the confidence of the House of Commons; and
- b) make clear that the restrictions which apply to government activity where there is doubt as to who can command the confidence of the House of Commons are more stringent than those which apply to government activity before an election.

Restrictions in practice

71. During the periods in which restrictions on government activity apply, there are two eventualities for which the civil service should prepare.

72. The first is the need for Ministers to consult politicians from other parties in the event that important business cannot be delayed. As the Justice Committee noted:

Clearly there are some issues and some circumstances in which delay can be extremely damaging to a particular industry, to the supplier who has bid for a contract or to a whole industry or sector. Conventions need to be in place to facilitate agreement by consensus across the parties on such matters.⁸⁵

73. An example of such a circumstance occurred on 9 May 2010, at a time when party negotiations to form a new government were still ongoing. On this day, Rt Hon Alistair Darling MP, the incumbent Chancellor of the Exchequer, attended an extraordinary meeting of the European Council of Finance Ministers (ECOFIN) in Brussels, called to address financial stability in Europe. At that meeting, the Chancellor agreed to the creation of a new European Financial Stabilisation Mechanism, as part of a comprehensive package of measures to preserve financial stability in the EU, providing for the EU Budget to guarantee EU borrowing to support Member States in need, up to the level of €60 billion. Other commitments reached at the meeting, in particular a Special Purpose Vehicle of up to €440 billion, did not involve any financial commitment from the United Kingdom. We do not dispute Alistair Darling's view that "the meeting was urgent and decisions had to be reached by the time the markets opened on the Monday morning".⁸⁶

74. Before attending the meeting, Alistair Darling consulted Rt Hon George Osborne MP and Rt Hon Vince Cable MP, at the time the Conservative and Liberal Democrat Treasury spokesmen.⁸⁷ While George Osborne suggests that he "cautioned against committing the UK to proposals that have a lasting effect on the UK's public finances", Alistair Darling submits that "their view was that [as] I was still the Chancellor they were not offering an opinion as to what I should do".⁸⁸

85 Justice Committee, *Constitutional Processes Following a General Election*, para 13

86 Ev w15

87 Ev w15

88 Ev w15

75. In the event, as Alistair Darling writes, “the proceedings were subject to [Qualified Majority Voting] and ... for us to have abstained would have meant we would have been outvoted anyway but we would have lost our influence in the other matters which would be regarded as important”.⁸⁹ Therefore we recognise why Alistair Darling took the course of action he did.

76. We also recognise that Alistair Darling was correct to consult his Opposition counterparts. In his evidence to us, he states that “Whilst there is no formal obligation to consult, I believe it is a matter of courtesy that it was right to ensure that the then Opposition was fully informed”.⁹⁰ This is consistent with the language of the draft Cabinet Manual chapter available at the time which states that as an alternative to postponing important decisions, “other options include ... consulting with the opposition parties”.⁹¹ The December 2010 Cabinet Manual uses stronger wording, stating that “If decisions cannot wait, they should, where possible, be handled by temporary arrangements or consultation with the relevant opposition spokesperson”.⁹² **Where an incumbent Government needs to take a decision on an important matter that cannot be postponed during a period where restrictions on government activity apply, the duty to consult Opposition parties is more than a matter of courtesy. It is a recognition of an uncertain democratic mandate. We welcome the fact that the draft Cabinet Manual now makes this clear.**

77. The second eventuality for which the civil service should prepare is where Ministers take decisions or make announcements which breach the restrictions. The Justice Committee recommended in February 2010 that “a procedure should be established for mediating and, if necessary, making public, differences of opinion between Ministers and the civil service on the application of the ‘caretaker’ principles.”⁹³ In written evidence, the Cabinet Secretary set out his view on how this could happen.

It is my view that this can be addressed through the existing rules which apply to accounting officers, which will continue to apply during the three periods outlined above. Any restrictions on government activity in place during those periods will be relevant to the application of a Ministerial direction to accounting officers, as any commitments of public resources for political purposes must be avoided.

... In normal circumstances the direction would be sent to the Comptroller and Auditor General, who would then forward it to the Committee of Public Accounts. However, if there is a period when restrictions on government activity are in place and Parliament is not sitting, then the direction together with the reasoning provided by the accounting officer could be made public by the department immediately and laid before both Houses at the first opportunity after Parliament meets. The direction

89 Ev w15

90 Ev w15

91 Cabinet Office, *Cabinet Manual Chapter 6* [draft]

92 Cabinet Office, *The Cabinet Manual – Draft*, December 2010

93 Justice Committee, *Constitutional Processes Following a General Election*, para 13

should also be sent to the Comptroller and copied to the Treasury Office of Accounts at the time of publication.⁹⁴

78. This view is reflected in the guidance provided in the December 2010 Cabinet Manual.

79. Guidance from HM Treasury to accounting officers where a conflict arises between their duties and a Minister's instructions states that:

3.4.2 If, despite the Accounting Officer's advice, the minister decides to continue with a course the Accounting Officer has advised against, the Accounting Officer should ask for a formal direction to proceed. This can be oral but, if so, should be confirmed in writing as soon as possible.

3.4.4. When a direction is made, the Accounting Officer should:

copy the relevant papers to the C&AG promptly. The C&AG will normally draw the matter to the attention of the PAC, who will attach no blame to the Accounting Officer.⁹⁵

80. As the Cabinet Secretary points out, the Committee of Public Accounts no longer exists after Parliament has been dissolved. He is therefore right that the direction needs to be made public using another mechanism. However, we suggest that rather than individual accounting officers having this responsibility, this should be a matter for the Comptroller and Auditor General, who is statutorily independent of the Government and owes no allegiance to Ministers.⁹⁶

81. We recommend that civil service guidance should be drawn up and published on facilitating consultation between political parties during periods in which restrictions on government activity apply. This guidance should set out the processes to be followed where differences of opinion arise between Ministers and civil servants on the application of the restrictions. With regard to the specific issue of a Minister making a written direction to an Accounting Officer in the period before a general election, we recommend that the Government, in consultation with the Comptroller and Auditor General, should consider whether it would be better that the Accounting Officer should copy the relevant papers promptly to the Comptroller, in the expectation that he will publish them as soon as possible, rather than expect the Accounting Officer to arrange for their publication himself.

Pre-election contact between the civil service and opposition politicians

82. The incumbent Prime Minister authorised contact between civil servants and opposition parties to take place from January 2009, to enable them to work together in the event a change of administration.⁹⁷

94 Ev 77

95 HM Treasury, *Managing Public Money*, para 3.4

96 National Audit Act 1983 s1

97 Cabinet Office, *The Cabinet Manual – Draft*, December 2010 para 60

83. Under current convention this contact takes place only after authorisation is given by the Prime Minister.⁹⁸ The December 2010 Cabinet Manual states that “At an appropriate time towards the end of any Parliament ... the Prime Minister writes to the leaders of the main opposition parties to authorise pre-election contacts with the Civil Service”.⁹⁹

84. However, Professor Hazell suggested to us that:

in future the Cabinet Secretary might, as a courtesy, inform the Prime Minister that he has authorised pre-election contact in the usual way, and at the usual time in the electoral cycle, without feeling that the Prime Minister has to give his permission and therefore implicitly might be able to veto pre-election contact.¹⁰⁰

85. We do not agree. The civil service works for the government of the day, and **it is for the Prime Minister to determine when contact between civil servants and opposition parties can take place. There is no reason, however, why the authorisation for such contact could not be given in advance, as a matter of course, soon after a general election, rather than at a time when speculation about the future of an incumbent government may inhibit a decision.**

86. The Cabinet Secretary raised with us how this convention might operate if the Fixed-term Parliaments Bill becomes law.¹⁰¹ A regular parliamentary cycle would make it possible for the Cabinet Manual to specify a normal start time for pre-election contact. However, there would still need to be a reserve mechanism for authorising contact in the event of an early general election.

98 Q 212

99 Cabinet Office, *The Cabinet Manual – Draft*, December 2010 para 60

100 Q 143

101 Q 212

6 The Cabinet Manual

87. On 14 December 2010 the Cabinet Office published the Cabinet Manual in draft for consultation. We welcome this step.

88. The Cabinet Secretary has described the Cabinet Manual as

the first, comprehensive account of the workings of Cabinet Government [which] will consolidate the existing unwritten, piecemeal conventions that govern much of the way central government operates under our existing constitution into a single written document.¹⁰²

89. The December 2010 Cabinet Manual states that it

is intended to be a source of information on the UK's laws, conventions and rules, including those of a constitutional nature, that affect the operation and procedures of government. It is written from the perspective of the Executive branch of government. It is not intended to have any legal effect or set issues in stone. It is intended to guide, not to direct.¹⁰³

90. While the Cabinet Manual as a whole was not originally in the scope of this inquiry, several issues regarding the Cabinet Manual have arisen in the course of our evidence-taking. In particular, many of our recommendations draw on and suggest changes to the Cabinet Manual draft chapter on Elections and Government Formation that was originally published in February 2010. This illustrates the potential significance of the Cabinet Manual. During our inquiry we and our witnesses have raised questions about not only the content of the Manual but its use and constitutional status. For instance, in countries internationally, arrangements for government transitions might be expected to be provided for in a codified constitution, an entity that the UK lacks. It is important to ask how far and effectively the Cabinet Manual can be seen as potentially performing the role of *de facto* codified constitution for the UK, and whether it is acceptable that it should do so. We have therefore announced a broader inquiry into the Cabinet Manual, intended initially to inform the consultation which ends early in March 2011.

102 Justice Committee, Fifth Report of Session 2009-10, *Constitutional Processes Following a General Election*, HC 396

103 Cabinet Office, *The Cabinet Manual – Draft*, December 2010, p3

Conclusions and recommendations

Background

1. Our comments on the Cabinet Manual in this Report relate only to the issue of government formation. We will return in due course to wider issues raised by the Cabinet Manual. (Paragraph 5)

The First Opportunity to Form a Government

2. The December 2010 Cabinet Manual provided greater clarity on the extent to which an incumbent government has a right to stay in office to see whether it can command the confidence of the House of Commons. However, the inclusion of the comments made in May 2010 by the Leader of the Liberal Democrat party may suggest that this view will carry weight in future. (Paragraph 15)

When should a Prime Minister resign?

3. Gordon Brown resigned at a constitutionally appropriate time. He did not have a constitutional obligation to remain in office for longer, nor to resign sooner. (Paragraph 22)
4. There needs to be clear and well-understood published guidance about when an incumbent Prime Minister should resign and when he has a duty to remain in office, in particular whether this extends to a duty to remain in office until there is clarity as to the form of an alternative Government, as opposed to simply the name of an alternative Prime Minister. Reaction to the events of May 2010 suggests that more detailed guidance was needed then. Reaction to the revised text in the December 2010 Cabinet Manual suggests that it may not go far enough. (Paragraph 27)

Appointment of the Prime Minister

5. There are arguments both for and against the idea of an investiture vote after a general election in which the House of Commons would choose a Prime Minister before he or she was appointed by the Monarch. It is an idea that we may wish to consider further in future. (Paragraph 35)

The role of the civil service and the Cabinet Secretary

6. We welcome the inclusion in the December 2010 Cabinet Manual of guidance on civil service support to government formation negotiations. We recommend that final guidance should take pains to protect civil servants from accusations of political interference, taking account of the fact that much of the support on offer in 2010 was not taken up. (Paragraph 43)

Status of the coalition agreement

7. By its nature, the policies of a coalition government have not been endorsed by the people. This makes full pre-legislative scrutiny and proper consultation on those policies all the more important. (Paragraph 53)
8. Members of the House of Lords may not feel bound to apply the Salisbury-Addison convention to policies contained in a coalition government's programme for government. (Paragraph 54)

Internal Party Processes

9. It is for the political parties to decide if they wish to review their internal procedures in light of the events of May 2010. (Paragraph 60)

Defining restrictions

10. We welcome the clarification and further detail of restrictions on government activity set out in the December 2010 Cabinet Manual. (Paragraph 66)
11. We recommend that the Cabinet Manual should be amended to:
 - a) reflect that restrictions on public announcements apply not only in the weeks before an election but also in situations where there is doubt as to who can command the confidence of the House of Commons; and
 - b) make clear that the restrictions which apply to government activity where there is doubt as to who can command the confidence of the House of Commons are more stringent than those which apply to government activity before an election. (Paragraph 70)

Restrictions in practice

12. Where an incumbent Government needs to take a decision on an important matter that cannot be postponed during a period where restrictions on government activity apply, the duty to consult Opposition parties is more than a matter of courtesy. It is a recognition of an uncertain democratic mandate. We welcome the fact that the draft Cabinet Manual now makes this clear. (Paragraph 76)
13. We recommend that civil service guidance should be drawn up and published on facilitating consultation between political parties during periods in which restrictions on government activity apply. This guidance should set out the processes to be followed where differences of opinion arise between Ministers and civil servants on the application of the restrictions. With regard to the specific issue of a Minister making a written direction to an Accounting Officer in the period before a general election, we recommend that the Government, in consultation with the Comptroller and Auditor General, should consider whether it would be better that the Accounting Officer should copy the relevant papers promptly to the Comptroller, in

the expectation that he will publish them as soon as possible, rather than expect the Accounting Officer to arrange for their publication himself. (Paragraph 81)

Pre-election contact between the civil service and opposition politicians

14. It is for the Prime Minister to determine when contact between civil servants and opposition parties can take place. There is no reason, however, why the authorisation for such contact could not be given in advance, as a matter of course, soon after a general election, rather than at a time when speculation about the future of an incumbent government may inhibit a decision. (Paragraph 85)

Formal Minutes

Thursday 20 January 2010

Members present:

Mr Graham Allen, in the Chair

Mr Christopher Chope
Andrew Griffiths
Simon Hart
Tristram Hunt

Mrs Eleanor Laing
Mr Andrew Turner
Mr Stephen Williams

Draft Report (*Lessons from the process of government formation after the 2010 general election*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 90 read and agreed to.

Summary agreed to.

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

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

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 21 and 28 October and 4 and 18 November.

[Adjourned till Tuesday 1 February at 9.45 a.m.]

Witnesses

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Rt Hon David Laws , Member of Parliament	Ev 1
Lord Adonis , a member of the House of Lords, Director, Institute for Government	Ev 10
Thursday 21 October 2010	
Rt Hon Oliver Letwin , Member of Parliament, Minister for the Cabinet Office	Ev 20
Thursday 28 October 2010	
Dr Catherine Haddon , Institute for Government, Professor Robert Hazell , Constitution Unit, University College, London and Dr Ruth Fox , Hansard Society	Ev 30
Thursday 4 November 2010	
Sir Gus O'Donnell KCB , Cabinet Secretary and Head of the Home Civil Service	Ev 45

List of printed written evidence

1	Hansard Society	Ev 63
2	Institute for Government	Ev 65
3	Professor Robert Hazell and Dr Ben Yong, Constitution Unit, University College London	Ev 67
4	Cabinet Secretary	Ev 76
5	Cabinet Secretary (supplemental)	Ev 77

List of additional written evidence

(published in Volume II on the Committee's website www.parliament.uk/pcrc)

1	Graham Clowes	Ev w1
2	Professor Dawn Oliver, University College London	Ev w1
3	Professor Robert Blackburn, King's College London	Ev w2

4	Professor Matthew Flinders, University of Sheffield and Dr Felicity Matthews, University of York	Ev w9
5	Baroness D'Souza, Crossbench Convenor, House of Lords	Ev w10
6	Baroness Royall of Blaisdon, Leader of the Opposition, House of Lords	Ev w11
7	Rt Hon Gordon Brown MP	Ev w14
8	Mervyn King, The Governor of the Bank of England	Ev w14
9	Rt Hon George Osborne MP	Ev w15
10	Rt Hon Alistair Darling MP	Ev w15

List of Reports from the Committee during the current Parliament

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

Session 2010–11

First Report	Parliamentary Voting System and Constituencies Bill	HC 422
Second Report	Fixed-term Parliaments Bill	HC 436 (Cm 7951)
Third Report	Parliamentary Voting System and Constituencies Bill	HC 437
Fourth Report	Lessons from the process of Government formation after the 2010 General Election	HC 528

Oral evidence

Taken before the Political and Constitutional Reform Committee

on Thursday 14 October 2010

Members present:

Mrs Eleanor Laing

Mr Christopher Chope
Sheila Gilmore
Simon Hart
Tristram Hunt

Sir Peter Soulsby
Mr Andrew Turner
Stephen Williams

In the absence of the Chair, Mrs Laing was called to the Chair.

Examination of Witness

Witness: **Rt Hon David Laws**, Member of Parliament, gave evidence.

Q1 Mrs Laing: Good morning, Mr Laws.

Mr Laws: Good morning, thank you for inviting me.

Mrs Laing: Thank you very much indeed for coming to give us evidence this morning. May I begin by giving the apologies of the Chair, Graham Allen, who has been unwell—nothing serious but unwell today—and unable to chair the Committee, and so I'm chairing it in his place. He sends his apologies. He had been looking forward to this session.

Let me begin by explaining that, as part of our inquiry into the constitution and constitutional matters generally, we are undertaking an inquiry into the mechanisms for the formation of coalition government and we are very grateful to you for coming to discuss this with us this morning. First of all, is there anything you would like to say by way of introduction?

Mr Laws: Mrs Laing, thank you very much for inviting me. I think all I should say, by way of introduction, is just explain very briefly what my role was, so you know where I can and cannot help. I think probably the perfect person to have had here—but probably not the perfect time for him this week—would have been the present Chief Secretary, Danny Alexander, because he was not only in the talks but he was, as Nick Clegg's Chief of Staff, the person who had some of the discussions with Gus O'Donnell and, to some extent, with contacts in Buckingham Palace before the election, so that the process of coalition forming was well understood, and then he chaired our negotiating team in the talks.

My role was to be in a small group, which Nick Clegg formed a couple of months before the general election—probably in February or March—to think about what would happen in a hung Parliament; to consider the options, to consider our priorities and to consider issues to do with internal party communications if we ended up in some sort of partnership with another party. We had a small team of people who did that work before the election and made recommendations to Nick Clegg and to others in the party. Then it was that same team that Nick used to negotiate with the other two parties after the election delivered a hung Parliament.

Q2 Mrs Laing: That is very helpful. So those around your party leader were prepared before the general election for the negotiations? We should not really be surprised at that.

Mr Laws: Yes. It was obvious that a hung Parliament was a possibility. Obviously, given that it was going to be a fairly unprecedented arrangement if a formal coalition was formed—and obviously fairly important both to the country and to us as a party—it merited quite a lot of preparation and consideration of the different options in the hung Parliament, what the key policies would be that we would want to negotiate on, how we would get the agreement of the party during that period of time and how we would interface with other parties. So there was a reasonable amount of thought that went into that, but with a relatively small group of people. As I say, Nick did not chair those meetings but he set up a couple of groups that then reported in to him and made recommendations. There were one or two meetings during the general election itself, particularly on the Sunday before the Thursday of the general election, just to take stock of where we were and to make sure that we were ready for a hung Parliament.

There had also—I think over a slightly longer period of time—been some discussions between individual Liberal Democrat spokespeople and senior civil servants in some of the Departments, about our policy priorities, so that they were prepared to have briefings and costings on some of the key policies, in order to facilitate the discussions after the election. Jim Wallace in the House of Lords oversaw that process for Nick Clegg.

Q3 Mrs Laing: Thank you. That is very helpful. Before we go into details of the history, the chronology of what happened, can I ask you a general question about the coalition agreement, which evolved and then became the key document that came out of the talks? In your opinion, does the coalition agreement carry the same weight as a manifesto commitment?

Mr Laws: I think it carries a slightly different weight, doesn't it. I mean, a manifesto is the platform of a particular party if they secure power. It is a statement

14 October 2010 Rt Hon David Laws

of what we want to do if we, as parties, have a majority in the House of Commons. The coalition agreement reflects the fact that no party secured an overall majority, either of the votes or of seats, in the House of Commons and, therefore, we had to make compromises. I am sure that people who voted both for the Conservatives and for the Liberal Democrats sometimes write to their Members of Parliament and say, "We voted for you and we have something slightly different from what was in your manifesto". But the truth is that, as Liberal Democrats, we did not win a majority in the general election unfortunately. We only got one seat in 10 and, therefore, we could not deliver our manifesto. Therefore, this agreement now supersedes—as our commitment for this Parliament—the pledges that were in our election manifesto.

Mrs Laing: Thank you. Does anyone wish to start—Tristram first, and then I will come to you, Simon.

Q4 Tristram Hunt: Could that continue further outside of a coalition agreement? Do you see a constitutional precedent whereby you have a manifesto and you could conceivably argue, "Well, we haven't received a majority of votes, we only have 30-something. We're still the governing party but the mandate isn't there, we're going to establish a slightly different coalition". That would not necessarily be a coalition agreement, but you would have an agreement for the Government post-election. Does the role of the manifesto change, or do you think that is only unique to coalitions?

Mr Laws: I think it is particularly relevant in a coalition circumstance, if I understand your question correctly. Clearly, neither party can get all of its manifesto delivered. By definition there will have to be compromises and, therefore, you have to have some type of agreement early on that sets out, on the most difficult and sensitive issues, how you are going to deliver policies in government. The coalition agreement that was published just after the coalition was formed was a fairly short document, so it only focused on the big issues. Obviously there are compromises to be made in some other areas as well, but the coalition negotiating teams consider that they dealt with the most prickly issues. I am not sure whether I have answered your question properly.

Q5 Tristram Hunt: But in terms of being held to account at the next election, you would regard yourself as being held to account by the coalition agreement not by your manifesto?

Mr Laws: I would now, in the sense that I would say to our electors, "This is now what we're committed to delivering". But does that mean that I do not expect the electorate in my constituency to have views about what was in our manifesto and whether they think that we have done the right thing or not? Of course they will have those views, and if some part of the manifesto, which we made concessions on, has not been delivered, then they are entitled to reflect that in their voting in the next general election. But I am entitled to say to them that we did not have an overall majority; that we had to make compromises; that if we had not, there would not have been a stable

Government formed, and that if they want Liberal Democrat policies to be implemented in full, then enough people will have to vote for them to deliver them.

Mrs Laing: Thank you. Yes, Simon.

Q6 Simon Hart: This is on a related procedural point. How does this play in the House of Lords, where the Salisbury Convention normally applies to manifesto commitments and the Lords deal with that kind of legislation slightly differently? Do you think that the Salisbury Convention, in some shape or form, ought to apply to the commitments made in the coalition agreement, or can it?

Mr Laws: That's an interesting question. I think that those in the Lords have to acknowledge that in a coalition the circumstances are slightly different from those that pertain where a party has been able to form an outright majority; that if there is to be effective government, in a situation where no party has an overall control, then there has to be some sort of compromise between the parties after an election and that, since those parties have been democratically elected, that has to be respected. So I am sure there are those in the Lords who will make that argument about the validity of agreements reached as part of a coalition, compared with those in a manifesto by a majority party. But I think it is difficult to think, in the circumstances that we have, of a better way of dealing with this. I think ultimately, democratically elected parties, where there is no overall majority, are entitled to reach agreements of this type and expect that they will be respected by all parts of the Parliament.

Q7 Simon Hart: Would you go as far as saying that the Lords needs a convention that applies to these circumstances, because clearly the current one does not?

Mr Laws: Yes, I think you are right, that this is an issue that needs some consideration, given the potential otherwise—in not just present circumstances but in future circumstances—for people in the Lords to take different views about what type of mandate the Government have.

Mrs Laing: Thank you. Simon, is there more?

Simon Hart: That's all, thank you.

Mrs Laing: Would anyone else like to come back on this specific issue? In that case I will move to Andrew Turner.

Q8 Mr Turner: Can we start with what happened on Monday 10 May and Tuesday 11 May, when I am told Gordon Brown resigned, David Cameron took office and then the Liberal Democrat parliamentary party and its federal executive—I am reading this out—endorsed the outline coalition agreement reached by the negotiating teams. We do not have any such democratic system; in fact we are probably quite pleased not to have one. Could you just say a little bit more about what this parliamentary party and its federal executive—that is especially important—are involved in, and did this take place after David Cameron became Prime Minister and/or before Nick Clegg became Deputy Prime Minister?

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Mr Laws: We have a relatively democratic process within the Liberal Democrats, in terms of the approval that is required under circumstances such as this. There had been what had become known in our party as a “triple lock”, which was imposed by our conference when Paddy Ashdown was dealing with Tony Blair in the 1997 Parliament, when people in our party became rather nervous about whether or not the coalition would be formed without them knowing about it. So we had a process of approval that required the parliamentary party, our federal executive, which is the sovereign party body, and ultimately a special conference having to sign off on the agreement.

There is a question about whether the special conference was necessary or not, which I will not bore you with because it is probably a slightly geekish side aspect of this, but certainly I think we had a higher level of party approval than was necessary. We were also faced with a situation, on the afternoon of the Tuesday, where we were seeking to conclude the agreement with the Labour Party in the afternoon and the existing Prime Minister, Gordon Brown, became increasingly of the view—I think, as the afternoon went on—that the discussions with his party were effectively at an end. At that stage, he became very impatient to resign and felt, to some extent, that he was being kept hanging on as part of a negotiation and I think the civil service, the Labour Party and the Liberal Democrats were very concerned that he should not resign too soon because, as soon as he resigned, there would then not be a Government and a Prime Minister, and the Queen would be obliged to send for somebody else to form a Government, even though one had not been agreed. I think the timing was that he resigned—having become rather impatient, as we understand it—just before we put the final touches to the coalition agreement, but where we had made most of the agreement but had not quite finished it and before, obviously, we had had the discussions in our parliamentary party and federal executive, which were, I think, at 10 o’clock that night. So, at the stage that Gordon Brown resigned, the Queen then had to call for David Cameron, as the obvious alternative Prime Minister. But he went to the Palace not knowing whether he would be leading a coalition Government, or a minority Conservative Government, because we had not had a chance to go back to our parliamentary party and our federal executive to get their agreement to the coalition document.

Q9 Mr Turner: The problem seems to me to be that if, for example, the Liberals had had a plurality and the Conservatives had been the smaller party, you would not have been able to hold that meeting until after. What happens if the Prime Minister, Mr Brown, resigns and you have not done this process of going through the hoops with your executive? Is the Queen then left without anyone?

Mr Laws: That is a rather interesting question, which I would probably need to seek advice on. I imagine that the pragmatic answer—but I do not know whether this is the technically correct answer—is that I hope Nick would take up the offer to go to the Palace and say, effectively, that he had this agreement but it would be all signed and sealed later on, in the same

way that we did not have the permission of the special conference before the Government was formed the next day and before Nick became Deputy Prime Minister. I don’t think we needed to. We relied upon the fact that this was such an obviously appropriate agreement that our special conference would vote for it and support it. But since the eventuality of us being the larger party was not one that we planned for before the election, we did not cross the bridge of whether or not Nick would have to keep the Queen hanging on while the parliamentary party met. But I suspect, as a pragmatic fellow, Nick would probably accept the Prime Minister’s job and then deal with the small print later.

Mrs Laing: I am not sure it’s entirely fair to expect Mr Laws to answer that question, but that was a very good pragmatic answer. Thank you very much. I think, in answering the question, you could just about write an entire university thesis on it but that’s not fair this morning. Andrew.

Q10 Mr Turner: Gordon Brown has been described in some areas as an obstacle to reaching an alternative coalition agreement with Labour. Is that what the Liberals felt?

Mr Laws: Yes. Before the election, I think that we felt that there were issues if there was a hung Parliament, and the Labour Party option was an option, about whether it would be easy to go into Government with somebody who was a defeated Prime Minister and also somebody, I think, personally, who would be quite difficult to deal with in a coalition. He seems to be difficult to deal with in terms of his colleagues let alone another party. There was some consideration given to whether it would be appropriate to say before the election that we would not go into a coalition that was led by him. But that, of course, opens up lots of other questions about who the alternatives would be. We neither took a decision on that issue before the election nor did Nick say anything publicly, other than express his commitment to talk to the largest party in terms of votes and seats first. After the election, based upon the defeat that Gordon Brown had suffered as Prime Minister and our view that, actually, he would be impossible to work with in coalition, the view very rapidly formed itself—in the 24 hours after the election result—that it would be impossible for there to be any Labour coalition with him as the Prime Minister. That was fairly quickly communicated to him.

Q11 Mr Turner: So you are saying, “Not a hope, Mr Brown. We’re going to deal with the Labour Party in some form”, with the leader obviously, either to decide to have a coalition with the Conservatives or let the Conservatives get on with it on their own?

Mr Laws: That is not quite right. What Nick had said during the general election campaign is that, whichever party had the largest number of seats and votes—we assumed that it would be the same, but obviously it could have been different—we would talk to them first, because we thought it would look very odd to the public if we went into talks first with the party that had just appeared to have lost power. Nick was very insistent about that during the campaign and

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he was very insistent about that after the general election result, in spite of a lot of pressure by Gordon Brown to open parallel negotiations. We were always very clear about that. That did not mean that that was the only potential coalition outcome. The view was that if the talks with the Labour Party were not successful, and if it was possible to reach a policy agreement and to form a stable coalition with the Labour Party, that was certainly something that we were willing to consider. Obviously, we would have been mad not to because it would have weakened our negotiating position, in terms of delivering as many of our policies as possible.

Q12 Mrs Laing: If I may just follow that up, did the position, as set out by the Liberal Democrats at that point, have a significant effect on the timing of the resignation of Gordon Brown as Prime Minister?

Mr Laws: I think that they probably did, in the sense that he understood that unless he made it clear that he was going to step down as Labour Leader and Prime Minister fairly rapidly, we would not be able to enter serious talks with his party. He understood that, and in fairness, with a little bit of a struggle and a little bit of equivocation about the timing of his departure, he accepted that and therefore enabled the talks to take place.

Mrs Laing: Thank you. Andrew, do you have any other questions?

Q13 Mr Turner: Just one. So Gordon Brown announces that he will step down on Monday and yet the talks went ahead then with Labour and the Liberals together. The following day, Gordon Brown resigned—in the early evening, I think—and then David Cameron took office.

Mr Laws: The Prime Minister, Gordon Brown, announced that he would resign. I think it was a forward-dated resignation, it was not immediate. There was some issue about how long it would take. But he announced that on the Monday, the 10th, in the afternoon at about 5 o'clock. Then after that, fairly rapidly, there was a Cabinet meeting where he announced to them his resignation and then there was a meeting of the Liberal Democrat and Labour teams, which went on for a couple of hours. Then the Liberal Democrat and Labour teams met again the next morning to have further talks. Those did not make any progress, from our perspective, and then there were talks with the Conservatives in the afternoon that finished around the time that Gordon Brown was resigning as Prime Minister.

Q14 Mr Turner: The problem seems to me to be that your talks with Labour happened after Gordon Brown said he was going to resign. Who leads the Labour Party at that time, if the talks had shown the potential for being successful?

Mr Laws: In the talks?

Mr Turner: In the talks, obviously, but certainly who becomes Prime Minister is what I want to know.

Mr Laws: My recollection of what was agreed and announced—I hope I am getting this right—was that Gordon Brown was offering to resign but would have remained Prime Minister for a couple of months while

the leadership election took place. For a while he was suggesting that he might remain for a longer period of time and help to win the AV (alternative vote) referendum, and so forth, but we thought that probably would not help very much to win the AV referendum. So I think the idea was that he would stay on for two or three months through to the summer and there would be a new Leader of the Labour Party.

Mrs Laing: Thank you. Again, that is not fair: Mr Laws, you're responsible for many things but the conduct of Gordon Brown as Prime Minister is not one of them.

Mr Laws: Definitely not.

Mrs Laing: Andrew, are we finished on that? In that case I go to Stephen Williams.

Q15 Stephen Williams: Can I first of all ask, David, do you think our team and the other teams realistically had enough time to put together a stable Government? The United States has its elections, I think, the first Tuesday in November, and the new Administration—new congressman, new senators, governors, whatever—do not take office until January. Our European neighbours sometimes take months to put together a coalition government and yet we did it in a matter of four days. Do you think that is sensible in the future?

Mr Laws: Yes. Our team had a slightly different view on this. Some of my other colleagues, for instance, Chris Huhne, who is very up on the way things are done in other countries, and Andrew Stunell, who is used to local election negotiations, felt that we should take a lot of time and make sure that we got it right. During the preparation for all of this Chris was telling us how long they took to form coalitions in Germany and Malta, and all sorts of other countries. But it seemed to me, firstly, that as this was the first coalition that had been formed in this way in the UK in living memory, the public and media expectation would be very high that this would happen quite swiftly, and that they would judge the coalition early on by how efficiently this all appeared to be done. Of course, there was also a lot of instability in the markets, which we were concerned about, given the situation in Greece and southern Europe, and there was some fear that if it took a while to form a coalition that could spread to the UK. Some of us were pushing for this to take place quite quickly and viewed it as not impossible to agree the key issues quite quickly. I think this is the type of thing where the more time you allocate, the more time you will spend talking about it—you could spend weeks talking about all the entrails of it—but my view is that we could agree the big issues, more or less on the time scale that we did. I thought that was about the shortest sensible, and we delivered on this.

The other two parties were pushing harder, I think. Both David Cameron and Gordon Brown wanted a coalition to be formed by the Monday, and were talking about their concerns about would happen when the markets opened if we didn't have a coalition or good progress towards it. I do not think that time scale was realistic or necessary. But I do not think that we lost a lot by compressing it into the time scale that we did deliver on. All we would have done, if we had

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spent additional days talking, is messed around with the small print and added all sorts of bits and pieces that could be dealt with, perfectly sensibly, later in the longer agreement that was published a week or so after the coalition was formed.

Q16 Stephen Williams: If you were to go through this process again—there is a very high chance the next election may result in a hung Parliament, so the parties will have to have negotiating teams, and will obviously spend the next four years about how they might do it—how do you think it should be done differently? Do you think there should be more time and would it be a nice constitutional innovation if there was a breathing space built in?

Mr Laws: I do not think I would change it, except that I think, once we have been through a process like this, there might be a bit more tolerance and patience among the public for a little more time, if it was needed. It certainly was important to us as a party that we should not feel bullied into any particular time scale that would weaken our negotiating position. But compared with 1999 in Scotland, where they formed the coalition for the first Scottish Parliament after the Scottish Parliament elections, this was a lot more of an efficient, swift process. In Scotland in 1999, where I went up as a staff member to assist in some of the background work for the negotiations, it was not until the Monday morning when any serious discussions commenced. So there were three days after the election when, as far as the media and the public were concerned, nothing happened. I do not think that does very much to reassure people that coalitions can lead to good stable government. For our party, which believes in PR, it is particularly important to demonstrate to people that you do not end up with a complete and utter shambles and no Government for weeks on end.

Q17 Stephen Williams: I have just one final question, Chair, about the two negotiating teams from the other parties. Do you think the Conservative negotiating team and the Labour negotiating team were equally prepared to form a coalition, or do you think the attitudes were different?

Mr Laws: I think the Conservative negotiating team had done a lot of work, were very serious, were very well prepared and sent us various papers—in fairness to Labour, they sent one or two papers as well. But those papers, on the Conservative side, engaged quite seriously with what the obvious issues and problems were going to be and offered solutions and that helped our talks with the Conservatives a lot. As for the Labour team, Ed Balls has said publicly that he did not think that they prepared very well, or at all, and that impression certainly came across in negotiations. In fairness, I think that Andrew Adonis had probably thought about the issues quite a lot and thought through the constitutional issues. But what was a particular problem with the Labour team was not only that we felt that they were somewhat split on some of the key issues that we were discussing, but that we did not have Alistair Darling there as the Chancellor. The Labour team seemed to suggest to us that they did not have any mandate to agree on economic tax or

spending policy without the Chancellor's permission. That made it really difficult to discuss half of what were our most important issues because there was nobody in the room who was willing to take responsibility for that. That was totally different from the Conservative negotiations where the Conservative team, on almost all issues, had complete authority to negotiate.

Mrs Laing: Thank you. Sheila Gilmore would like to make a quick point.

Q18 Sheila Gilmore: It was following up the other question from Stephen. Is part of the problem that coalition building in Britain is presented as a crisis and, therefore, a lot of pressure is put on that may be unnecessary were there were a clear process, an understood constitutional process for this? I think you will agree that a lot of the media presentation at the time was along the lines, "This is a terrible crisis and if we don't do something about it..."

Mr Laws: Yes, I think that's true. In Scotland, in 1999, my recollection is that when the coalition was finally formed most of the media coverage was not about the details of it but reported, "Hurrah, at last these useless people have formed the Government and sorted it all out and the shambles is over". But I do not think there was any way around that on this occasion—the risk that the media and the public would form that view if we took a long period of time putting things together. We were worried it would take some time to get this right and that, in the meantime, the publicity would be damaging and it would damage the type of politics that we think is something that comes out of having a fairer voting system. So I think, on this occasion, it was particularly important for us to act quite swiftly and, more so, because of the state of the financial markets. But I agree with you, if this does happen again—and I suspect it's what's now happening in Scotland and Wales, where they are getting used to these things—then I think both the press and the public would be a bit more tolerant about, and understanding of, the processes and the time scale. Although I still think it is reasonable to expect two parties to have a clear idea of their negotiating objectives and get on and agree something relatively rapidly.

In Scotland, in 1999, it was not just the complexity of some of the issues and the disagreements on some of them, but how long it took the parties to get into the same room together that delayed the negotiations. This time, the parties, or certainly the Conservative and Liberal Democrat parties, were in the same room by 7.30, I think, on the day after the election—Friday the 7th—so that's when the talks started. That was a long way in advance of what happened in Scotland.

Q19 Mrs Laing: Thank you. That's very helpful. Committee, we'll go a little faster now because everybody wants to get in. Before I move to Tristram Hunt, can I ask you, as a general point, were you aware before you went into negotiations that the Cabinet Secretary had put together a new chapter to the Cabinet Manual about how a coalition might be formed? If you were aware of it, had you read it and was it helpful?

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Mr Laws: I think Danny Alexander dealt with the Cabinet Secretary, along with Nick, before the election and discussed all these issues, including, I think, with the Queen's Private Secretary. Therefore they had a very clear understanding of what was going to happen and what was expected and what the civil service would do. They communicated that to us. My recollection is that when we had a summary of all our agreements and our strategy—which was in mid-March, I think, attached to a note that Danny did that summarised our conclusions—there was the document that you are describing, as I recollect it. But if that was the right document, then it didn't seem to me to add an awful lot to what one would assume and know anyway, except for the very clear understanding that the Palace did not want to be involved and that it was our responsibility to find somebody, who was going to be the Prime Minister and be able to command a majority, before putting the Queen in a position where she then had to send for somebody to be the Prime Minister. But, other than that, there did not seem to be anything that was terribly exciting in the document that would constrain or inform our negotiations.

Mrs Laing: That's very helpful, thank you. Tristram Hunt.

Q20 Tristram Hunt: On the ground, during the period of negotiations, what was the role of the Cabinet Secretary? We have had evidence from him suggesting he wanted a Government in place, also from Monday, because he was concerned about the markets, which should not necessarily be the primary concern of the Cabinet Secretary. But what was his function during this period of negotiation?

Mr Laws: I think he, and his civil service colleagues throughout the Government, had done a good job in the run up to the election, I am sure, in communicating with both opposition parties and understanding their priorities and researching their policies. I think a lot of that work had been done and we saw some of it, which highlighted the costing of our policies, issues that the civil service were concerned about, and so forth. They had also gone out of their way obviously to have good communications—to a greater extent, I think, than in previous Parliaments—with Nick Clegg and with Danny and others to make sure that there was a clear understanding of what needed to happen. They had arranged the accommodation in the Cabinet Office; I think they had appointed a civil servant who would support our team, specifically, rather than relying upon somebody who was seen to be part of the existing Government. So they had done quite a lot of that work and that preparation. When we met, I think probably on the first formal day of negotiations, the Saturday—or sorry, maybe it was the Sunday—I think Gus offered to have the Governor of the Bank of England come to brief us, and I can't remember whether there was somebody from the security services or not, to inform our thinking, presumably particularly on the financial situation, which neither party took up because we did not think it was necessary. We suspected we knew what he was going to say and we also thought it was more appropriate for our Treasury spokesmen to talk to him, so we suggested it was dealt with bilaterally.

Gus also did offer to support the negotiations directly by having civil servants in the room taking notes, and so forth. That is very much how it happened in Scotland—in fact civil servants drafted the agreed parts of the policy negotiation and then sent it into politicians for the disagreed bits to be resolved. But, here, our parties decided that we would do the talks direct, that we did not need the civil servants in the room and, therefore, they left and the talks only took place with the negotiating teams and some note takers.

Q21 Tristram Hunt: On the role of the Governor of the Bank of England, George Osborne is on the record as saying that the Governor was invited in but—as you suggest—it was not needed. The Chancellor has suggested that was because there was a high degree of, effectively, ideological concurrence between yourself and the Conservatives, so there was no need for you to be shunted into thinking that way. You were pretty much all on the same page from Friday morning.

Mr Laws: I think the reasons that we did not take him up on that offer were firstly, that we thought we knew more or less what he was going to say; secondly, the crisis, or the potential for financial turbulence, did not seem to be quite to the extent of the type of crisis that would have required us to bring a non-political figure into political negotiations. I think also, because we felt we understood the economic circumstances, probably on our side of the table we did not necessarily feel that we wanted to be leant on in any way or perceived to be leant on. We were also offered, I think later in the talks, the Permanent Secretary to the Treasury to brief us. I think probably, although we did not get a chance to discuss our reasons for not taking it up, because this was put to us when we were in the negotiations in front of the other parties, I would have been a little bit reticent to have been seen to be bringing in non-political individuals that might influence in any way the decisions we reach. But, having said no, we then felt slightly guilty that—given the Governor of the Bank of England is an important person, his view is not insignificant—we made sure that Vince Cable was contacted so that he could have those discussions. I am not sure whether he ultimately had them, because we then had some feedback that Gordon Brown was a bit upset about what was going on, and I am not quite sure whether he managed to torpedo that proposal or whether Vince ultimately met up with the Governor. But we thought that that was the best compromise, that we would not end up getting involved with non-political people during our negotiations but that we would make sure that somebody as important as the Governor of the Bank of England would be listened to, at quite an important time when there was still some nervousness about whether the contagion in Greece and elsewhere would spread to the UK.

Q22 Tristram Hunt: One final question. Would you say, despite it being the convention that it was the sitting Prime Minister who should have the first attempt to form a coalition, that the energy activism of the civil service was focused on yourselves and the Conservatives?

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Mr Laws: In fairness to the civil service, because we did not want to look too promiscuous, we did not have our negotiations with the Labour team in the Cabinet Office, partly because we did not want to be going in and out of the same building talking to different people, which probably, presentation-wise, would not have looked wonderful. So we had our talks with Labour outside the Cabinet Office in a room in this building. Although when we started formal discussions, Gus O'Donnell did come along and he made the same offer, and we also declined it, so there weren't any civil servants in the meeting.

I am sure that civil servants would have supported us extremely professionally and even-handedly in both circumstances, but I do think sometimes there is a risk that the civil service can see the way the wind blows. And in Scotland when we were negotiating with Labour, we certainly felt that there was an inequality in the relationship between ourselves and Labour in the way that civil servants dealt with each team, because they knew who the more powerful party was. We did not have that problem, or didn't perceive that problem at all, in these negotiations I ought to emphasise. But I think that sometimes it is inevitable that strong impartiality of the civil service is qualified by a bit of anticipation of who is going to be wielding the power.

Mrs Laing: Thank you very much. Have you finished, Tristram? Simon Hart.

Q23 Simon Hart: Thank you. If we could go back to something you said earlier on in the early stages of the negotiations. Could you clarify this: you gave the impression that you went into negotiations with Labour with no real anticipation of it leading anywhere—and I'm not sure of the expression you used—but you felt you had to? Had there been a different leadership of the Labour Party at the time how much difference would that really have made? In other words, was the problem Gordon Brown or was the problem Labour? Which leads me to the second point: you referred to the impatience of Gordon Brown, and the perhaps slightly premature resignation, do you think there should be a protocol in place which limits what a Prime Minister can do in bursts of impatience at that kind of time? That picks up on Sheila Gilmore's point—if the nation knew that there was always going to be a 10-day period when a coalition would be formed, everybody would be a lot more relaxed and it would not have the feel of a crisis about it. The third, slightly more light-hearted, point is: if you were going through the motions a bit with Labour when it came to the—I think the expression was—big comprehensive offer by the Conservatives to form a coalition, were you pleasantly surprised? Did you feel David Cameron offered over the asking price or did you know what was coming down the line?

Mr Laws: On the Prime Minister issue, I think there ought to be an understanding that the Prime Minister stays on to facilitate negotiations in a hung Parliament. I think that is the expectation. In fairness to him, I think it was said by Peter Mandelson that Gordon Brown was not very keen to end up leaving Downing Street in the dark. Obviously some of the

people in the media were implying that he was clinging on after he should have cleared off. Once he felt that the negotiations with Labour were going nowhere—and they weren't going anywhere after midday on the Tuesday—and he felt he was being held in place in order to facilitate the forming of a Government by other parties, he was obviously getting quite agitated and eventually lost patience a few hours before it would have been ideal, but I think one can understand that. Had he lost patience 24 hours before, then it would have been, I think, a bit more of a problem and a bit more untidy.

On the Labour talks, we certainly went into them with very serious intent, having done a lot of work and being willing to negotiate and contemplate dealing with Labour. Our problems were two-fold: firstly, we felt the Labour team had not done sufficient preparation in some areas; did not have a mandate to negotiate some of the key policy issues; did not make the concessions in some of the key areas that the Conservatives had already done; and seemed to be quite split on some of the important issues and economic policy, so we did not really know what the position was on some of the key tax spending and deficit issues. Secondly, we did not think that some of the Labour Party people on the negotiating team were committed to forming a coalition. We thought some of them probably had a different view of what the Labour Party's interests were. So that was one of the most important things that made us think we could not take this further. We did not think they were united or serious, with the exception probably of Andrew and Peter Mandelson.

But we did, of course, have a concern about whether such a coalition could deliver stable Government because, with Labour, it would have had to be a coalition with side confidence and supply agreements with the DUP, the SDLP, the Alliance party, a Green, and possibly the Welsh Nats. That did not seem to be likely to form the basis of a very strong Government, particularly one that was going to have to take unpopular decisions. So both parties knew that that was an issue, but I think the lack of preparedness and unity on the Labour team were also quite an important signal to us that the whole thing just was not going to work.

On David Cameron's statement on the Friday, we had expected him to make a big bold offer, including coalition, because we thought that that was what the country would expect and that they would expect all the parties to be trying to form a stable government. We did not think that parties would want to be seen to be putting their own interests before that of the country. So we expected that. What we did not necessarily expect was that it would be his preference. On re-reading the statement, and then thinking about what happened afterwards, I think where he did slightly surprise us—and which perhaps we did not pick up on on the day—was that it did seem as if his preference, as far as I can understand it privately, not having had the chance to ask him about it, was for a more stable coalition-type arrangement, rather than a looser confidence and supply agreement. We had not thought that that was necessarily the course that he would go down.

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Mrs Laing: Thank you very much, Simon. Christopher Chope.

Q24 Mr Chope: Can I take you back to what you said earlier on about Gordon Brown; you said there was an idea of getting him to help by staying on, so he could help win the AV referendum.

Mr Laws: That wasn't our idea.

Mr Chope: No, that was his idea and you said that was rejected, but was there ever any discussion about the possibility of Labour legislating immediately for AV without a referendum?

Mr Laws: No, I don't think that that was ever very likely. I won't say that there were not discussions about whether there did or did not need to be a referendum, but I think both sides knew that it would be very unlikely that we would want to change the voting system without one. I suspect that there was a certain amount of confusion because our view was that there needed to be a post-legislative referendum—that we needed to get legislation through first—and so what we were often talking about was that there needs to be immediate legislation on this. I think that there was some mangling across the parties as to whether “immediate legislation” meant without a referendum but that was never on offer from the Labour Party.

Q25 Mr Chope: It was never on offer from the Labour Party and so when Conservative MPs were told that that had been put forward as an offer to the Liberal Democrats, and that, to avoid immediate legislation, they should sign up to the prospect of an AV referendum, they were completely misled?

Mr Laws: I do not think that they were misled, but I think there was a certain amount of confusion in this very chaotic period; both because there were some media reports that Gordon Brown might be able to offer that and also because some of the discussions that were had across the parties were on the basis of immediate legislation.

Q26 Mr Chope: But this was given to the Conservative parliamentary party, at the only meeting where there was ever any discussion prior to the coalition agreement being formed. What was said by leaders of the Labour Party was that this was a fact. Are you saying that the leaders of the Labour Party were mistaken, had been misled by somebody or misled themselves?

Mr Laws: I do not know because I have not discussed that with them and was not at the meeting. What was certainly true is that I do not think there would have been a coalition without the guarantee of legislation on an AV referendum. However, I do not think it was the case that there was a firm offer to us on the issue of AV without a referendum. I think what there was was a determination, on our part, that the legislation should be immediate and should not be after a referendum. That requirement for immediate legislation might have been interpreted by some as meaning immediate legislation without a referendum.

Mrs Laing: I think we have to be careful here. To help our witness, it is not for Mr Laws to answer for the leaders of the Labour Party, but it is very helpful

if you would follow Mr Chope's line of questioning on what was discussed between the Liberal Democrats and the Labour Party and what was offered by the Labour Party. Christopher.

Q27 Mr Chope: Yes, I will leave that one now, but obviously this confusion arose somewhere and I take it that it did not arise from conversations between you and the Labour Party?

Mr Laws: Not as far as I am aware and obviously I am not aware of all the discussions that there were between others in the party. I was part of the negotiating team negotiating with the four Labour negotiators. There would have been other conversations going on with people such as Lord Mandelson, who was in communication with Danny Alexander. I think that this is one of the things that was an issue of confusion in the smoke and heat of the battle.

Q28 Mr Chope: Yes. Can I just ask you: in the period leading up to these discussions, was the possibility of a minority Government very seriously being considered? You say that you got the impression that the current Prime Minister had ruled that out, very early on, and wanted to try and get a coalition. Obviously if you have a hung Parliament, you can either have a coalition Government or you can have a minority Government. With the numbers as they were, a minority Government would have been quite on the cards. Would you have been happy to go along with that?

Mr Laws: We thought that a minority Government where there was no co-operation with the Liberal Democrats, and no agreement of any kind, would be very unstable, very bad for the country, very destabilising for the financial markets, and that whichever party was responsible for delivering that minority Government, with no co-operation, would probably face a high penalty in a succeeding general election. What we did think was quite possible—and what we thought might be a likely outcome—was a Conservative Government with a confidence and supply agreement, where we would have been sitting on the Opposition Benches but where there would have been an agreement in exchange for some policy understandings between the two parties for us to support a Conservative Government on confidence and supply issues. When we felt we could not make any progress on some issues, including electoral reform, we actually negotiated a confidence and supply agreement, and that is what we concluded in our negotiations on the Monday morning.

So we finished on Monday midday with a confidence and supply agreement between the two parties, which we both undertook to look at and which we undertook, initially, to take back to our members for their view. We did not regard that as something we were going to recommend to them because, frankly, we did not think that we had necessarily hit the bottom line on the agreements that could be reached on some of that political reform and we did not know whether David Cameron would wish to make any further moves. But we did take that back to our party members. Their view was that they wanted a full coalition with one or

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other of the parties, because they believed that what confidence and supply offered us was responsibility with not much power or input, and that, other than the few pledges that were signed up to immediately in the confidence and supply agreement, we would not have much ability or control over what the Government did. So we would take all the political pain of having to sign up for cuts, and higher taxes and everything, but we would not be in any control of this Government. After our parliamentary party met on that Monday, and before the Prime Minister resigned, it reached the decision that it thought that a coalition government would be better for us, in terms of delivering policy, and also that it would be better in terms of delivering economic stability. It thought—and may well have been right—that a confidence and supply agreement would have eventually unravelled, and that we would probably have ended up with another general election, either in the autumn or in early 2011, having made no serious progress on tackling the deficit. But we did conclude negotiations on that particular option. It was our parliamentary party collectively, including Nick as leader, who thought that that was not the right way to go.

Q29 Mr Chope: And that was quite a well-formulated document, the draft confidence and supply agreement?

Mr Laws: As I remember it, it was a five or six page document that covered a lot of the issues in the ultimate coalition agreement, particularly on deficit reduction, taxation, banking reform, political reform and the environment. We had not got on to discussions on relations with the EU, asylum and immigration, and some of those areas that were tacked on towards the end of the negotiation of the full coalition agreement. So it was a shorter version of the coalition agreement that you have now.

Q30 Mr Chope: My last question is this: it has been said that you and Oliver Letwin basically cooked a lot of this up before the general election, because you have neighbouring constituencies and travel frequently on the train between London and the west country.

Mr Laws: Who said that?

Mr Chope: I read about that somewhere, and I just wondered whether you could confirm or deny whether you had any discussions with Oliver, or with anybody else in the Labour Party, about the possibility of coalition Government before the actual general election?

Mr Laws: Disappointingly, none whatsoever. I mean, disappointingly for your story, none whatsoever. I mean Oliver and I, our houses are quite near but I've never been to his house, he's never been to mine and I don't think I've ever met him on the train. We seem to go back at different times.

Mrs Laing: We're definitely getting into the Agatha Christie side of things here. That's very helpful, thank you, Mr Laws. Finally—we're about to run out of time—Sir Peter Soulsby.

Q31 Sir Peter Soulsby: Yes, I do realise we're running out of time, in fact it is the pressure of time

that I wanted to return to. You have described how things became quite hurried once Gordon Brown announced he was off to the Palace, but in fact you had already got a long way before that happened. You have talked about the need for there to be sufficient time for any agreement or any coalition to be formed after an election. In a sense, it was fortunate that Gordon Brown did not throw in the towel earlier and that you had reached that stage. You did talk about the need for there to be some form of convention about how an incumbent Prime Minister allows the time for things to happen, even if they know that they are not going to be a part of any future Government. What sort of convention do you think is needed and how could that be enshrined so that a Prime Minister who had lost an election was able to give the time, and also to show that they can leave in a dignified manner?

Mr Laws: I think there should be—and I think there probably is, but I am not sure that it is codified very unambiguously—an expectation that the sitting Prime Minister stays in place to have a stable Government while a coalition is being put together. What time scale is reasonable for a Prime Minister to wait is an issue that I do not feel qualified to answer on. The case here was that Gordon Brown did stay on, and it was fortunate that we had reached the point in negotiations with the Conservatives where we were able to publish this agreement.

I do not know what would have happened had we said to him that we were not willing to enter into negotiations at all, or had it not been for the fact that the negotiations with his party had more or less unravelled just a few hours beforehand, because he clearly was very serious himself about seeking to get a coalition and he ultimately was willing to stand down as Leader of the Labour Party to facilitate it. I do not doubt his commitment after the election to try to get this type of agreement. I do not think the problem was with him, it was with many other members of his party. But part of why he was staying on, presumably, was to try to get that coalition agreement with the Liberal Democrats. I think it is impossible to know what his view would have been had we told him, on the Friday, that the one thing we were not going to do was go into coalition with the Labour Party, but I imagine that, as a responsible Prime Minister, and individual, he would have stayed on for a period of time but that he would be—as he was getting on that Tuesday afternoon—pretty impatient.

Q32 Sir Peter Soulsby: It strikes me that there is a real danger that if a Prime Minister has clearly lost an election, has no prospect of being part of any future Government and is under pressure from the media to go—but is obviously wanting to leave with some dignity—that it could be that the Prime Minister would leave without allowing sufficient time?

Mr Laws: The Prime Minister certainly could do that. It seems to me a more informal understanding that the Prime Minister will not do that, and will not put the Palace in a situation where the Queen has to call for another Prime Minister not knowing whether there is an alternative leader who has the confidence of enough people in the House of Commons to form a

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Government. So at the moment I think we probably are relying a little bit on the goodwill of the existing leader, under circumstances where they are certain that they are not going to be the next Prime Minister. But I suppose it is also reasonable to expect anybody that holds that type of office to behave in a responsible way and finish discharging their responsibilities, and maybe that, as you say, should be explicit.

Mrs Laing: Thank you, that is very helpful. We have gone over time but Andrew Turner indicates that he has one quick question.

Q33 Mr Turner: Yes. You said that on the Monday morning the members of your parliamentary party had the opportunity to look at three or four things on your list, and you listed those and you said, I think, that AV was one of those things. Is that correct?

Mr Laws: On the Monday morning the Liberal Democrat and Conservative negotiating teams met and we were drafting a confidence and supply agreement, because we did not believe that then there would be agreement on the alternative vote, and we finished that in the very early afternoon. We then took that back, firstly, to Nick Clegg and then to our parliamentary party, and we undertook to communicate the response from the parliamentary party to David Cameron before a Conservative parliamentary party meeting that was scheduled later on in the afternoon. We did not give copies of that agreement to all of the people at that parliamentary party meeting because it would have been too risky that it would have leaked out, particularly when Conservative MPs were not aware of the detail of the agreement. But we discussed the principles of it and it was on the basis of discussing those principles, and our attitude to coalition, that we concluded that we definitely did not want to go down a confidence and supply route. Nick then communicated that to David Cameron after our meeting so he knew where things were.

Q34 Mr Turner: AV was one of those things?

Mr Laws: There were two separate decisions. So what was in that agreement, the draft confidence and supply agreement, was obviously not a referendum

commitment on AV. Presumably it was the offer that was tabled by the Conservatives to establish a committee to look into the issue. I'd have to check whether it was that or whether it was a free vote in the House of Commons.

Q35 Mr Turner: Would you let us know?

Mr Laws: Yes, because I think that was the offer that was made after David Cameron's original statement, but it certainly was not a pledge that there would be a referendum. I think it was just a pledge, essentially, that Parliament would scrutinise this in some way.¹

Mrs Laing: If it's not too inconvenient to you, it would be very helpful to this Committee if you were able, in due course, to answer that question to us. Thank you very much. Are there any other vital points? We are over time.

Q36 Sheila Gilmore: Very quickly—it may be something for us to reflect on as well as the Committee. A lot of members of the public believe that a hung Parliament would give an opportunity for bits of almost all parties' policies to come together, rather than a firm coalition. Do you accept that is the public view of what they expected?

Mr Laws: Sorry, do you mean a sort of National Government?

Sheila Gilmore: Yes, in a way, perhaps, or maybe it's a public misunderstanding of what a hung Parliament implies.

Mr Laws: I don't know, I think people did have an understanding that it would mean two parties coming together, rather than three, and I know that David Cameron did tell Nick Clegg on the Friday that he had not had any phone call from Gordon Brown suggesting that they should form a coalition.

Mrs Laing: That is very good news. Thank you very much, Mr Laws. You have been most helpful to us. We have gone over an hour and we are very grateful to you for answering our questions, in such detail and with such candour. Thank you very much indeed.

¹ *Clarification from Witness:* With regard to the question put to me on a draft confidence and supply agreement, I can confirm that what was offered in this on electoral reform was a free vote in the House of Commons on an AV referendum.

Examination of Witness

Witness: **Lord Adonis**, a member of the House of Lords Director, Institute for Government, gave evidence.

Q37 Mrs Laing: Welcome, Lord Adonis, thank you very much for coming to give evidence to us this morning. May I begin by giving the apologies of the Chair, Graham Allen, who is unwell this morning and has been unable to attend the Committee, which is why I am chairing it in his place. You have heard, I think, a little of the evidence—

Lord Adonis: I caught the last 10 minutes. I do not quite know whether I will be contradicting anything said in the previous hour.

Mrs Laing: I am quite sure that won't happen. As you know, we are undertaking a very general inquiry into the workings of the Constitution and constitutional reform. We are specifically today

looking at the way that the coalition was formed and, understanding that you were a key part of the Labour Party's team in negotiation after the general election, we are very grateful to you for coming to see us this morning. Is there anything you would like to say by way of introduction?

Lord Adonis: I am happy to go straight into questions.

Q38 Mrs Laing: Thank you. In that case, can I ask you a very general question to start with before we begin other questions? Were you aware, before the election, that the Cabinet Secretary had produced a new chapter to the Cabinet Manual setting out the way in which, and rules under which, a coalition might be

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formed and, if you were aware of it, had you read it and did it have any bearing on what happened after the election?

Lord Adonis: Yes, yes, yes, is the answer to that. I was aware, I had read it and it did have a bearing on how we behaved after the election.

Q39 Mrs Laing: Could it be revised to be more helpful in any future situation?

Lord Adonis: I think it performs its crucial task, which is to make it clear that, in the event of there not being a clear outcome to a general election, space needs to be provided for the political parties to seek to agree the best way forward and, on the basis of the discussions that take place between the parties, advice will then be given to the Queen on the formation of the new Government. So I think it performed its crucial role of overcoming the knee-jerk expectation that there must be a new Prime Minister in post by Friday afternoon, which of course has been the general practice in British Government over recent decades.

Mrs Laing: Thank you for that. That is very helpful. I am looking for a first question. Stephen Williams?

Q40 Stephen Williams: Thank you, Chair. Could I ask, Lord Adonis, first of all, you just confirmed that the civil service had given some preparation and thought to how coalition negotiations would take place. How well prepared was the Labour Government for entering into a coalition? How mentally prepared and psychologically prepared were they for sharing power with another party?

Lord Adonis: I think that's ascribing to a party a collective mental state, which is quite hard to do. Some of us had been thinking about possibilities in a hung Parliament before. The party collectively had not done so in the sense of formal discussions within the party machinery, but then I believe that is also true of the other parties too. It is very difficult, in the British context, to be contemplating results other than outright victory in any formal way.

Q41 Stephen Williams: Not even privately? I mean the Liberal Democrat parliamentary party had away-days that were held out of Westminster, with no media, to discuss this. Did the Cabinet not have an away-day at Chequers, or something, to discuss what happens if there is a hung Parliament?

Lord Adonis: No. With great respect, I suspect it was probably slightly easier before the election for the Liberal Democrat MPs to meet on an away-day without the media working out what was going on than it would have been for us.

Stephen Williams: Well, we didn't tell them what was on the agenda.

Lord Adonis: I am not aware of any Cabinet meeting or ministerial discussion that I ever participated in that, one way or another, did not make its way into the media. So that would have been a very difficult process to have conducted. Of course the size of the Labour parliamentary party made collective discussion of something that you did not want to become public virtually impossible.

Q42 Stephen Williams: So when the result of the election was known with certainty—some time in the early hours of Friday morning after the election—that was the first time the Cabinet thought, “Oh gosh, there's a hung Parliament, what do we do now?”

Lord Adonis: The Cabinet, as an institution, did not meet until Monday evening, but there was a good deal of discussion between Ministers once the results were known. But you said the results were known for certain in the early hours of the Friday. In fact, they were not known for certain until midday on Friday and, given the fluid nature of the results and a number of very close contests that were being held, it was not until the final results came through that the range of possibilities in a hung Parliament became apparent.

Q43 Stephen Williams: When was the Labour negotiating team appointed, and can you confirm who was a member of it?

Lord Adonis: Saturday lunchtime and it was myself, Lord Mandelson, Ed Balls, Ed Miliband and Harriet Harman as Deputy Leader of the Party.

Q44 Stephen Williams: Lord Adonis was not in the room when David Laws was answering a question that I asked about whether the Conservative negotiating team, and the Labour negotiating team, seemed to be even in their contemplation of a coalition being formed with the Liberal Democrats, and he hinted that yourself and Peter Mandelson appeared to be more constructive in their negotiating attitude than the elected members of the negotiating team. Would you say that was a fair impression?

Lord Adonis: No, I wouldn't. I think we were all equally constructive. And when the Cabinet met on the Monday evening to discuss and agree a way forward for the then Government, it was overwhelmingly supportive of the Prime Minister's proposition that we should seek to negotiate a coalition with the Liberal Democrats, if it could be done on a satisfactory policy platform.

Q45 Stephen Williams: Last question: why do you think ultimately those negotiations between the Labour Party team and the Liberal Democrat team failed? Was it lack of time or attitude?

Lord Adonis: No, it was a straightforward political decision. The Liberal Democrats simply decided that they wanted to go in with the Conservatives. There was no other reason and that, of course, is a perfectly satisfactory explanation for what happens.

Q46 Mrs Laing: Thank you. We heard from Mr Laws that there was some difficulty for the Liberal Democrat team negotiating with the Labour Party team because, when it came to discussing economic policy matters, there was no one who could speak with authority on that because the Chancellor of the Exchequer, Alistair Darling, was not part of the team and we had the impression from Mr Laws that the Labour Party team did not have the authority to make decisions in the negotiations because of the absence of Alistair Darling.

Lord Adonis: That's not correct, no.

Mrs Laing: Thank you.

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Lord Adonis: Because they were essentially overtaken by the Liberal Democrats reaching agreement with the Conservatives, the negotiations never reached the stage where we were seeking to agree precise elements in a coalition package. You have to remember that the Labour Party and Liberal Democrats negotiated for a sum total of about 3½ hours and we did not get to an advanced stage in those negotiations. By the Tuesday evening, the Liberal Democrats and the Conservatives had been negotiating for many times more than that, and had reached a point where they were able to nail down an agreement on specific issues, in terms. One can only speculate as to what would have happened if we had discussed with the Liberal Democrats a potential coalition agreement for longer, but they did not desire to discuss it for longer, so we never got to the stage where we needed to nail it down.

On the specific issue of the economic credentials of members of the negotiating team, you will of course have noted that Vince Cable, who was the Liberal Democrat Treasury spokesman, was not on their negotiating team either. So there was neither the Liberal Democrat nor the Labour Treasury spokespeople on that team, and so there would obviously have had to have been discussions with those six people—

Mrs Laing: If it had reached the next stage.

Lord Adonis: Yes.

Mrs Laing: Thank you, that's helpful.

Lord Adonis: To complete the picture—it's very important that the record is correct on this because there's a certain amount of disinformation that has been peddled since—it was agreed that Vince Cable and the then Chancellor, Alistair Darling, would meet on the Monday morning. That meeting was cancelled by the Liberal Democrats at very short notice. So there was no desire on the part of the Liberal Democrats to accelerate discussions, on economic issues, on the Monday. That was perfectly within their prerogative. They were the ones who had to make a decision as to which way they were going to go, but it's important that the Committee understands that what happened was a political decision on their part to go with the Conservatives. It wasn't anything to do with the composition of negotiating teams that would have made it difficult to have reached agreement.

Q47 Mrs Laing: That is very helpful. If it had gone to the next stage then Alistair Darling, Vince Cable, *et cetera*, would have been brought in?

Lord Adonis: Absolutely. Absolutely.

Q48 Mrs Laing: Can we just get the chronology?

Lord Adonis: Indeed; again, to get the record correct, the then Prime Minister, Gordon Brown, offered the leader of the Liberal Democrats the opportunity to have a meeting that would have included the Chancellor and the Liberal Democrat Treasury spokesman, Vince Cable. Mr Clegg declined that invitation. So it wasn't an issue to do with the negotiating machinery that hampered agreement, it was a straightforward political decision that was taken by the Liberal Democrats.

Q49 Mrs Laing: So it wasn't the practicalities?

Lord Adonis: No.

Mrs Laing: It was a political decision?

Lord Adonis: Yes.

Q50 Mrs Laing: Can we get the chronology correct: do you recall at what point that happened because it seems that that must have been the point—that was Monday morning?

Lord Adonis: Monday. At what point did what happen, Chair?

Q51 Mrs Laing: Was that the point at which it appeared to the Labour Party negotiating team that the Liberal Democrats were not serious about making a coalition with Labour?

Lord Adonis: It is hard to pinpoint the precise time but it was during the course of late Monday morning and Monday lunchtime that it became increasingly apparent to us that the Liberal Democrats and the Conservatives were close to an agreement and that the Conservatives were the Liberal Democrats' coalition partner of choice. By early Monday afternoon that was crystal clear and it was at that point that Gordon Brown—in my judgment, correctly—decided it was not appropriate for him to continue in office.

Mrs Laing: That is extremely helpful. Thank you. We'll go to Simon Hart.

Q52 Simon Hart: David Laws indicated that, with the exception of yourself and Lord Mandelson, there was never any serious intent to reach an agreement. There was an implied view. Are you suggesting that there was never any serious intent on the part of the Liberal Democrats to form a coalition?

Lord Adonis: I am not imputing motives at all. I don't know what the level of intent was on the part of the Liberal Democrats. I can only answer for myself and my colleagues. Our intent was very serious all the way through, until the point on Monday when it became clear that the Liberal Democrats had decided that they were going to go with the Conservatives. We were prepared to continue and, indeed, were keen to continue discussions and negotiations, but the Liberal Democrats did not want that to progress.

Q53 Simon Hart: Can we just park that? I accept that entirely. Going back to a more general procedural point, which we also discussed with David Laws: on the basis that in the end nobody voted for this Government at all, do you have a view as to whether the coalition agreement, which we are now all working to, carries the same validity as a manifesto commitment? In your position in the House of Lords, where obviously the Salisbury Convention exists to assist in the delivery of manifesto commitments, do you think the Salisbury Convention is sufficient to deliver, and do you think the House of Lords will deliver the coalition agreement on that basis?

Lord Adonis: Those are very significant questions to which I do not have a clear answer. Clearly, the coalition agreement was not put before the British people because it was negotiated after the election. It is, however, an agreement between the two political parties that command the confidence of the House of

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Commons and, therefore, it has a significant status. So far as the attitude that the House of Lords should take to it is concerned, that is entirely uncharted waters because the Salisbury-Addison Convention is clearly related to commitments that were in the manifesto of the governing party, but as you rightly say, a good deal of the coalition agreement, actually parts of the coalition agreement, were not in the manifesto of either of the coalition parties, but there is very little in it that was in the manifesto of both of the coalition parties. So the House of Lords will have to exercise its judgment with discretion and wisdom, as it always does in my experience.

Simon Hart: We look forward to that.

Mrs Laing: Diplomacy, absolutely. Tristram Hunt?

Q54 Tristram Hunt: Just to return briefly to a previous point, we have heard from the Chancellor of the Exchequer that he had no need to bring in the Governor of the Bank of England to convince the Liberal Democrats of what he regarded as the financial armageddon facing the country. We have also had a sense from David Laws that they did not need to be convinced of that either. Picking up from your earlier testimony, did you have a sense of a degree of ideological unity between the Liberal Democrats and the Tories, which was inhibiting the Labour Party's attempts to work at a coalition?

Lord Adonis: It's a difficult question to answer because, as I said in answer to the Chair's earlier question, the discussions between the Liberal Democrats and the Labour Party were short, so we didn't get into detailed discussions of these issues. What I can tell the Committee, as a straight fact, is that from the outset of our discussions it was the position of the Liberal Democrats that a coalition Government, to which they belonged, should commit themselves to eliminating the structural deficit in the course of this Parliament, which is of course the position that the current coalition has adopted and was the Labour Party's position at the election. That was the Liberal Democrats' position from the outset of the negotiations. Indeed, it was stated, in terms, in the document that they presented to us at the start of the coalition discussions. Now, what I can't answer is whether, in the course of discussions, they might have been prepared to move from that. They did not in fact move from it in the discussions that we had, and they did in fact agree that position with the Conservatives. It therefore appears unlikely that they would have moved. We did make it clear to them that it was not a position to which we could subscribe, and we would not have been party to a coalition agreement that proposed to eliminate the structural deficit in the course of a single Parliament.

Q55 Tristram Hunt: But we can certainly get rid of all this guff about the Labour Party not being serious about negotiation; about negative body language and other strange attributes?

Lord Adonis: That is complete nonsense.

Tristram Hunt: Right.

Lord Adonis: Indeed the fact that the body language was referred to, I always thought to be a sign that the issues of substance were not necessarily obstacles. It

was very interesting, in that pressure cooker period of the five days after the election, that the Liberal Democrats did not want to refer, in their public statements, to specific issues that were making it impossible to reach agreement with the Labour Party. It was the style of negotiations. Well, in my experience, having one way or another been a party to a good deal of negotiations, the point at which you start to question the bone fides of your interlocutor is a point at which you are not really serious at negotiating. So I took it to be a general indication of lack of seriousness in negotiating, but, more specifically, at no point did they refer to specific policy disagreements. As I look back on it, in retrospect, I think that's for two reasons: firstly, because on most areas of policy, besides the economy, there were unlikely to have been serious policy disagreements. On the economy, I do not think that the Liberal Democrats were very keen to parade the fact that their preference was to subscribe to the Labour Party's economic policy from the outset, rather than to seek to reach agreement with us on a different strategy. But that is seeking to make sense of these things in retrospect.

Q56 Tristram Hunt: I know it's not the job of this Committee to talk about the internal structures of the Labour Party, but we heard earlier about the triple lock for the Liberal Democrats to sign up to a coalition. We have also heard from my colleague, Andrew, about the wealth of lack of democracy in the Labour Party who could sign up, effectively, to what the leadership asked for. The Labour Party is halfway in between that, in terms of agreeing to a system. There were certainly elements among Labour MPs who watched what was going on on television but did not really know what was going on. Do you think the internal party systems are credible and effective enough for coalition negotiation?

Lord Adonis: Yes, I think so. In fact, there was a fairly clear game plan as to what would have happened in terms of securing party agreement to a coalition. The Cabinet had met on the Monday and gave a negotiating mandate to its members who were meeting with the Liberal Democrats. It was agreed that, once negotiations had proceeded towards some outline agreement, the Cabinet would meet again, and of course Ministers were being kept informed as the discussions proceeded in any event. The National Executive Committee (NEC) of the party met also before the negotiations started, and its officers—sorry, to be precise, I think it was the officers of the NEC that met, and they also gave a mandate for the negotiations to start. A meeting of the full parliamentary party had in fact been summoned for the Wednesday afternoon; indeed, it took place and it was agreed—now we're getting into Labour Party constitutional details—that what is, I believe, called a clause 15 meeting was a clause 5 meeting. Sorry, I don't immediately have to hand the different clauses of the Labour Party.

Mrs Laing: It's fine. You can call it what you like.

Lord Adonis: That meeting, which brings together the Cabinet and the National Executive Committee, would have taken place the weekend after the

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negotiations had started, or at whatever point at which agreement was reached to ratify an agreement. So the internal processes of the Labour Party were clear and they appear to me, in retrospect, sufficiently robust to have been able to implement an agreement.

Tristram Hunt: Final question, if I may?

Mrs Laing: Another question, Tristram.

Q57 Tristram Hunt: You wrote in *The Guardian*, and I quote, “We were perfectly serious—*vis-à-vis* negotiations with the Liberal Democrats—but we were not prepared to engage in constitutional gerrymandering”. Could you just expand upon that?

Lord Adonis: The Liberal Democrats were keen to get as many items in their constitutional reform plan agreed by us as possible. And among the proposals they put to us was the proposal that we should agree to the alternative vote before a referendum was held; we should implement it; we should implement legislation for the alternative vote before a referendum was held. That was the point at which we made it clear we could not agree with them on a key constitutional measure, but they retreated from that position fairly quickly and I think it was always a try-on. I do not think they expected us seriously to agree that there should be a fundamental change to the electoral system for the House of Commons before a referendum had been held. But had they persisted in that view, of course we would not have agreed. There is no way that the then Cabinet would have agreed in a change in the electoral system without a referendum.

Q58 Tristram Hunt: So the referendum would have simply sanctioned the legislation?

Lord Adonis: No, the proposal they put to us is that it should have been implemented before a referendum was held, that there should be legislation.

Q59 Tristram Hunt: So what would the referendum be on?

Lord Adonis: It would presumably have then had the right to appeal with the legislation. It would have been rather like the 1975 referendum on membership of the European Community, that the referendum would have been held after the change had been implemented. Now that was the significant point of disagreement that emerged between us, but, as I say, my impression from the way the discussions went is that they were not intending to insist on that, and it was a try-on to see how far we would go in respect of constitutional reforms to which they were attached. Of course, we made it clear immediately that there was no prospect whatever of the Labour Party agreeing to change the electoral system without a referendum first being held.

Q60 Mrs Laing: Thank you, Tristram. So the issue of whether it was a pre-legislative or post-legislative referendum is not the issue, if I could just clarify this with you: the Labour Party had not, in fact, said that they would agree to form a coalition with one of the conditions being that there would be the alternative vote introduced without a referendum?

Lord Adonis: That’s correct. It was always taken for granted that the—actually no, that’s not correct, the

issue of pre or post. It is absolutely correct to say that there was no question of the Labour Party agreeing to a referendum being held after legislation for AV had been implemented.

The question whether the referendum itself should come before the legislation was introduced, or after it was enacted but before it was implemented, was left open and we were still, as I say—because the discussions between Labour and the Liberal Democrats were not protracted—it was still not agreed between us whether, if there were to be a referendum on the alternative vote, that would take place before legislation was introduced or after it had been enacted but before it was implemented. Those two options were still open.

Q61 Mrs Laing: I appreciate there are layers upon layers, but the Labour Party would not have agreed to a coalition with the Liberals, based on introducing AV without a referendum?

Lord Adonis: No, in those circumstances.

Mrs Laing: Thank you. I’ll go to Christopher Chope.

Q62 Mr Chope: That’s very interesting. At what stage on the Monday was that made clear?

Lord Adonis: As soon as the issue was raised in the discussions between our negotiating team and the Liberal Democrats.

Q63 Mr Chope: What time would that have been, relatively speaking?

Lord Adonis: The meeting on the Monday began, from memory, at 10.30, so it was made clear then. Again, I would need to check my notes, but I think that issue was raised on the Monday—sorry, on the Tuesday morning the meeting was at 10.30. On Monday, the meeting was in the evening and the point at which that issue was raised was, I think, on the Monday evening, I do not think it was on the Tuesday morning, but I can check my notes on that point.

Q64 Mrs Laing: It’s not fair to put you in a position of remembering at this point exactly which hour matters occurred, but if it’s not too much of an imposition would you be able to answer these questions in due course?

Lord Adonis: To be precise, the reason I was slightly thrown is your question referred to a meeting on the Monday morning. There was no meeting on the Monday morning between Labour and the Liberal Democrats. The meetings were on Monday evening and Tuesday morning. I cannot recall whether it was on the Monday evening or the Tuesday morning that the issue of introducing the alternative vote before a referendum was held was raised, but whenever it was raised we dismissed it immediately.

Q65 Mr Chope: But you never offered the Liberal Democrats the possibility of legislation on AV without it ever being put to the British people in a referendum?

Lord Adonis: No.

Q66 Mr Chope: Can I take you back to the situation immediately following the result of the general election, because Gordon Brown was the Prime

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Minister, you were the incumbent Government, and I think most people's understanding of the British constitution was that it was open to the Prime Minister and the Government to stay in office, and then from that position try and find support to enable them to form either a minority Government or a coalition. The ball should have been in your court first, and normally it would only have been after you had been unsuccessful in being able to form a minority Government, or a stable Government, that the Prime Minister would then have gone to the monarch and said that he was unable to form a government and would suggest to the monarch that she should invite the Leader of the Opposition to take over. Why was it that that process, which most of us had understood was what would happen under our constitution, did not happen in this case?

Lord Adonis: As always in Britain, where we have an unwritten constitution, understandings are not completely understood. It is not completely clear what is the constitutional position. If you look at precedents in the British constitution, in areas of conventions largely governed by precedents, there are two sets of precedents that apply in this circumstance: one set of precedents is the precedent as to what has normally applied after recent general elections, which is that if the Prime Minister of the day does not believe he is able to command the confidence of the House of Commons, he or she resigns immediately and a new Prime Minister is appointed immediately.

But there are another set of precedents that clearly legitimise a Prime Minister who decides, even if he or she is not leading the largest party, to meet Parliament and not to resign until a vote has taken place on the Queen's Speech. Until 1868—sorry, I speak here as an historian—Prime Ministers always met Parliament, even if they had clearly lost the election. It was Disraeli's decision in 1868 to resign immediately the election results were clear, rather than to meet Parliament and be voted out by Mr Gladstone that created the precedent that where an unambiguous result of an election is clear, and the Government have clearly lost it, then they resign immediately.

But, in cases where no party has a majority it appears to me, on a reading of the constitution, that either course is constitutionally valid: either that the Prime Minister chooses to resign immediately because he believes he is unlikely to be able to command the confidence of the House of Commons, or he stays to meet Parliament. The crucial precedent, of course, being 1923 when Stanley Baldwin, although he was unlikely to be able to command a majority in the House of Commons, after Asquith's statement that he would support Labour in a hung Parliament, nonetheless decided to meet Parliament. Only after he was voted down in the King's speech—which I think, from memory, was about six weeks after the election—did he resign.

There is the precedent, which is some way between the two, of February 1974 when Ted Heath did not resign immediately. In fact, I think from memory, he resigned on the Monday after the election—which is only one day different from what in fact happened this time, which was the Prime Minister resigning on the Tuesday after the election—because he wished to

ascertain whether there was any reasonable prospect of him being able to command a majority in the House of Commons before deciding whether or not to resign. Now, this is a long answer to your question because the position, as I see it, is unclear. But what, in fact, happened this year was very similar to the February 1974 position of a Prime Minister who, after the election, was leading the second largest party, not the first largest party, who was not sure whether he would or would not be able to command a majority in the House of Commons, and allowed exploratory conversations to take place for a few days after the election before reaching the conclusion that he was unlikely to be able to command a majority and, at that point, advising the Queen to send for the Leader of the Opposition.

Q67 Mr Chope: That's helpful, but my point is: why didn't those exploratory conversations begin immediately because surely the incumbent Prime Minister had the first option, basically, of trying to see whether he could form a Government to stay in office, in the same way as Mr Heath did in 1974. Why was the Prime Minister so slow in doing that or was he the victim of duplicity on the part of the Liberal Democrats?

Lord Adonis: No, I do not believe there was any duplicity at all. The first conversation between Gordon Brown and Nick Clegg took place on the Monday afternoon. So, very soon after the final results of the election were clear. It was also clear from that conversation that some form of process would take place, of discussions between the parties. Nick Clegg made clear that he wished first to talk to the Leader of the Labour Party in a formal sense, but he also made it clear that he would wish to see discussions take place with the Labour Party. I think, on that basis, it was perfectly reasonable for Gordon Brown to allow there to be a period of time during which those discussions would take place before concluding whether or not he had a prospect of being able to form a new government.

Q68 Mr Chope: So you weren't surprised. Gordon Brown obviously realised what was happening. He could see all the reports of conversations taking place between the Conservatives and the Liberal Democrats, so why didn't he say, "Well, hang on a minute I'm the incumbent Prime Minister. I have a first take to see whether I can form a viable Government, so you, Liberal Democrats, why don't you come and talk to me first, and perhaps the Nationalists as well?" Why did he allow the Liberal Democrats to negotiate, at quite considerable length and quite considerable depth, over that weekend with the Conservatives while he was out on a limb?

Lord Adonis: It was not clear during the weekend that the Conservatives and Liberal Democrats were going to be able to reach agreement, and there were discussions taking place between the Liberal Democrats and Labour, which we believed might have led to agreement. So, at the point at which it was clear that the Conservatives and the Liberal Democrats were likely to reach agreement, Gordon Brown did

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resign but, until that point, he regarded it as both correct and his constitutional duty to remain in office.

Mrs Laing: Thank you, Chris. I'll come to Stephen first and then to Sheila.

Q69 Stephen Williams: Chair, because Andrew has admitted he is an historian and Churchill said that, "History will record my events because I'm going to write it", it is important we get this right and on the record. At what point does Lord Adonis feel that it was clear to the Labour negotiating team that the Liberal Democrats were going to form an agreement with the Conservatives and there was no point in continuing discussions any further?

Lord Adonis: I would say it was crystal clear by early Tuesday afternoon. It was fairly clear by late Tuesday morning, when we held our second formal negotiating session with the Liberal Democrat team. Those of us who were on the Labour negotiating team left that meeting fairly clear that the Liberal Democrats were not seriously wishing to pursue an agreement with the Labour Party, and that they were close to an agreement with the Conservatives. That became very clear during the early part of Tuesday afternoon.

Q70 Stephen Williams: At that point on Tuesday, the Labour Party was effectively leaderless because Gordon Brown had offered to resign at some point in the future. Do you think the Labour negotiating team, at that point, lacked any clear steer as to which direction to head with, with the Liberal Democrats?

Lord Adonis: We were clearly seeking to reach an agreement if an agreement could be reached. That didn't change during the negotiations.

Q71 Stephen Williams: Was any final plea made to the Liberal Democrats, "Please don't go off with the Conservatives, we can still do a deal on Tuesday"?

Lord Adonis: I didn't see it as our role to make a plea to the Liberal Democrats. The issue was for the Liberal Democrats to side with us.

Q72 Stephen Williams: Presumably you wanted to stay in office?

Lord Adonis: We only wanted to stay in office on the basis of a principled programme, which was agreed between the two parties. We certainly did not regard it as our job to keep the Labour Party in office if it was not possible to reach a principled agreement on a programme with the Liberal Democrats. At the point at which it became clear that that was very unlikely to happen, Gordon Brown resigned forthwith.

Q73 Stephen Williams: I would like to ask a completely different question, which I asked David Laws as well. Do you feel in four and a half years' time, when it's quite likely that we may have to go through this all over again, that in the intervening period—in between then and now—we need to come up with a different constitutional arrangement, whether it is as long as the United States from November to early January, or what happens in Europe. But is it sensible for us to contemplate now in 2015 that we'll—when we're all exhausted—thrash

out a Government programme for five years in the space of four days?

Lord Adonis: No, I do not think any changes are needed; I think the constitution worked remarkably well. In particular, the discussions that took place between the party leaders and their negotiating teams, in those five days, did precisely what was required in the circumstances, which was to identify the shape and leadership of a new Government and to enable the sitting Prime Minister to give advice to the Queen on who his successor should be. I think that the arrangement served those purposes well and there is no need to change them. I do not think it is realistic to suppose that you can move to an American system. The President is not, in fact, inaugurated until 20 January, so there is a Government in office that has full authority until a new Administration takes office in Washington on 20 January. That of course is not the case in Britain. The sitting Government is the Government with the confidence of the House of Commons until the House of Commons declines to renew that confidence, so it is inconceivable that the process could be delayed beyond the meeting of Parliament.

Q74 Stephen Williams: Sure, but it was decided, wasn't it, that the House of Commons would meet later than normal because after the 2005 general election we all arrived here pretty quickly, in fact?

Mrs Laing: Again, we can't expect Lord Adonis to answer that question but, as a matter of fact, I think we're all agreed that that is the case.

Lord Adonis: The point Mr Williams is making is significant though. The backstop was not five days. The backstop was the meeting of Parliaments. It is perfectly conceivable that negotiations could have taken place for some days longer than was the case. The reason why they stopped after five days was not that there was any external deadline imposed, but that it was clear at the end of those five days what the position was. However, the actual constitutional backstop was the meeting of Parliaments, and that was still another two weeks away.

Mrs Laing: Thank you. Sheila Gilmore.

Q75 Sheila Gilmore: Do you think that if there were a clearer constitutional procedure involved, that was clearly understood in the population generally, that some of the pressure could have been lifted off? You said there was no constitutional deadline other than the sitting of Parliament, but there was a great deal of an atmosphere, it would be fair to say, of "get on with it" "crisis" and "we don't have a Government", and that has been contrasted with the position in other countries where it is recognised that there may be a period of Government formation. Do you think it would help in the future if this was clearer, so that discussion could take place in a calmer atmosphere?

Lord Adonis: I am not sure it is realistic to expect the media to lay off and say, "We can now wait for several days before anything happens". Being a realist, I am not sure that it is in the realm of the possible to expect that. The only way it could happen would be if the party leaders themselves agree that that is what they wish to do. If the three major party leaders had agreed,

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if they had come out on the Friday and said collectively, "Hey, look, we're all absolutely shattered and exhausted, none of us have slept for a week, we do need to recover and consult with our colleagues before we start these negotiations, and we're not going to start them until Monday", it might have been possible to have proceeded in that way. But I think that's the only way you could have brought about the change. I don't think you could have brought about the change by trying somehow to formulate expectations before the election, because the media would still have expected, immediately after the election result was declared, that discussions would take place about the formation of a new Government. So I think those expectations could only be changed if on the day itself, on the Friday, the party leaders had all said that they did not wish to start negotiations until the following week; they did not do so and I suspect it will be difficult, in an equivalent situation, after a future election for them to do so either.

Mrs Laing: In which case the media would have gone into a frenzy for a week, but there we are.

Lord Adonis: Or not. An interesting question is what would have happened in that situation. It could be. I mean, after all, what could the media have got into a frenzy about if the three party leaders had said, "Sorry, we're going home to bed—"

Mrs Laing: "Nothing is going to happen."

Lord Adonis: "—and we're holding internal discussions over the weekend." If Gordon Brown and David Cameron had both said that they intended to meet Nick Clegg on the Monday, and that was the beginning of the process, I am not sure the media could have done much. One thing I can say is that of course the machinery of state would have continued uninterrupted. Nobody suggested that the machinery of state was in any way imperilled by this five days' worth of delay. The Government continued on a perfectly satisfactory basis. There were in fact important negotiations in the European Council that took place over that weekend. The Chancellor of the Exchequer attended them. So there isn't an issue to do with integrity of the Government. The issue is to do with the expectations management with the media and expectations could only be changed if all three party leaders—and it would have to be all three—were prepared to say that they wished to proceed on a different basis. If you just had two of them saying that, I still do not believe it would have been possible to have delayed the start of negotiations.

Q76 Mrs Laing: That's very helpful. I was going to ask you this question in a different way, but you've anticipated me in answering it. Just to put it on the record, am I right in saying that government continued, Ministers were still Ministers, the Chancellor of the Exchequer had an important negotiation, we recall him doing that, and other Ministers were still undertaking their ministerial duties where necessary, and that the machinery of government continued until such time as a new Prime Minister was appointed?

Lord Adonis: Absolutely. I mean the only period of interruption, whatever it is, is the 20 minutes between one Prime Minister leaving the Palace and his

successor arriving. I am not sure I can advise you, Chair, on what the constitutional position is if crucial decisions had to be taken within that 20 minutes.

Mrs Laing: No, quite.

Lord Adonis: I think the Cabinet Secretary, if at all possible, tries to delay them. But until the Prime Minister has resigned, he is in charge of the Government, as are Ministers, which was the case during the election. As you will be aware, there was a major transport crisis during the election with the ash cloud over Europe, and I was exercising the full authority of the Government, including meetings of the European Council that I attended the day before the general election to finalise a new regulatory regime for flights through ash. So the Government are in full command of the machinery of the state until they resign, subject to the conventions of purdah, which is that they do not take decisions on new policy issues that are capable of being delayed until the result of the election is clear.

Mrs Laing: Yes. Thank you very much. It's very good to have that fact on the record, and it's interesting that we come down again to convention. I'll come back to that in a moment. We have a few minutes left. Andrew Turner.

Q77 Mr Turner: Yes. I'm interested in your recollection of a Government remaining in office because, until I saw it on television—Lord Norton of Louth had a group of people giving their views in the House of Lords—I thought it was the situation that normally happened in the last 20 or 30 years. But the question is: what would have happened if the Queen was not presented with anyone in charge? When Gordon Brown resigned, matters could have gone on for two or three days beyond his decision to resign.

Lord Adonis: I think the constitution is very clear. If the Prime Minister resigns, unless there is some wholly exceptional circumstance, the Queen sends for the Leader of the Opposition. The wholly exceptional circumstance, I think, would be if the outgoing Prime Minister were to advise her to send for somebody different from the Leader of the Opposition. But if the Prime Minister offers no such advice, then the constitutional convention is very clearly established that the Queen would send for the Leader of the Opposition. The question as to whether the Leader of the Opposition is able to form a Government is then an issue for the Leader of the Opposition, and the Leader of the Opposition then has to advise the Queen accordingly.

But there are conventions there too. In 1963, when Harold Macmillan recommended the Queen send for Sir Alec Douglas-Home, Sir Alec Douglas-Home said to the Queen he was not sure whether he was able to form a Government and he accepted—there was a term, I think it's something like a provisional mandate—provisionally, Her Majesty's commission to form a Government, but subject to him being sure he was in fact able to form such a Government and then he came back, I think it was a day or two days later, to accept the commission formally and to kiss hands. So, our constitution seems to work in these situations. Looking at what would have happened, if you posit a situation where Gordon Brown had resigned

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immediately after the election, because he formed the judgment that he was not able, in any realistic circumstance, to command the confidence of the House of Commons, I think the constitution would still have worked in a perfectly satisfactory way. The Queen would have sent for the Leader of the Opposition, David Cameron would then have formed a Government. The issue would have been whether that Government were going to be a minority Conservative Government or a coalition with the Liberal Democrats.

Q78 Mrs Laing: Is it not the case that the constitutional convention is, and the practicality in terms of how things are operating, as you said earlier in terms of your own role during the campaign and that of other Ministers, that the Prime Minister may well—Gordon Brown in this case certainly indicated his intent to resign as leader of the Labour Party—remain Prime Minister, for practical purposes, until there is another Prime Minister in place?

Lord Adonis: Absolutely.

Mrs Laing: I don't want to put words in your mouth. That is it. Does that answer your question, Andrew?

Q79 Mr Turner: I'm not sure, is the honest answer, because things were happening behind the scenes, or rather in front of the scenes—the Justice Select Committee looked at this responsibility of the Prime Minister to remain in position. That is how it happened. Now it strikes me what we are hearing is there is no such obligation to remain in position. If he resigns, he resigns, and the Queen gets the next man down. Whether it's the Prime Minister.

Mrs Laing: I'm not sure we can expect Lord Adonis to answer those questions.

Mr Turner:

Mr Turner: I think we can because he's been quoting what happened in 1828 and I thought what happened—

Lord Adonis: Not 1828, I don't think I went back that far. 1868.

Mrs Laing: Lord Adonis, as an historian, rather than as a Labour Party negotiator, it would help the Committee if you would give us your opinion.

Lord Adonis: Let us be clear: Gordon Brown did accept that it was his responsibility to stay in office until the point at which he was able to recommend to the Queen a successor. He did accept that, and it was on that basis that he remained in office until the Tuesday evening, at which point he recommended to the Queen that she send for the Leader of the Opposition.

Q80 Mr Turner: But this was presented to the Justice Select Committee as a responsibility that Gordon Brown had, and he could do nothing about it. He had to remain in post until the Queen would be offered an alternative. Now it seems to me it's quite clear that the Queen did have an alternative, in fact, she did have an alternative from Friday.

Lord Adonis: Yes, but the point is the constitutional Convention is absolutely clear, that the Prime Minister does not have to resign the day after the election if he has not clearly won the election.

Mr Turner: Absolutely, I agree.

Lord Adonis: That he has the ability to remain in post for longer than that, and the expectation is that he will remain in post until he is in a position to give the Queen clear advice. What is unclear—and this is the point we have been discussing in the Committee—is what that period of time is, whether it is a few days or whether it could go on for a few weeks. I think my view on that is that it would be very much a matter of the circumstances of the case. If the negotiations had proved to be more complex than they were in this case, or indeed if the Liberal Democrats had taken longer to decide on their potential coalition partner, it is perfectly conceivable, even in the events of this May, that the negotiations could have gone on for a week or perhaps even longer than a week. It is not conceivable that they could have gone on longer than the meeting of Parliament but it was not fixed that they had to be concluded within a very small number of days.

Q81 Mrs Laing: That is very helpful. Thank you. We've kept you for a long time, Lord Adonis, but can I ask you, in conclusion—because we are looking in this Committee at the constitution as a whole, and our discussion this morning has been very largely about conventions and the process—having now gone through this process earlier this year, as well as your many years of experience of examining the historical progress of the development of the conventions of the constitution and, given that that is based on precedent, I suppose that another precedent has been set now because what happened in May has happened. Next time it occurs people will examine what happened in May, just as you are referring back to Alec Douglas-Home and others. In your opinion—and I realise I am just asking for your opinion, but we would value it—was the process relatively satisfactory or could it be improved by having a better codified system written down and agreed in advance, or did it work reasonably as well as it might have?

Lord Adonis: I think the arrangements worked in a perfectly satisfactory way. If you ask my personal opinion, though much is made of the draft Cabinet Manual and the statement that the Cabinet Secretary made, in my view events would have proceeded in precisely the way they did proceed, even without those changes because the conventions were sufficiently clear as to what should happen in the event of no party having an overall majority. That the Prime Minister is perfectly entitled to stay until it is clear that he is unable to command the confidence of the House of Commons, and that he does recognise an obligation not to go, in any event, before he can clearly recommend to the Queen a successor. Had Sir Gus O'Donnell not opened his mouth at all, had there been no draft Cabinet Manual that is precisely what would have happened, in my view. I do not believe events would have taken any different course whatsoever if there had been no statements of that kind before the election.

Q82 Mrs Laing: That is extremely helpful. Thank you very much. Is there anything else you would like to say in conclusion?

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Lord Adonis: Only to reiterate that I think there is no constitutional issue at all about what happened in May. The constitution worked perfectly smoothly with, I think, a strong recognition of responsibilities on the part of all those people who were taking part in that, right from the Queen's Private Secretary through to the Leaders of the political parties, through

to the Cabinet Secretary. The issue about what happened in May is not a constitutional issue, it is a political issue.

Mrs Laing: Thank you very much indeed. That has been extremely helpful and elucidating. Thank you very much for giving us so much of your time.

Thursday 21 October 2010

Members present:

Mrs Eleanor Laing

Mr Christopher Chope
Sheila Gilmore
Simon Hart

Tristram Hunt
Mr Andrew Turner
Stephen Williams

In the absence of the Chair, Mrs Laing was called to the Chair.

Examination of Witness

Witness: **Rt Hon Oliver Letwin**, Minister for the Cabinet Office, gave evidence.

Q83 Mrs Laing: Good morning, Mr Letwin, and thank you very much for coming to see us this morning. May I begin by giving the apologies of Graham Allen, who is the Chairman

of this Committee. Graham is unwell; nothing serious.

Mr Letwin: I am aware of that.

Mrs Laing: We suspect he is watching us by some kind of electronic link and we're trying to behave. He sends his most serious apologies and has sent some questions as well.

As I am sure you are well aware, we are conducting an inquiry into the formation of the Coalition Government, as part of our general inquiry into the constitution and the prospects of a written constitution or not, as the case may be. It is very good of you to come before us this morning, having been a key player in the formation of the Coalition Government. We had here last week Mr David Laws and Lord Adonis, as I'm sure you are aware, and so we have an emerging picture of what happened in each stage of the formation of the coalition. Before we go into general questions, I would ask you is there anything in particular you would like to say by way of introduction?

Mr Letwin: Thank you. No, I don't think so, in the sense that I think the Committee will be well aware of the public information, and that sets the background.

Mrs Laing: Indeed, that is fine.

Mr Letwin: So I'm open to whatever you want to ask me

Q84 Mrs Laing: A simple question to start with. Was five days long enough to produce a coalition?

Mr Letwin: I think there is a balancing act here and I should preface what I am about to say by saying that I don't think that what was true then will necessarily be true at all future possible occasions. I think it is dangerous to assume that either history stands still or that there are easy generalisations. But dealing with the specific period we're talking about, located as it was at a particular point in our national history, I think, because of the state of the public finances in which we found ourselves as a result of the activities of the previous Government, there was a genuine risk—very difficult to quantify, but a genuine risk—that very serious financial consequences for the country in terms of the financing of the national debt and the value of our currency, which could have lasting, long-term impacts on our economy as a

whole, would arise if there was a prolonged period of instability and uncertainty about government.

You could well have later times at which people were forming or not forming coalition governments when there was no such background, but at that particular juncture I think there was a real danger that a prolonged period of instability would have precipitated some form of crisis in the financial markets, which in turn would have made it very much more difficult to form a Government. So one could have created, by mistake, a vicious circle, and for that reason I think there was an extremely strong national interest in rapid formation of a Government.

The next question one has to ask, I suppose, is how much better could we have done if we had had 10, 15, 20, 25 days; to which I don't know the answer. But my instinct is that, as sometimes happens in human affairs, if you're in a pressured situation and there are time limits, you do what you would have done anyway in a longer time in a shorter time. I doubt much would have altered if we'd had 10, 15 or 20 days. That is a long shaggy-dog story, but my brief answer to your question is we didn't have the time so the issue didn't arise. But I don't think it would have helped much to have had the extra time, although I can't be sure.

Q85 Mrs Laing: Would I be right in saying that 20 days would have been a long time to leave the country without a Government?

Mr Letwin: In different circumstances I don't think it would matter too much. There are many countries in which coalition is a more usual phenomenon and which are not, at a given time, going through a financial crisis where I understand it is quite normal for that sort of period of two or three or four weeks to elapse while a Government is formed. As I say, I'm not making a general observation about how things need to be at other times. I'm just saying we didn't have that luxury and I don't think it matters too much.

Mrs Laing: Simon, on timing?

Q86 Simon Hart: It was just a very quick question. During that period, the media tended to interpret the situation as something of a crisis and I think stoked up that national feeling. On reflection, do you think it would be helpful that, if these circumstances ever occurred again, there was some kind of written protocol that clicked in where you wake up to an election result such as that? Would that be helpful if

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you knew you had almost a statutory period of time in which to form a Government, in order to keep the national mood at a manageable temperature and, therefore, avoid the sort of market consequences you were talking about?

Mr Letwin: I think that is an issue that is certainly worth considering. I am very conscious that it pays, when you are thinking about things that have quite long-term consequences, to engage in mature deliberation and I wouldn't want to give you a view suddenly on that question. But I think it is an issue that I would very much welcome this Committee considering and making recommendations about and then I think it would deserve to be debated more generally. I certainly think there is a case for a set of rules. As always, there is also a case for flexibility and you have to balance those two quite carefully.

Mrs Laing: Thank you.

Q87 Stephen Williams: We have a parliamentary system, obviously. So, arguably, the first important occasion is the meeting of the House of Commons where we elect the Speaker. Would that not be the logical backstop for the forming of a new Government; the period in between the final result of the general election and the first meeting of the House of Commons? That could be the interval during which a Government could be formed?

Mr Letwin: That is certainly a possibility. As I understand it—and this is reflected in the draft first chapter of the Cabinet Manual, which you will have seen, of course—the normal practice in other elections, for some time anyway, had been to rather rapidly convene Parliament after the election; I think on average about four days after. On this occasion I think it was about 12 days. I don't think the period is set in any formal way. I may be wrong. I am not a constitutional expert. But I'm not aware of any crypto or actual constitutional document or statute that defines the maximum period. So if the Committee were to think that the answer to your question is that we should gear the period to the period at which the Speaker is chosen and Parliament is convened to choose him or her, then I think one would be forced back to ask the question, "Well, what is that period?", and I don't know. At the moment I think that is an unanswered question. So there is a sort of daisy chain of consequences. But I can see there is a certain logic in your proposition.

Q88 Stephen Williams: Do you have a view on what that interval should be?

Mr Letwin: I guess it is a view that you would share, which isn't terribly helpful, which is that it should not be too long but not too short. The question is: what is the golden mean? I hope that what I am already expressing is certainly something that is the most profound belief I have about these things; that is, these are cases in which it is not the brilliant perception of an individual but the wisdom of a collection of people that needs to be brought to bear. I don't think adopting a dogmatic view about that would be sensible. I think we should discuss it and come to a view and perhaps, over time, change it. One lives and learns in these arenas.

Q89 Stephen Williams: One of the issues that arose out of the timing was that Gordon Brown, the former Prime Minister, went to the Palace and surrendered the seals of office and David Cameron, the new Prime Minister, was immediately summoned. I, along with quite a large chunk of the Liberal Democrat Parliamentary Party, was sat in Pizza Express, Millbank, when we found out that had taken place, in advance of us meeting in Local Government House—I think it was—just around the corner, to consider the final documents that our teams had negotiated. Do you not think it would be better if the Prime Minister was chosen by the House of Commons, once those negotiations have come to full fruition, in a sort of investiture vote?

Mr Letwin: I certainly think that is a thinkable arrangement. Of course, under our constitution—and this is something that I think is as settled as anything gets in our constitution—the Prime Minister in the end is chosen by the House, in the sense that unless the Prime Minister can command the confidence of the House, either through getting the Queen's speech approved or through a supply motion that is accepted or through a no confidence motion that he or she wins, then the Prime Minister can't be the Prime Minister. I think if there is a fixed point in our rather fluid constitution that is one of them. So I don't think it makes an enormous amount of difference, in practice, whether there is or is not a moment at which we say, "This is the moment that the Prime Minister is chosen". But it is, nevertheless, perfectly thinkable that you would have such a moment. I certainly wouldn't object to having such a moment.

Q90 Mrs Laing: If the Chairman had been here he would have wished to ask you specifically, do you think, in planning for the future, that there ought to be provision for a regular investiture vote regarding the Prime Minister in the House of Commons?

Mr Letwin: As I say, I certainly do not have any rigid objection to that idea. I don't think it is something that would be transformingly different. It would depend on what else went with it, but, as part of an appropriate jigsaw, I certainly would have no quarrel with it.

Q91 Tristram Hunt: In terms of the timing behind this coalition, was five days almost too much? Because what we have heard from other witnesses is the high degree of ideological convergence between the Liberal Democrats and yourself when you entered into negotiations. So I imagine you must have all been trying to find things to talk about towards the end. Do you think that having that kind of ideological convergence was helpful towards the formation of a quick coalition?

Mr Letwin: There are two importantly separate—and each important—questions contained there. One is, was five days almost too much and the second is, is it helpful to have convergence for negotiations? On the question of the time, I certainly would not describe the five days as too much and we certainly were not in the position of having almost nothing to talk about. In fact, it was nail-biting to the end. Not because we hadn't had the time to discuss properly the few critical issues that needed to be discussed to see whether we

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had the basis for a Government, but because—as a question from another member of the Committee revealed—inside each party there was much to be thought about.

It was certainly necessary to have the amount of time we had in order to allow that process to go forward to the point where it crystallised in a set of decisions. Although I certainly wouldn't wish to speak for the Liberal Democrats, I think inside the Liberal Democrats Party there is quite a formal process. Conservative colleagues may think that there should be inside the Conservative Party, but there isn't. But, nevertheless, we had an informal process that we did go through. I think there is the need for those kinds of processes and I certainly don't think you could telescope them into a shorter time. In fact, I think I could imagine colleagues, in either party, feeling that it was—or indeed, in the Labour Party, on their side of the fence—quite a compressed period in which to consider the issues and, of course, the dynamics of consideration internally affect the negotiating dynamics.

We were faced with a triangular situation in which there were three parties, each thinking through things, and one party that was having to make a very difficult decision as between the other two. That affected the negotiations that each of the larger parties were having with the party that was trying to make a decision between them. So it does take a certain number of hours to go through that process. While I stick with my view that it wouldn't have made too much difference if we'd had more than the five days, I can say—as close to certainty as you can in human affairs—that if we'd only had three days we probably could not have done it. I simply don't think we could have gone through the processes behind the scenes where we would have reached the point where we could agree.

Q92 Tristram Hunt: Because it was more a question, not of the leaderships of the party convincing each other of their philosophical grounding—because we know that the Liberal Democrats went into the negotiations committed to the same fiscal strategy as yourself, in terms of the deficit—but what the five days was about was squaring your parties to the agreement?

Mr Letwin: It's sort of half yes, but I think I would put what you are saying a little differently, in the sense that it is more interactive than that suggests. How much we gave and took on which parts of the negotiation of the things that were most difficult to negotiate, which were the only things we were discussing at that stage, very much depended on the reactions that we and—on the Liberal side—they received from colleagues coming home; not least, incidentally, the two party leaders. We have to remember that neither Nick Clegg nor David Cameron were present at these negotiations. You might imagine that we—I can only speak on the Conservative side of this, but I am sure it was true on the other side—were pretty acutely conscious, in the Conservative negotiating team, that a figure who was the leader of our party would have certain views about what it was

we had said and done. So we had to come home and talk to him, but not just him.

We had to talk to others, both specifically about detail and, more generally, about where we were going inside the leadership of the party. Then we had to have very considerable discussions with colleagues much more widely in the parliamentary party and, indeed, beyond the parliamentary party. I know that the Liberals were in the same position. I imagine that the Labour negotiators were too. So it's not a question of squaring. It is a question of interacting with people not in the room and reflecting the effects of those interactions back into the negotiations.

Indeed, as I think the Committee has heard already from other sources, there were times during the negotiations where a related but different negotiation went on—at least in our case—between David and Nick. So you have quite a complicated tapestry of people talking to one another and there is the minimum amount of time during which human beings can get to the points they need to get to psychologically, emotionally and intellectually. I really do think if we tried to compress it into two or three days it probably would have collapsed.

Mrs Laing: That is very helpful.

Mr Letwin: If I may just answer the second question you're asking?

Mrs Laing: Of course.

Mr Letwin: Was it helpful to the negotiations that we had a high degree of ideological convergence? Yes, it was totally required. If we had been in positions as other parties, or the same parties, at other times have found themselves in, of very considerable and profound divergences, I don't think five days would have sufficed to deal with them. There were some very crunchy issues we needed to resolve but, as you rightly point out, the broad conception of where we thought the country was and what we thought the country needed was very similar. Indeed, I had satisfied myself of that by pretty extensive investigations of the Liberal policy documents before we started the process. I am pretty certain that if that hadn't been the case, we couldn't have done it in five days. We were able to walk into the negotiations pretty much knowing—in fact, I think it turned out entirely accurately knowing—what the crunch issues were. We knew that there were a small number of them and one just had to find ways through those.

Mrs Laing: Thank you. That is extremely helpful. We heard evidence last week from Mr Laws and Lord Adonis, which was in the area that you have touched upon.

Sheila Gilmore: Chair, just a follow up on the timing issue.

Mrs Laing: Let us pause where you are, Mr Letwin, and flip back for a moment to the timing issue, and then we'll go back.

Q93 Sheila Gilmore: I would also like to get on the record that the view that there was such an economic crisis that this had to be done in a great hurry is your own view, I would suggest.

Mr Letwin: Correct.

Sheila Gilmore: It is not necessarily shared here by everyone.

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Mr Letwin: I'm sorry, I didn't mean in any way to imply that others thought it. I thought it.

Q94 Sheila Gilmore: My perception from being further away from what was happening—and I think perhaps the public's perception—was there was a lot of pressure from the media who did not understand the situation we were in. In other words, "It's a constitutional crisis, this is a real problem." Had there been a clearer process, perhaps even a written process, that accepted that it takes time to put together a coalition there might not have been that pressure. The media certainly did not seem to understand the process and that may have put pressure on everybody involved; we were not just in, as you saw it, a financial crisis but that we were in some form of constitutional crisis and if we had a written procedure there would not be a constitutional crisis. Does that make sense?

Mr Letwin: May I just respond to that?

Q95 Mrs Laing: We will come back to the issue of the Cabinet Manual and the formal process in a moment or two, but if there is anything you would like to say about media pressure and so on?

Mr Letwin: I think I would like to say something about the media pressure and I want to say something that may strike you as unusual. Shall I wait until the dreadful bells finish?

Mrs Laing: Yes, let us wait.

Mr Letwin: I speak for myself here. I don't know what all of my colleagues felt, even in the negotiating team. My own view is that the amusement that the media had reporting with great excitement on the event and having very large numbers of cameras tracking us back and forth as we walked back and forth was entirely spurious. It had nothing to do with anything. It didn't cause the people of Britain the slightest concern and didn't cause us the slightest concern. I can speak for the last bit definitely. We were not in the least concerned about it. And I don't think, if we went out there and asked Mrs Jones and Mrs Smith, "Did you find this a terrible constitutional crisis", we would find anything different. Indeed, I think one of the splendid features of the whole scene was that it was a brief moment in which serious politicians of all three parties took charge of a process and carried it out in a serious and professional way, paying absolutely not the slightest attention to the media. In fact, I had a very strong sense that the media were astonished and horrified that they found out nothing.

Indeed, one of the bases of trust between ourselves and our Liberal Democrats counterparts—I can't speak for the other negotiations—was that not a single thing we said to one another leaked at any time during that process. So we quite quickly came to understand that if we said things to them and they said things to us, neither of us was going to let anybody else know. I had a very strong sense that the media thought it was extraordinary, almost unconstitutional, that politicians should have a set of discussions that the media were not in charge of. I thought that was a wonderful feature of the scene. We should remember that and treasure it, and be willing to do things in the future,

where politicians, in the national interest, do things that they do not—until they're ready to say what they have to say—say to the media. So I wasn't worried about the media pressure at all. I accept there are differing views about this but, as I say, I think there was a very serious issue about the financeability, at reasonable interest rates, of the UK's national debt. Therefore, I think that there was a very serious reason for having a Government—of whatever disposition—in place to deal with it, relatively rapidly, media or no media.

Mrs Laing: That is very helpful. Thank you. Can we flip back again, to where you were in explaining some of the content and the ideological position of the negotiating parties? I will go to Christopher Chope on this one.

Q96 Mr Chope: I shall ask my good Dorset parliamentary colleague about this three-way negotiation. We have heard that by the Monday morning there was a draft confidence and supply agreement that had been drawn up, which was in quite a lot of detail and running to several pages, and in that there was the possibility of a provision for a free vote in the House of Commons on whether or not there should be an AV referendum. Is that correct?

Mr Letwin: It is certainly correct that there was such a document. Rather like witnesses in court, I'm afraid at this distance I'm absolutely unable to remember which day was which and I can't tell you on what day this document was ready or at which stage it was given to whom. But, as I wrote the document in question, I do know that there was one.

Q97 Mr Chope: Is that a document that this Committee could see?

Mr Letwin: It is not a public document. I don't know whether the Committee has or has not the power to require it or to obtain it under the Freedom of Information Act.

Q98 Mr Chope: Would you be willing to make it a public document?

Mr Letwin: Personally, unless forced to do so, no. I think it is right that the negotiations should be regarded as negotiations that went on between two parties and the final product of it, of course, was entirely public. But I don't think it benefits the national interest for it to be seen how it came about because, if that were the case, in a future case everyone would know that it was going to be public and that would alter what was one was willing to do and, I think, diminish the chances of being able to negotiate successfully.

Q99 Mr Chope: Leaving that on one side, we have heard from both Mr Laws and Lord Adonis that there was never any discussion between the Liberal Democrats and the Labour Party about the possibility of legislating for AV without the people being consulted, either before or after. Is that your understanding as well?

Mr Letwin: I have not only read the account of Lord Adonis' remarks to you but also have attended to what the Deputy Prime Minister said in the House of

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Commons, and, as both parties to the Labour and Liberal side have said what they have said, I assume that they're accurate. It was certainly not our perception. Our perception was that there was a very considerable risk that such concessions would be made. If we were mistaken in that, then that is one of the features of the scene in which one knows what one is saying to the other party oneself, but one does not ultimately know exactly what they are saying to each other.

Q100 Mr Chope: So you recognise that, in retrospect, you were mistaken about that, if you formed that perception?

Mr Letwin: I recognise that both the participants to it have said that it was not as advanced as we thought it was.

Q101 Mr Chope: Yes. So then we get to the situation where the Conservative Parliamentary Party has a meeting where the Prime Minister—or the Leader of the Conservative Party as he then was—addressed the parliamentary party and was discussing with them whether to take the negotiations further forward. And what was said by David Cameron was that there was the real prospect that, if there wasn't a better offer from the Conservatives, there would be a deal done between Labour and the Liberal Democrats that would involve legislating for AV without consulting the people through a referendum. You were there at the meeting.

Mr Letwin: Yes, that is what we believed.

Q102 Mr Chope: That is what was said. In the BBC programme, *Five days that changed Britain*, when it was put to him that he had misled his MPs, David Cameron said, and I think I quote exactly, "No, I was absolutely certain in my own mind that that was the case"; that this had happened. He then went on to say that he had good reason to be certain because a number of people had told him that that was the case. Were you among the people, or perhaps the person who told him that you thought that that was the case?

Mr Letwin: I see. No. Let me take it step-by-step. First of all, that is an exactly accurate position that the Prime Minister relayed. We were persuaded that it was the case that there would be, or there was a very strong prospect of there being, an alternative offer from the other side in the way that he described the parliamentary party. It is certainly also the case that quite a lot of sources had suggested that to us. I was not among those. You may know, after our long acquaintance, that I am not a person who spends a great deal of time gossiping in the corridors. I am the last person to find things out. I have to trust those who are better at that. It did seem to me that it was highly plausible that they would and, incidentally, I think it is quite plausible that they would have done. We don't know. We will never know whether they would have made that offer if we hadn't. But it was not I who received the information and relayed it. I simply heard it at more or less the same time as the Prime Minister did.

Q103 Mr Chope: We know that this information was incorrect. So are you able to say who got the wrong end of the stick and was—

Mr Letwin: No, I don't think I should dwell on it.

Mr Chope: You don't think you should what?

Mr Letwin: I said, I don't think I—

Mrs Laing: I think I must protect Mr Letwin here. It is only fair that we can ask you, Mr Letwin, to tell us what you think and what you were doing.

Mr Letwin: Indeed.

Mrs Laing: You can't answer for others.

Mr Letwin: I'm grateful for that protection.

Q104 Mrs Laing: But it is emerging, from what you have said and from what our previous witnesses said that the understanding was not complete between all of those who were negotiating.

Mr Letwin: Yes, and let me go further than that. You do have to imagine yourself into circumstances in which you don't even properly understand what the people on the other side of the table from you are thinking. They take good care not to tell you everything, after all. Still less do you understand about what is going on between them and someone else who is taking extremely good care not to tell you anything at all. So this is a game of battleships. You're trying, under those circumstances, to sense out what is going on and we were trying to get a sense of "what would happen if", and this can never be perfect information.

Q105 Mr Chope: If you felt you were in the dark, how did you think your Conservative colleagues in Dorset felt? We were completely in a blackout situation. In concluding my questions, can I ask you whether you feel that the concerns that were expressed during the latter part of the election campaign—that a hung parliament would result in negotiations behind closed doors, where the elected representatives of the people were the last to know what was happening—were realised in practice by what happened in those five days?

Mr Letwin: Inevitably. Yes.

Q106 Mr Chope: Do you think that on future occasions, if this was to happen, there is a lot to be said for having more open and frank and transparent discussions with the Members of Parliament in advance of any agreement being drawn up?

Mr Letwin: I have several things to say about that. The first is, I think you and I both accurately represented to our electorates something that you and I both, I think, still believe—certainly, I do—which is that first-past-the-post is a good system because it tends to produce majority Governments and that one of the disadvantages of not having a majority Government emerging from an election is, in my view—I am coming on to why—inevitably that there will be closed-door negotiations between parties. I think one follows the other as night from day. That is one of the reasons why I persist in believing that first-past-the-post is a good system. Now, first past the post was the system and it doesn't always produce the result one hopes for of a majority Government. In this case it didn't and I think it was inevitable, therefore, that there would be negotiations behind closed doors.

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No, I don't think you could possibly have an open discussion beforehand about all the modalities. First of all, as you and I very well know—and as all members of the Committee will be aware—you cannot possibly assume that these would then be secret. On the contrary, all the evidence over the years suggests they would be well-known to everybody. Once you've had an open discussion among hundreds of people it will be in the newspapers within hours and if you go into a general election, as your suggestion would entail, with the newspapers being able to list all the negotiating positions of all three parties—or the party, should there be a coalition discussion—then it would be almost impossible to deal with the situation. Still more so if one party did it and the others didn't, that party would then be at a complete disadvantage. So I see no practical way of doing that. I think the solution to the problem you are addressing is to elect majority governments.

Q107 Mr Chope: Just a quick question: leaving aside what happened before, after the event—between the election, with the hung parliament, and what followed on after that—do you not think that the Liberal Democrats in a sense, with much more consultation with their parliamentary party, had a message to deliver to the Conservative Party, in similar circumstances should they ever arise in the future?

Mr Letwin: I'm not posing as a constitutional expert about the Liberal Democrat Party but, as I understand it, they do have a much more organised process. But it was not the case that they went through that process before the election. As I understand it, they went through it afterwards. Indeed, their negotiators kept on saying to us, I think in perfectly good faith, that they couldn't do X, Y or Z until they had been back and had consulted. I would observe, first, that the number of MPs in the Liberal Democrat Party is very much reduced; it's much easier to do, compared with the Conservative Party, especially after the last election. But it would indeed be possible to organise things in the Conservative Party so that there was a more elaborated process for such things. I have no axe to grind against that at all. It's obviously a matter to be thought about within the party machinery. I think that there are very good arguments for trying to formalise it. But I see all that as a process that you might establish for dealing with the situation after an election in which you didn't get a majority verdict. I don't think you could do it before.

Mr Chope: Thank you very much.

Q108 Mrs Laing: Thank you, that's very helpful. Would it be right to summarise what you were saying by saying that where the electorate is indecisive then their vote on election day is not the end of the decision-making process, it's the beginning of the decision-making process?

Mr Letwin: Yes, it is; I think inevitably. It is a very interesting reflection that, on a certain Thursday in a certain month of a certain year, the people of Britain collectively make a decision, and I slightly believe—although I'm certain that I can't prove this proposition—that there is such a thing as the collective wisdom of the nation and that there is such

a thing as a collective decision; although no one individual is making that decision. Therefore, I slightly believe that the people of Britain, at the last election, made a decision that they wanted not to have a majority Government. I regret that decision. I would have liked to have had a Conservative majority Administration but I think that they told us, collectively in Parliament, "Go and do something about the situation. We don't want to have one party running this country". Therefore, I think they effectively forced some kind of arrangement to be made and I think the arrangement that emerged was vastly better than any of the alternatives. But, of course, I'm biased about that.

Mrs Laing: The people have decided and so on. That's it. Thank you.

Q109 Mr Turner: Could I just ask you—because you used these phrases that I take it were reasonably representative of what you think—you said, "An informal way in which people were consulted, for example the members of our party"?

Mr Letwin: Yes, the meetings of the 1922 Committee and so on.

Mr Turner: Yes. As I recall, there weren't any meetings of that Committee.

Mr Letwin: Yes, there were two great—so maybe it wasn't the formally the 1922 Committee; the meeting of the parliamentary party.

Mr Turner: That is different.

Mr Letwin: Sorry, yes.

Q110 Mr Turner: You said those meetings were very considerably wider. Could you just go through what were the informal meetings that took place?

Mr Letwin: Primarily, the meetings you will be very well aware of; the meetings of the parliamentary party.

Mr Turner: Yes.

Mr Letwin: I don't pose as an expert on the constitution of the Conservative Party but, as I understand it—I'm not a Conservative Party constitutional expert at all; I'm personally much more interested in the constitution of the country—in the Conservative Party's constitution and rules generally, those meetings did not have a formal status. I don't believe that there is a process; whereas, as I understand it, in the Liberal Democrats' constitution there is a formal process. I may be wrong about that. That's how I understand it.

Q111 Mr Turner: There was one or did you say two meetings?

Mr Letwin: I think there were two, weren't there? Do I not remember that?

Q112 Mr Turner: When were they?

Mr Letwin: I am terribly sorry; as I mentioned before, I have absolutely no recall of the exact date.

Mrs Laing: Let's try to help. I recall two.

Mr Letwin: Yes. I believe there were two separate meetings. This is a matter of record and can be checked.

Mr Turner: Okay. Yes.

Mr Letwin: There were also all sorts of efforts of various kinds to consult various persons and groups

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of people, including—I think this is also a matter of public record—a moment at which what was then the Shadow Cabinet was convened. Again, I’m terribly sorry, I can’t tell you exactly what day but I know that it was convened because I was present at the meeting. No, I do not have a precise list of all the people the Chief Whip and others spoke to, but my point was all of that process was not a formal process where there was a rulebook and things were done according to a rulebook, which I think was what happened inside the Liberal Democrat Party. I think that Mr Chope’s suggestion, so to speak, is that, either *ex ante* or *ex post*, there should be such a process in the Conservative Party and I entirely understand that suggestion. I can see the point of it.

Q113 Mr Turner: Earlier on, you said it would be a good thing to have mature reflection, I think. I am very concerned about this because the question is: with the AV Bill and the timetable and hearing the argument about the Salisbury Convention, as a member of the Conservative Party, I don’t feel that I committed myself to the AV and I don’t feel that I committed myself to the change in the number of MPs, both of which are in the Bill and which are something I suspect other people would agree with me. What is your response to that?

Mr Letwin: Clearly, your view of your view is your view. I am in no position to question that. The Conservative Party, in the person of the Leader of the Conservative Party and with the approval of the Shadow Cabinet of the Conservative Party—which, as I understand it, are the bodies that are empowered to make such decisions in the Conservative Party—made a decision to agree a document in which those things are placed.

Mr Turner: Yes, I accept that.

Mr Letwin: Of course, that does not entail that every member of the Conservative Party or every parliamentary colleague in the Conservative Party or, still less, everybody who voted for the Conservative Party agreed with it. Incidentally, that’s true of every piece of legislation. I mean it is the right, the proper right, of every backbencher in the Conservative Party to take a view of legislation proposed.

Mr Turner: It’s a different—

Q114 Mrs Laing: Andrew, if I can stop you for one second, I will put the question to Mr Letwin that the Committee put to both of our witnesses last week, which was very simply: in your opinion, does a coalition agreement have the same force as a party manifesto, an election manifesto?

Mr Letwin: No, they’re completely different kinds of document. Without wishing to be naïve enough to assume that very many people in the country read election manifestos, much as I wish they would, it is nevertheless the case that a lot of journalistic attention, at least, is paid to manifestos and that it is at least open to voters to read the manifesto and that some voters—maybe a higher proportion of those making up their mind than those already settled in their convictions—do read manifestos, or read summaries of manifestos, or read summaries of the manifestos in the newspapers and elsewhere.

Therefore, at least I think one can say that some of the main lines of the manifesto probably have some influence on the outcome of a general election.

Mrs Laing: Indeed, whereas, a coalition agreement can’t be because it’s not in existence.

Mr Letwin: The coalition agreement manifestly can’t be because it isn’t in existence at the time of a general election. It is a totally different status of document.

Mrs Laing: That is very helpful, thank you. I’m going to Simon to follow up that point and then to Tristram on the other point.

Q115 Simon Hart: It’s a very quick add-on: in a sense it’s a bit more serious than that, isn’t it, because within the House of Lords there is the Salisbury Convention, whether we believe it remains valid or not—the Hansard study has some views on that—it does tend to take into serious account manifesto commitments. What nobody seems to be able to answer, and perhaps you can, is whether the Salisbury Convention applies at all—you might be able to answer this—in relation to a coalition commitment? I think it’s a bit more than just saying that a manifesto commitment is different. We know it’s different but it has a constitutional implication in the House of Lords when it comes to the implementation of Government policy.

Mr Letwin: I’m afraid that you would need to speak to the Leader of the House of Lords, and others, about the operation of the Salisbury Convention in the House of Lords. I don’t pretend to be an expert on the *arcana imperii* of the House of the Lords, but I entirely accept that a coalition agreement is not a document on which the British public have voted. It is a document that emerges from a discussion between politicians for whose parties, in varying degrees, the British public have voted. Whether that is material, from the point of view of the House of Lords or otherwise, I don’t know and you would need to talk to those who are experts about it, and I’m sure that the Committee will wish to explore that. If it does wish to explore it, it will call witnesses who are expert about it. But I think we have to be clear that these are two quite different kinds of documents.

Mrs Laing: Thank you very much. We will have to conclude fairly quickly, but Tristram had a question from earlier and then there’s one more general point we’d like to come to.

Q116 Tristram Hunt: Just to drill down very briefly on what Mr Chope was pushing at, in terms of the commitment to the AV referendum, we’ve heard from those involved in the Labour Party negotiations that—in the words of Lord Adonis—they were not interested in what he regarded as sort of constitutional gerrymandering and said that the Labour Party regarded it as a non-starter, in terms of their negotiating position; agreeing to AV legislation without a referendum.

Mr Letwin: Before you go on, may I just observe that if that was indeed the case it was slightly odd, in the light of the parliamentary record, because the Labour Party had voted for such a thing.

Tristram Hunt: In what sense?

Mr Letwin: In the previous Parliament.

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Mrs Laing: As a matter of fact, it is correct. The then Labour Government had in a Bill that fell just before the general election, that there would be an AV referendum. It was law at that point.

Mr Letwin: Yes.

Tristram Hunt: A referendum?

Mr Letwin: Yes.

Tristram Hunt: Yes. We're talking about legislation without referendum.

Mr Letwin: I'm sorry. I thought you said "referendum".

Tristram Hunt: No. The suggestion from Andrew Adonis was that the Liberal Democrats' starting point was to have AV legislation without a referendum and maybe having a *post-hoc* referendum.

Mr Letwin: I'm sorry.

Tristram Hunt: So the Labour Party position was always that this was not a runner. What you're suggesting—

Mr Letwin: I'm terribly sorry, but you're telling me something very interesting. May I just ask about this? Are you telling me—

Tristram Hunt: That was in Lord Adonis' evidence to us.

Mr Letwin: Yes. I hadn't caught this. Are you saying that Lord Adonis said that the Liberal Democrat negotiators said to the Labour Party that they did want to have AV legislation without referendum?

Tristram Hunt: Shall I read you the quote in full?

Mr Letwin: Please, yes, that would be very helpful.

Tristram Hunt: "And among the proposals they put to us"—the Liberal Democrats—"was the proposal that we should agree to the alternative vote before a referendum was held. We should implement it; we should implement legislation for the alternative vote before a referendum was held. That was the point at which we made it clear we could not agree with them on a key constitutional measure."

Mr Letwin: Right.

Q117 Tristram Hunt: So that was not a starting point for the Labour Party. But what we've heard today is that you came to the Conservative Party, you heard from sources—which you quite rightly have not revealed—that this was running. So either you're a terrible poker player, or you were thrown a dummy by the Liberal Democrats and agreed to all sorts of measures that you're now having to put through Parliament with a straight face, which were not necessarily something you had to do?

Mr Letwin: Hold on. First of all, you said something very interesting to me, historically—which is, I think, only of historical but nevertheless of very considerable interest—which is, even if we were mistaken that the Labour Party had offered this, if the report you're reading out is accurate, it was something that had been asked for.

Tristram Hunt: Yes.

Mr Letwin: That may well have been, coming back to Mr Chope's question, the source of the confusion. That is to say, it may well have been—it often does happen in these affairs, does it not—that the slight but crucial difference between proposition A, something was asked for, and proposition B, something was

offered, became lost somewhere in the transmission mechanism to us in this campaign.

Tristram Hunt: Either deliberately or not deliberately.

Mr Letwin: For whatever reason, yes. That could possibly be, yes. It could more than possibly be. I have no knowledge of it of course but I can now well imagine what might have happened. Why it happened, and who made it happen that way, I have genuinely no idea, as a matter of fact; although I certainly wouldn't reveal to the Committee if I had. But I don't, as a matter of fact. But that may be the explanation of what did occur and why we were led to believe that that was the case. To clarify my response earlier; I am sorry, I had thought that you were saying that Lord Adonis had said that it was a non-starter for them to have even an AV referendum.

Tristram Hunt: No.

Mr Letwin: That would have been very wrong because we knew that they had voted for one and that, as the Chairman says, it was then kind of the law.

Q118 Mrs Laing: Thank you; that does help. I think, in trying to clarify this point, we seem to be digging up more and more mud. It becomes all the less clear the more we go into it, but it has become very clear to this Committee that obviously there was confusion. But then, as you said, Mr Letwin, that is the nature of negotiation when one side doesn't know what the other side is really offering, and I think Mr Hunt's analogy of poker is probably fairly accurate.

If we may—we're running over time—can I come to a very particular issue, and that is the issue of the Cabinet Manual. Was the Cabinet Manual of use to you when you began these negotiations? It clearly wasn't absolutely the first thing that you went to and said, "Oh, let's find the Cabinet Manual".

Mr Letwin: I'm trying to formulate exactly a truthful answer. It is true that, knowing what the practice was in certain areas—like, does the sitting Prime Minister have a right to go on sitting, or is it an established practice that the Prime Minister has a right to go on sitting as Prime Minister until certain things happen—was very useful to us. That is to say, in this fog of war, having any point of clarity about anything is useful. It was useful to us, therefore, to know, to the extent one can know, what the practice was in a respect like that, and any document that helped us to understand that was, therefore, useful.

Mrs Laing: Yes.

Mr Letwin: But you asked me quite precisely the question, "Was the Cabinet Manual useful?"—the draft that was then exposed—and I think the truthful answer to that is: at that juncture it wasn't but for a particular reason, which was that, extremely helpfully, the Cabinet Secretary had so arranged matters—I think he'll tell you with permission of the then Prime Minister—that he was able to offer advice about the constitutional proprieties to all parties.

Mrs Laing: Right. So in practical terms—

Mr Letwin: We didn't have to look at the Manual because we could meet the man.

Mrs Laing: You could meet the man.

Mr Letwin: And ask quite precise questions and have them very clearly and very comprehensively

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answered. It was that helpful provision of advice by officials that was the thing that really helped us. I'm not at all confident that we would have understood the situation sufficiently if we simply had to rely on however clear a document we were able to—

Mrs Laing: Much better to have a discussion about the document with the person who had pulled those matters together.

Mr Letwin: Have a proper discussion, exactly.

Q119 Mrs Laing: That is very helpful, thank you. Since we are looking, overall in this Committee, at the arguments for or against a written constitution, and having a general inquiry—over a number of years, we hope—about developments in the constitution, should the Cabinet Manual as such, given that it now exists and has been acted upon, be in the public domain? This is the question that the Chairman—had he been here—would have liked to have taken very seriously: should such a document be in the public domain?

Mr Letwin: This is a personal view. I think it is useful to have in the public domain a document that accurately, or as accurately as can be managed, describes the various practices that are established.

Mrs Laing: Yes.

Mr Letwin: And not just in the domain of that first chapter but in other areas of the conduct of Government. I hope that the Government will come to the point of agreeing sufficiently with other political parties to get to a document that is able to be published; it is of the essence that it should not be partisan in any respect.

Mrs Laing: Of course, yes.

Mr Letwin: It should be seen to be a fair summary of existing practice and constitutional experts outside politics, professors and jurists, should have looked at it and find it to be as accurate a summary as can be managed, and so on. So if one can get to the stage where there's a document that is widely accepted as non-partisan and reasonably authoritative, then I think there is a major advantage in having that out in the public domain. I think some of the issues about how you do things would then be clearer and clarity seems to me valuable.

Mrs Laing: That's extremely helpful. The value of a fixed-term Parliament—there's time to do that. But, if I may, Mr Williams would like a quick question about preparations before the election.

Q120 Stephen Williams: Yes, Chair. Could I ask Mr Letwin: when was the Conservative negotiating team appointed by David Cameron? Was it subsequent to the election or were you in place and prepared just in case there was a hung Parliament?

Mr Letwin: There was not a negotiating team established until the negotiations began, but I would be misleading you if I were to suggest that there were no discussions about these matters before the moment of the negotiations beginning. Unluckily, I cannot exactly remember the date, but there was certainly a time slightly before the date of the general election itself, during the election campaign, when it became apparent that there might be a result of this kind. Up until the moment of the election campaign we were simply gearing up to try to win the election, as you

might imagine. During the early stages of the election campaign we were trying simply to win the election. Most of our effort continued to be trying to win the general election throughout, but there were discussions at a late stage of the election campaign and we did, at that stage, begin to study what we might be having to deal with in order to prepare ourselves if we couldn't get past the finishing post and get a majority Government. But there was no negotiating team established until literally the votes were in and we knew what the situation was.

Q121 Stephen Williams: You said that you'd read Lib Dem policy documents, which is rather comforting, having had a hand in writing some of them. Was that well before the election?

Mr Letwin: You must understand, as my Conservative colleagues understand, that I'm a complete anorak. So I had spent months reading and analysing other parties' policy documents and manifestos, and I had developed a fairly clear understanding, I think, of the essence of Liberal Party policy in a wide range of areas. Of course, at the beginning of the election, I obtained a copy of the Liberal Party's election manifesto, as soon as it was published, and I began to read that. This would have happened anyway, completely regardless. If we had been sailing to a majority of 200 or doomed to defeat and obliteration, I would still have been reading the Liberal Party documents because that is what I do and it has always interested me to understand our opponents and their policies.

So we had a fairly developed understanding, not just of the manifesto but of where the manifesto had come from, how it had evolved, what positions had been taken, who inside the Liberal Democrat Party had taken those positions, why they had altered, and so forth. We were fairly thoroughly intellectually prepared for the exercise of the negotiation and, as I say, I'm quite proud of the fact that we correctly identified—it became apparent in the first few minutes of the negotiations that we had correctly identified—what the sticking points were. Solving them is another thing, but you can't get a successful negotiation of a very complicated and extremely important thing like a Government unless you start with a pretty good working knowledge of where you have differences that have to be ironed out.

It may be helpful for the Committee if I remind people that this was very much a two-stage process, and we recognised from the very beginning—the first day—that it would have to be a two-stage process. The crunch issues had to be resolved in a satisfactory manner in order to enable us to form any kind of Government, whether a minority with an agreement about how it would operate or a coalition agreement. But it was also clear that if we could get to a coalition agreement and form such a Government there would be much else that we would need to resolve.

I had also assured myself that it would be possible within a very short space of time to go through the other, I think, 431 items that would need to be resolved. The reason I had assured myself of that is because I had studied the other things in our documents, that I had been partially responsible for

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producing, and in the documents that the Liberal Democrats had produced.

So once we got past the coalition agreement itself—it's important to recognise that was not the point at which the *Programme for Government* was established—into the early days of the Government, the very early days of the Government, in a very short space of time, Danny Alexander and I, and some others, were able to identify and agree on the entire set of propositions in the *Programme for Government*, as quickly as I had anticipated we would be able to; because, excepting those small number of very difficult issues that we had resolved in the early days, most of the rest were very closely aligned.

There were differences, but we had also identified where those lesser differences lay and it was, therefore, relatively easy to agree all the things that we could agree in minutes, in minutes, and then to start discussing the things that took a little longer but were not so difficult as the crunch issues. So it was a layered process and it was layered because we had a very clear understanding of the position of our colleagues.

Q122 Mrs Laing: Thank you. That has given us a very good insight into what happened and will help inform us as we consider the question of how coalitions are formed. One last little question, if I may; the question, again, of the Cabinet Manual. Do you envisage a date—not a precise date—a time in the future at which it might properly be published if it's refined, considered and, as you rightly said, looked at by academics and others?

Mr Letwin: I don't, but I hope that it might not be too long. I think the most important thing is that it should be right and that it should become a matter of consensus before it's published, but the sooner the better.

Mrs Laing: That's extremely helpful, thank you. Thank you very much for giving us so much of your time. It has been truly enlightening.

Mr Letwin: Thank you for informing me about something I didn't know.

Mrs Laing: Any time.

Thursday 28 October 2010

Members present:

Mrs Eleanor Laing

Mr Christopher Chope
Sheila Gilmore
Simon Hart

Tristram Hunt
Mr Andrew Turner

In the absence of the Chair, Mrs Eleanor Laing was called to the Chair.

Examination of Witnesses

Witnesses: **Dr Catherine Haddon**, Institute for Government, **Professor Robert Hazell**, Constitution Unit, University College, London and **Dr Ruth Fox**, Hansard Society, gave evidence.

Q123 Mrs Laing: Good morning, Dr Fox, Professor Hazell, Dr Haddon. Thank you very much for coming to see us this morning. As you know, this Committee—before I say anything else, may I give the apologies of the Chairman, Graham Allen, who is genuinely very sorry that he's not here this morning? He's been unwell and been forbidden from attending the meetings. He's not very mobile, so this is a problem. He will undoubtedly be watching our proceedings and keeping a beady eye on what his Committee is doing. This is, as you know, part of our inquiry into the formation of the coalition Government and we're very grateful to you for giving us your time this morning, and also for having given us papers and your submissions to the Committee in advance. That is extremely helpful of you; thank you.

May I also apologise for the fact that there are some members of the Committee missing? We are in some sort of state of flux where some members are leaving the Committee and new members are being elected or are about to be appointed. Therefore we are without some of our members at present. But we have plenty of vociferous members here, and plenty of questions for you.

Before we begin, would you each like to introduce yourselves, and say anything you would like to say by way of introduction, or as a summary of what you have given to us in writing?

Dr Fox: I'm Ruth Fox, Director of the Parliament and Government Programme at the Hansard Society. You have my evidence, so I don't think it's necessary to go over things.

Professor Hazell: I'm Professor Robert Hazell, Director of the Constitution Unit, University College, London. I too have submitted written evidence. The only thing I would add, in one sentence, is that I do think the draft Cabinet Manual is a very useful advance. I look forward to seeing the publication shortly of the whole Cabinet Manual, and I hope the Committee will support that.

Q124 Mrs Laing: We do. We have asked for it, and we did ask Oliver Letwin, who was before us last week, about it and he indicated that he considered it would be published sooner rather than later.

Dr Haddon: Dr Catherine Haddon from the Institute for Government, and likewise I have submitted written evidence with my colleagues.

Mrs Laing: For which, thank you very much. In that case, let me begin with Tristram Hunt, who has some obvious questions.

Q125 Tristram Hunt: Good morning. Can I add my apologies? I'll have to leave at 10.30 am to go to a debate. One of the binding threads of the coalition Government is that they faced an unprecedented economic crisis and had to unite together in the face of remarkable financial pressures. During the period of the formation of the coalition, we've heard that Gus O'Donnell was very worried about the effects of the markets on Monday if a Government weren't formed, even though the Government weren't formed and the markets were okay.

We've also heard that there were fears of a Greek-style sovereignty crisis, even though the new Nobel Laureate has said that's not the case. What do you think the role of Mervyn King, the Governor of the Bank of England, was during the period of the coalition formation? Do you think the Governor of the Bank of England does have a role to play, in terms of advising parties and development of a coalition during this sort of post-electoral period of nature, as it were?

Professor Hazell: None of us knows directly what the role of Mervyn King was, but you can call him before this Committee and ask him. The role of the Cabinet Secretary, in the period immediately after the election, was to ensure an orderly process of formation of a new Government and, as we know, he facilitated negotiations between the political parties. He had set in hand arrangements whereby all Whitehall Departments could offer advice to the negotiating parties, if they needed it, on any aspects of policy. That advice could have included advice about the economic situation, which could have been asked for from the Treasury or possibly from the Governor of the Bank. I don't know whether any advice was asked for in the days immediately after the election. But everyone was on standby to be in a position to offer advice if the negotiating parties wanted it.

Q126 Tristram Hunt: So from everything you understand, as it were, the Bank of England simply operated as another Government Department, ready, if called upon, to assist in terms of information?

Professor Hazell: Certainly I have no knowledge whether the Bank played any more direct role, but you're quite right in your introductory remarks:

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everyone was very anxious about what the reaction of the markets might be and, as you rightly reminded us, in the event the markets didn't panic.

Q127 Tristram Hunt: Do you think that provided, as it were, a false environment within which to pressurise these negotiations, or was this simply just a sensible, precautionary approach to the economic context?

Professor Hazell: There were two sets of pressures bearing down very hard on the negotiating parties. One was the worry about the reaction of the markets. But the other was media and public expectations. Don't let us forget that historically, after a British general election, it's normally clear within 24 hours that there is an overall winner, and a new Government is formed extremely quickly. The media, therefore, I think were themselves impatient for a result, and they had to wait five days to get one. As I said in my written evidence, I hope that might establish a new norm, and possibly a new minimum, if we have further hung Parliaments, because as you will know, in Continental Europe, where hung Parliaments are the norm, it's also the norm to take weeks, not days, to negotiate a new Government. In fact, the European average is about 40 days.

Now, I'm not suggesting that the UK is likely to extend negotiations to that kind of time frame, but I do think five days was extremely short in which to negotiate something so important. I hope that in future the norm might creep up to the length of time it has taken typically in Scotland or Wales, which is 10 days to two weeks. Forgive me, I'm aware I've been doing a lot of talking. My colleagues—

Q128 Mrs Laing: Very good; I was just going to ask Dr Fox if she'd like to say something.

Dr Fox: I broadly endorse what Robert has said. I think if you look at what the Cabinet Office has made available, in terms of the detail about what logistically and operationally they were making available to the parties as part of the negotiating process, there were three elements to it. One was constitutional advice, which was, as I understand it, to be offered to all parties at the start of the process. There was then the option for policy advice from Departments, which was not going to be offered to them, but which parties would request; that was available. Then there was the logistical support.

Now, it doesn't seem to me that inserting economic advice from the Governor of the Bank of England naturally fits into any of those, in terms of that being proactively offered. It would fit into the policy advice if requested. But it doesn't seem to me inappropriate if the Governor of the Bank of England himself felt that it was important for him to convey to the party leaders and the politicians that he had some issues that he wanted to draw to their attention; he, as the Governor of the Bank of England—an independent body separate from Government—could approach the party leaders and offer that. I'm not sure, though, given what the Cabinet Office was setting out as what it was offering, that it should naturally be a part of that. But, as we know, if it was offered, the party leaders didn't feel it was necessary.

The other element of this is, of course, that we know that Alistair Darling, as Chancellor of the Exchequer, consulted with both the two Opposition finance heads—the shadow Chancellors—in advance of going to the Finance Ministers' meeting about the Greek situation. So we don't know what was conveyed in those discussions. It may well have been that there was sufficient information about what the situation was and they didn't feel it was necessary or appropriate to have the Bank of England talk to them.

Dr Haddon: I echo both of those points. I would just say, as a sort of general issue around all of this, one of the things we were most concerned with—certainly myself and Peter Riddell when we were doing our report on change of government, looking backwards—is that there's a real concern, because we had such long periods of majority rule. The planning, and the contingency planning, particularly, for eventualities that might be worse than one would obviously hope—and thankfully nothing like that occurred—still needed to be done. They needed contingency planning for all sorts of issues relating to: potential political crisis; potential constitutional crisis; logistical problems, in terms of simply managing those five days; and also the possibility of a financial crisis, which in that period of uncertainty wasn't so unreal as a possibility, given everything going on in Greece at the time, given the world situation, and also given the experience of the financial crisis of the previous two years. So I think planning for the worst case is not the worst thing they could have done at that time.

Q129 Tristram Hunt: Could you see, though, if you are of a suspicious frame of mind with a historical mindset, the Governor of the Bank of England suggesting to parties what the best way forward is—it's not as if they're inviting the leader of the trade unions to advise them either, is it? There's a certain species of advice coming in here, which is from one element of thinking. That's just my suspicious mind.

Dr Haddon: Maybe we're not so suspicious.

Mrs Laing: It's fair enough to have a suspicious mind when you conduct an inquiry.

Dr Haddon: We just simply don't have enough information on it. I'll have to wait until the history records are opened up and have a look properly.

Q130 Mrs Laing: Do you all think that the situation would have been quite different if nothing happened in Greece? If there had been no crisis looming, would that have changed your view of the time taken? We have had some evidence in previous sittings of this inquiry that has suggested that the whole matter was conducted much more quickly than it otherwise would have been had there not been pressures from the financial crisis, or perceived crisis, in Greece.

Professor Hazell: I think they clearly did feel under intense pressure to try to come to an early agreement. All the parties found themselves in a rather unexpected outcome in terms of the exact numbers. I think it's generally known that they hadn't anticipated or necessarily desired to negotiate or enter into a coalition. My reading from discussions with the political parties before the election was that if there

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were a hung Parliament, the most likely anticipated outcome would be a minority Government.

So, that was one rather dramatic circumstance, which I think they weren't fully prepared for. Of course, negotiating a coalition agreement requires far more detailed negotiation in working together a common agreed programme than the lesser negotiations required simply for a supply and confidence arrangement, where the minor party, agreeing to offer support on supply and confidence, retains the freedom to oppose the Government on all other things, and so it's not necessary in the agreement to specify very much else.

Dr Fox: I think we're operating in an environment in which, as far as the public domain is concerned, particularly in terms of media perceptions of it, and some of the political perceptions of some of the MPs, the benchmark was 1974, and it was three days. So I think to some extent that also played a part, because the perceptions are, "How much more can it run beyond that? How much time do they need?"

It would be expected that they would be very mindful of the financial pressures and the economic situation. Clearly, what was happening in Greece was part of the backdrop to this, but in terms of the actual British financial situation, the markets didn't have much of a response to what was happening. I think a reasonable reading of that from the negotiator's perspective was that there was no specific pressure in respect of the British situation to that extent. But I think once they'd gone beyond the three days you did see a ratcheting up of media pressure and media comment about how long it would take. That goes to Robert's wider points about the fact that we perhaps now have the new norm at five days, and we may go beyond that in future.

Dr Haddon: Certainly the difference with 1974 was that that didn't get beyond the first point of, "Do we want to negotiate with this?" Thorpe went back to his party and then came back and there was no possibility of a negotiation with Heath, at which point it moved on, so it was quite clear by the Sunday night. The difference here was as soon as it became clear that actual formal negotiations over a coalition were going to be entered into, that sort of changed everyone's perceptions. In the period before the election, before the election campaign, we were very keen to look at international examples and to point out that we've had no desire to go anywhere near what some models tend towards—several months of negotiation—but that comparable democracies such as Canada and New Zealand do spend sort of a week, almost two weeks, negotiating in this period.

But to go to the point about the financial pressures upon them, I agree with Ruth. I think at one point on that Monday/Tuesday, it was just becoming the point at which the pressure was increasing. I think if we hadn't had a financial crisis over the last two years, maybe it would have been a different situation. But it's impossible to know whether that meant it would have been longer or shorter.

Dr Fox: Can I just add to that as well? It's quite remarkable to what extent there were no leaks at all from the negotiations and discussions, and quite clearly the media were well behind the cycle of discussions and negotiations, in terms of reporting

what was going on. I think possibly—I don't know, it would be for them to say—that might also be an issue in terms of the parties, and the degree to which the party leaders and the negotiating teams could take their parties with them, without it being the case that the longer it went on, the more people appeared in front of the media commenting on this and commenting on that, and it therefore becoming a more difficult scenario to manage. Had you then gone on longer, you may have had leaks and more difficulties, and the political process just becomes more difficult. So I think there are a range of factors that were pressuring down on them.

Mrs Laing: Yes, what you've just said fits very well with previous evidence that has been given to the Committee. Simon?

Q131 Simon Hart: As you know and have probably read, we've taken evidence from David Laws, Lord Adonis and Oliver Letwin. In particular, Oliver Letwin stressed, when we asked him whether five days was enough, that he thought it probably was, and he didn't think the end result would have been any better if they had had 10 days or 15 days, or some other multiple. The others slightly reflected that too. What did come across, though, from the three individual evidence-givers was a slight concern that there was a sense of crisis about the media coverage, and that this might have resulted in uncertainty across a range of different fields, the financial one being the most obvious. Does all of this, and the discussion this morning, lead you to the conclusion that perhaps there should be some kind of written protocol that comes into effect in the event of a hung Parliament? It could be a "not less than" or a "not more than" period during which time a coalition could be reasonably easily formed, so as to suppress market volatility and speculation and, indeed, unreasonable pressure on the politicians who are trying to put this thing together. Would something in writing be of help to us?

Professor Hazell: In effect, there was a written protocol, and that was the hugely useful contribution made by Sir Gus O'Donnell and the Cabinet Office, who published in advance the draft chapter from the new Cabinet Manual about elections and Government formation. That was published in February. That did set out very clearly what would happen in the event of a hung Parliament, and it had a separate section specifically about a hung Parliament and Government formation.

If the drift of your question is, in part, "Should there be a specified timetable within which a new Government must be formed, as, for example, is the requirement in Scotland and in Wales, where a First Minister must be elected within 28 days?", I don't myself think it's necessary at this stage to have a specific timetable, because I think the expectation will continue to be in the British tradition, if you like, that Governments are formed relatively swiftly.

Q132 Simon Hart: Wales is perhaps not a particularly good example because it doesn't have primary law making powers, but I remember the situation quite clearly when that coalition was formed, and indeed there was quite a lot of speculation

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towards the end of the period about whether they were going to be able to reach a decision at all, and that did lead to a certain amount of uncertainty, and speculation in the press about the need for another Assembly election. But the question, really, if one is worried about market volatility—this follows on from Tristram Hunt's question—is whether the relevant chapter or paragraph from the Cabinet Manual published in February was sufficient, because it wasn't particularly specific. It gave general and sound advice, but how could you suppress market volatility?

Professor Hazell: Two points, I think. Wales, in a way does help to make the case, because after the formation of the last Government in 2007, when they were getting close to the 28-day period, there was discussion about whether they should elect an interim First Minister. That would have been the way round it, rather than to hold a fresh election. But that brings me to my next point, which is the importance of a caretaker convention, because let us not forget that during the negotiations there is still a Government—the incumbent Government. Ruth has already referred to the very important Brussels meeting that Alistair Darling went to on the Saturday immediately after the election. We had a Government and the Government were continuing to do necessary business. But—here I agree with you—the February draft of the Cabinet Manual was a bit vague.

We believe, and we've strongly urged this in our evidence—the Justice Committee in its report in March made the same point very strongly; I hope this Committee might reiterate the Justice Committee recommendations—that the caretaker convention does need to be more specific in its guidance.

Dr Fox: If the question is how do you suppress market volatility and you believe that the provision of clear, detailed information helps, in terms of public education, media education, education of people in the City, and so on, then there is a good argument for that, in the sense that I do think the Cabinet Manual did help in that process. I think the work that our three organisations did and the work that we were doing, particularly with the media, for example, in terms of trying to outline what would happen, helped in that process.

In a sense, we have a time frame to a degree anyway, because ultimately the Queen's Speech is the point of deadline where things have to be clear. What is not clear is necessarily when the Queen's Speech will occur. That is, of course, once the proclamation is issued announcing the Dissolution and the formation of the new Parliament, you have the meeting date of the new Parliament, but you don't necessarily have the date of the Queen's Speech. I think that's where possibly the uncertainty may lie. Should that be formalised? I do think that there is a case for saying that the convening date of the new Parliament should perhaps be more formal, and create that transitional period, so that it's not necessarily always done at the behest of the Executive through the proclamation. I think there's a case for that.

In terms of having the date of the Queen's Speech as the time frame, you then get into questions about whether the final date was the date on which the Queen's Speech was announced, or the date on which

the Queen's Speech votes took place, which, from memory, was something like 8 June. So, you have a kind of extended timetable. I think the question is whether it would be better to formalise that and in effect to agree that there is a natural administrative function, and there should be a transition period formalised before the new Parliament meets, which could be what it was this time, which effectively was a fortnight.

Dr Haddon: I think you need to separate out financial crisis of an acute kind—if the markets had moved, or if we had had more of a constitutional crisis—and the general excitement that surrounded the first hung Parliament election result in such a long period of time, and also the possibility of a coalition in this Government after so many decades. So there was that sort of feverish anticipation and excitement and desire to know.

I think, looking back, a lot of the statements that were coming out of the senior politicians about what was going on about the process, and also obviously the statements beforehand—the Cabinet Office and the draft Cabinet Manual setting out what the process would be, what support there would be, and so forth—were all very reassuring. I think that probably contributed to a general level of calm that certainly in the months beforehand we had been concerned might not have occurred.

On the issue of whether or not you need more of a timetable or, indeed, some kind of hiatus, I probably tend towards Robert's points that there are some difficulties involved in that. I do think it's worth looking at other countries that normally, whatever the election result, would have that period of hiatus, and don't rush to an overnight change of Government, but at the same time it is part of our political culture, and managing public expectations, and the impact upon them, would be very difficult. This might have set a precedent in doing so.

But in all of this, I also think it's important that we consider not only the specific circumstances that occurred this time round, but potential circumstances. If we're revisiting the whole question, the issue becomes about whether—as happened in Scotland, when the SNP eventually got in—you have election results where you have so many different permutations of negotiating possibilities; that requires so much more time. Or indeed if you got to a situation where the three main political parties got much closer, so you had a situation like 1923, when it was almost a sort of across-the-board result that almost any one of them could have taken on. So those are very different circumstances.

It's not so much that we need to now look back and think, "How could we have done it differently?" We need to be, while it's all fresh in our minds, thinking forward so that in future we're not starting from scratch and trying to scramble through the files again.

Mrs Laing: That is exactly our purpose in this Committee, and we're finding what you are saying very helpful, very constructive. Simon, do you have more questions on that?

Simon Hart: No.

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Q133 Mrs Laing: Before we go on to the next sets of questions, you were talking about the caretaker Government and the purdah period. This is also relevant to the timing of the resignation of the former Prime Minister. *[Interruption.]* Let's just give it a moment, until the bell stops. "For whom the bell tolls"—in this case, the former Prime Minister. The timing of his resignation was quite controversial at the time. Do you see that as significant? Did he resign at the right time, constitutionally?

Professor Hazell: I think there are two things to be said. One is that the draft Cabinet Manual could be clearer in stating in terms that it is the duty of the incumbent Prime Minister to remain in office until it is clear who can command confidence in the new Parliament. If it had been stated clearly in that way, those, I thought, very unfair headlines in *The Sun* and the *Daily Mail* about "the squatter in Number 10" could more easily have been rebutted.

As to the precise timing of Gordon Brown's resignation, we know that by the time he did go to the Palace to offer his resignation it was clear that Labour as a party, and he as the Labour leader, could not command confidence in the new Parliament, and that it was therefore very likely that the Opposition leader, David Cameron, could. What was not clear at that stage was what kind of Administration David Cameron might form—whether it would be a minority Conservative Government, or, as it turned out, a coalition.

Q134 Mrs Laing: That's very helpful, thank you. Dr Fox?

Dr Fox: I probably take a slightly different view from Robert, in the sense that he's talking about clarifying the Cabinet Manual a little more, with regard to when it is clear who can command confidence. It seems to me that late Tuesday afternoon, early Tuesday evening, when Gordon Brown took that decision to resign, it was clear at that stage who could command confidence. It was not Gordon Brown, and the only person who it was, was David Cameron. What was unclear was whether it be a coalition, or a minority Government of supply and agreement. It seems to me that the constitutional position was that he was going to be the person who was Prime Minister and form a Government in some form. Was it necessary at that point, constitutionally, to know what form it would take?

Q135 Mrs Laing: That's the key question.

Dr Fox: That goes to my point in the written evidence I've submitted. There is a difference, it seems to me, between clarity about the identity of the Prime Minister, and how you define, in fact, readiness for Government. At what point do you regard the transition to have been made from just knowing that identity to feeling that the Government are ready to take office? Is that the point at which all the t's are crossed and the i's are dotted in the coalition agreement? Well, there was an interim agreement and then there was a further agreement, so would you have waited a week until that was ready? Is it when you have appointed all your Ministers and you've therefore agreed all the deals between the two parties?

Well, that took quite a while. Would you wait for that point? Would it have been when the Lib Dem triple lock had come into place? They had a deal, but they couldn't be absolutely sure until the triple lock process had gone through. Now, on this occasion, it was a fact that it went through very smoothly, from their perspective. In future that need not be the case. They could have had difficulties; they may have had to have a special conference. Do you wait until that point?

I take Robert's point about "maybe a little longer", but I think there is an issue about how you define it, and I'm not sure that that language necessarily gets you to a sufficient point of definition.

Q136 Mrs Laing: But you consider that the transfer of the responsibility of Prime Minister—who the Queen sends for—is the relevant point?

Dr Fox: Yes, the relevant point is that the constitutional position is: who can command the confidence of the House? If the incumbent Prime Minister determines that he cannot, and therefore there is no prospect for him to go, he would have had the right to have continued to try and face the House, if he wanted, in a sort of Baldwin scenario, but that obviously wasn't an option. If he determines that he cannot command the confidence of the House, and cannot form a Government, the constitutional position is to advise the monarch to call on someone else, the Opposition Leader in this case. It seems to me that how you then go beyond that and define Government readiness becomes highly complex, because it will depend upon what the arithmetic calculations were, in terms of the parties.

Professor Hazell: May I just add one thing? Dr Haddon can then elaborate on it. There is an alternative tradition in the Westminster world. In a sense, in Britain, it's regarded as undignified for the Prime Minister to remain in Downing Street as soon as it's become clear that he cannot command confidence in the new Parliament. But in places like Australia, Canada, and New Zealand, they allow a week or so, even when it's clear that the incumbent Prime Minister has lost the election, for the new Government to be formed in a more deliberative, reflective and orderly fashion. That new Government is typically sworn in after about 10 days. This is in Ruth's report rather than mine, so she's the expert.

Dr Haddon: I'll go on to Robert's point in a minute.

Professor Hazell: Sorry, Catherine's report.

Dr Haddon: Yes, thank you, Robert. I would first go back to Ruth's point. I think, yes, you have to keep remembering that the way in which a Government are formed is on the basis of that individual who can command a block of confidence in the House of Commons, and then it is for them to form a Government, both for appointing Ministers and for being able to carry votes in the House of Commons. To go back to the issue about whether or not you want to have that certain and clear formation of Government before that process of a change of Prime Minister occurs, that's a separate question from the constitutional position that Gordon Brown found himself in. That goes to points about whether or not we want to have that delayed period, and whether or not we would have a fixed period where you have a

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Prime Minister elect, with clear caretaker rules surrounding what the caretaker Prime Minister does while the Prime Minister elect goes through the process of forming a Government, of considering in greater depth, and perhaps with a greater amount of rationality—more sleep, and so forth—whom he will appoint to which post. Those Ministers can go through a process of induction, and you can have sort of political vetting. You can have a clearer process of relationship with officials. In Canada, that's the process that they largely go through. Unlike our system, they have a much clearer divide; they don't have a long period of pre-election contact before an election campaign. It's only through the Leader of the Opposition that any such contacts occur. So in that period of around 10 days to two weeks, they go through the process of working up how their plans for Government would translate into action. That would occur whatever the result. Obviously, Canada has experienced a large number of minority Governments, so it's well versed in doing it under this period as well.

Q137 Mrs Laing: Can you just confirm that that would mean, though, that effectively—because we've been talking about caretaker Government, *purdah*, and so on—the country would have no Government?

Dr Haddon: No, it would have a Government; it would have a caretaker Government.

Q138 Mrs Laing: It would still have a caretaker Government. For example—am I right in saying this?—nobody objected to Alistair Darling as the outgoing Chancellor of the Exchequer representing the country in international meetings.

Dr Haddon: No, and this comes to the importance of the caretaker conventions. You have to remember that they are no different—well, they vary in a couple of small details around use of Government cars and so forth, but they are not wholly different in essence to the period of *purdah* in the six weeks before the general election. So it's the same sort of restrictions upon signing major contracts that might tie the hands of a future Government, making major appointments, and, in that period, using the Government machine for party political purposes; that is the essence of why they sort of restrict it in that way.

It's very clear that if anything has to be done—if any actions have to be taken of major significance—either a short term measure or solution should be looked for first, and there should be the possibility of consultations with the leader of the Opposition parties. That also occurs with Privy Counsellor status for all sorts of other issues around national security and defence, and so forth. So, these things are well versed.

Q139 Mrs Laing: Do you consider that the rules for pre-election *purdah* and now for post-election *purdah* are sufficiently clear?

Professor Hazell: I think they're slightly confused because of the use of the term "*purdah*". That's why we are trying to encourage the Government to use the term "caretaker convention", which is the term used in Australia and New Zealand. We think that conveys more clearly the rationale for the restrictions on Government activity and decision making, because

there are two different sets of principles and rules in play. *Purdah* is a long-standing set of principles about the limitations that should apply, in particular to the Government's, if you like, propaganda machine—I'm using that term neutrally—the public announcements that Ministers can make, and that applies during any election; it applies when there are European elections, and it applies when there are devolved elections. It is in recognition of the principle of electoral fair play that during an election, not just a general election, the Government shouldn't use the Government publicity and information machine for their own electoral advantage. In particular, it applies to majority Governments. It applies to Governments that can and do command the confidence of the House of Commons.

The caretaker convention, I think, rests on a different principle—this is argued in the written submission that I put to the Committee—namely that although the Government are in office, are the lawful Government, and can exercise all the powers of a lawful Government, they no longer have the political authority, because they don't command the confidence of the House of Commons. By definition, once Parliament has been dissolved for a general election that must be the case; and after the election, until it's clear who can command the confidence of the new House of Commons, we argue that the incumbent Government must remain in office but should be subject to what we call the caretaker convention.

There is a third context in which the caretaker convention should also be triggered, and that is if, mid-term, a Government lose confidence because they lose a confidence motion.

Q140 Mrs Laing: That is very helpful. I think that does take us on a stage. Dr Fox?

Dr Fox: Just very briefly, this is a question for consideration, and I don't know the answer. Robert and Catherine may have a view on this. It did occur to me that the differential between the pre-election *purdah* period and the post-election caretaker status, particularly around the Alistair Darling situation of going to the Finance Ministers' meeting, is this: what if a Cabinet Minister in a Government who then become a caretaker Government, because they haven't won the election, is not re-elected, and loses their seat? In the *purdah* period, it's kind of acceptable because no one is an MP; you are all candidates. But once the election has taken place, some are MPs. What happens to that individual who isn't? Had Alistair Darling, say, lost his seat, in those scenarios you could say, "Well, some people in Cabinet are more equal than others." It may well be an acceptable thing to continue on a caretaker basis, but I do wonder at that stage if he had been going to the Finance Ministers' meeting, and had lost his seat, what would public and media opinion have been about that? I don't know what the answer is.

Q141 Mrs Laing: One would guess that he wouldn't have, but the Chief Secretary to the Treasury would have stepped in, because it's "The King is dead; long live the King." There's always another Minister.

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Professor Hazell: Constitutionally, the position is quite clear—that he remained a Minister in the incumbent Government, subject to the caretaker convention. Ministers remain in office because they’ve been appointed as Ministers, not because they’re Members of Parliament.

Mrs Laing: That’s very helpful, thank you very much.

Dr Haddon: Robert’s right, that’s the constitutional position. It’s the political ramifications that Ruth pointed out.

Dr Fox: That is the position, but that could come under immense political pressure, media pressure, if that were to arise.

Mrs Laing: Of course, you’ve made a point that is clearly constitutionally correct, and we all appreciate that, but one wonders what the headlines in *The Sun* would have been had that happened. But that’s not the question for the Committee now. Andrew, sorry, you’ve been waiting a long time to make your points.

Q142 Mr Turner: Answering that last question, the Earl of Home, of course, became Prime Minister, then got rid of his peerage. Then there was a by-election; then he was elected, and then he came into the House of Commons, so there was a period when he was not. But what I was going to ask on this particular subject, almost all of which you have dealt with, is this: is the difference between the system in Britain and the system in the other Commonwealth countries that in our case we are dealing with the Queen, whereas there we are dealing with someone halfway between the Crown and the Prime Minister? Is that in any way relevant?

Professor Hazell: I don’t think so. The Governor-General represents the Crown in Australia, Canada and New Zealand, and I think for this purpose is in exactly the same position as the monarch, in terms of the constitutional powers that are being exercised, and the powers we are talking about—we talked about the power to dissolve Parliament but, in particular now, there is the power to appoint a Prime Minister. Again, Catherine is more expert on this than I am, and she can tell you more about the conventions that have led to the practice in Australia, Canada and New Zealand of a more deliberate and slightly slower process of Government formation.

Dr Haddon: Thank you, Robert. Going back to your point, the answer, in essence, is no, not at all. I was at an event last night with Professor Margaret Wilson, who is a former New Zealand Speaker, talking about the Cabinet Manual, and talking about the processes they’ve gone through. If you look at some of the past, more recent constitutional crises in that country, and also in Canada, there is clearly an acute feeling that the sense of constitutional crisis is because the Governor-General represents the Head of State, and it is all around that representation of that role, not around the specific individual.

To go back to the point about the role of the Cabinet Secretary in this, not just as an adviser to the Government of the day, but also as a constitutional custodian, traditionally the process has been marshalled in some respects by the Cabinet Secretary, the Prime Minister’s principal private secretary as the

link to the existing Prime Minister, and through the Queen’s private secretary, who also plays that role. So one shouldn’t invest a sort of personal role of the monarch in this. It’s really around that role as Head of State, which is why we often refer to the monarch, the Head of State or to relations with Buckingham Palace, in that sort of general sense.

Q143 Mr Turner: Could I just follow up with another question that goes back to February, when part of this booklet was published? Was that a civil service decision, or was it a Prime Ministerial decision?

Professor Hazell: It was a civil service initiative, which I applaud, and, as I have said, in the event it was extremely useful that the draft Cabinet Manual had been published three months or so before the election. But it was a civil service initiative that had the authority of the Prime Minister. You can ask the Cabinet Secretary about this next week, but my understanding is that Sir Gus O’Donnell was persuaded that it would be very useful to make much clearer the rules on Government formation, particularly in the event of a hung Parliament. He saw the need to do that and decided that the Cabinet Office should do that. I think he then approached the Prime Minister and asked for his authorisation.

Dr Haddon: I’d just add that there is some confusion around the role of a Cabinet Manual in this country. Obviously, when we use that title we are referring particularly to the New Zealand one and, as Robert pointed out in his evidence, that took many years of development from very limited documents up to the one that exists at the moment, whereas we are going through that process in a rush.

The idea that equivalent documents didn’t exist to advise officials in their advice to the Government of the day, the monarch or whoever, as custodians, again, of official records, and so forth, is misleading. We had some documents that bear great similarities to that, particularly one that was called the precedent book, which is very similar to the Cabinet Manual in the specific issues that it covers and in the specific role that it’s supposed to play, not as a treaty or a legal document, but merely as an accumulation of various advice gathered over the years, in which the constitutional position is explained and added to. It’s a living, breathing document that does not change events, but changes to reflect what has already occurred. We do already have that; we just didn’t have it written up in such a succinct and practically useful way, or have one that was made publicly available. The precedent documents that I’ve seen that exist in the National Archives go back to the 1960s, and are incomplete and obviously out of date. To have something like that published and made available for the media and the public, and for the politicians to be held to account by—that was the importance of it, rather than as any kind of new edition to the lexicon of official documents.

Professor Hazell: May I make one further comment? In supporting the case for publishing the Cabinet Manual I’m also, in effect, supporting the case for more clearly recognising that the Cabinet Secretary has a constitutional role. Catherine has, in part, referred to this. What I mean by a constitutional role

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is that for some purposes, he should not be regarded simply as the most senior civil servant serving the Prime Minister of the day. There are two particular respects, I think, in which this might apply. One is in authorising the pre-election contacts with the opposition parties. Normally a Cabinet Secretary seeks the permission of the Prime Minister before that happens. I hope that it is becoming a sufficiently well-established practice that in future the Cabinet Secretary might, as a courtesy, inform the Prime Minister that he has authorised pre-election contacts in the usual way, and at the usual time in the electoral cycle, without feeling that the Prime Minister has to give his permission and therefore implicitly might be able to veto pre-election contacts.

Similarly, after the election, the Cabinet Secretary has a constitutional role as the custodian of due process. He explains the constitutional rules to all the political parties, and as Ruth described earlier, he—and this was a new departure for Whitehall—facilitated the negotiations between the parties by providing meeting rooms and by providing staff, and is on standby to offer policy advice as well.

Q144 Mrs Laing: If the Chairman, Graham Allen, were here, I know that this is a matter on which he would wish to take you further. I am putting words into his mouth, but I think he would want to ask you this. I think he is of the opinion that the Cabinet Secretary arguably might have had too much power in the process that took place earlier this year, and that it ought to be up to elected representatives—Members of Parliament—to undertake the whole formation of Government process. It does appear that the Cabinet Secretary played a larger role than he might have. This is not my opinion; I'm trying to put the question that I think Graham Allen would wish to put to you, which is: from what you have said, do you surmise that those two particular duties, which you have rightly outlined, give the Cabinet Secretary, or the post of Cabinet Secretary, possibly a greater standing than has heretofore been recognised?

Professor Hazell: Yes, it would be a greater standing than has heretofore been recognised. But to take a real example, and show the risks if the elected politicians remain in charge, after the first elections to the Scottish Parliament in 1999 the Liberal Democrats, who were one of the political parties negotiating about a possible coalition, formed the impression, rightly or wrongly, that the civil servants who were on hand to advise the negotiations appeared to be leaning too strongly towards the, if you like—this is slightly confused terminology now—incumbent. Well, I mean the First Minister elect, because Donald Dewar had been the Scottish Secretary of State, and all the officials in Scotland had been working directly for Donald Dewar. But it's not entirely inapposite, because in Whitehall the whole of the civil service machine has been working for the incumbent Government, and the Cabinet Secretary has been the chief official for the incumbent Prime Minister.

What I'm arguing is that, particularly in the immediate post-election period, the Cabinet Secretary should be recognised as being the holder of the ring. In particular, he should afford absolutely equal treatment

to all the negotiating parties. He is clearly accountable directly to the parties, because if they feel they're being unfairly treated they can say so, and no doubt it may come out afterwards if there's any substance to their sense that they have been unfairly treated. I think any Cabinet Secretary in this position will take care to ensure that there is a completely level playing field and all the negotiating parties are treated absolutely equally.

Dr Haddon: I'd add a few points on that. I think one thing is you have to remember that the role of the Cabinet Secretary in this country more generally has become so much more public than it would have been the last time we had a hung Parliament result. In particular, around the election this time, the Cabinet Secretary's role was much more public, and because it was more visible, I think there's a danger of confusing that with "more powerful".

I would also add to what Robert has just said about his role as a custodian. This comes to the heart of the role of the civil service itself as a sort of permanent bridge between the impermanence of the elected Government. We have this system and that balance precisely because we don't go through what, say, the Americans go through; they have a three-month transition process. So that's part and parcel of the system. If you're going to have that bridge and that process of overseeing and making sure there is seamless continuity of government then you need to have somebody who can oversee that process.

Dr Fox: Can I just add to that? I agree with what Robert and Catherine have said, but I do think there is the issue of accountability to Parliament that then arises in terms of the documents, and in terms of the Cabinet Secretary. We know, for example, that when the Justice Committee published its recommendations, there was then no formal response to those. It may have been that time ran out, but there was no formal response, so we don't have the new drafted version, assuming that it did make the changes to the draft that was published. Once we get the whole Cabinet Manual, there has to be a consultation process on that and what would be the accountability function. Obviously, if, for example, the Fixed-term Parliaments Bill goes through, there would need to be some further changes to the Cabinet Manual, to make clear that in the event of the emergency valve mechanism being enacted—in the event of a no confidence motion—you would have, potentially, a 14-day period where it would have to be made clear in the manual, I think, that the caretaker convention applies in those circumstances. So what is the accountability function there, in that context, to make sure that it happens and that MPs obviously have the opportunity to scrutinise?

Mrs Laing: Fortunately, we have the current Cabinet Secretary coming before the Committee next week, when there will be plenty of questions for him. Chris Chope?

Q145 Mr Chope: Can I follow up on that issue of lack of accountability? Nothing you said today, or in your written evidence, has examined sufficiently, in my view, the role of the parliamentary parties in the formation of Government where there's a hung Parliament. Obviously, if there is a minority

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Government, that minority Government are able to be formed on the basis of the manifesto on which they were elected. They may not be able to implement everything in their manifesto, but it's pretty clear to the MPs supporting that party that that is what it's going to be about, essentially.

What we had this time was a Government formed on a completely new manifesto that wasn't the subject of consultation in the Conservative Party at all. There are probably about half a dozen Conservative MPs involved in this, out of over 300 elected in that election. It seems to me that what happened was that the Leader of the Conservative Party was able to exploit the absence of any requirement in the Conservative Party constitution or in the rules of the parliamentary party to require accountability. So he wasn't constrained in the same way as the Liberal Democrats were because, through a previous experience, they had changed their rules to ensure that the MPs weren't going to be left in the dark, as Conservatives were on this occasion.

Surely this is absolutely fundamental to the issues of accountability, and to the issues of the timetable for setting up such a Government. Would you accept that it's most unlikely that a parliamentary party is ever again, in the future, going to allow the wool to be pulled over its eyes in the way that happened this time with the Conservative parliamentary party? They will want to have a much bigger say in any negotiations, particularly as it emerges gradually that something far short of what the best deal could have been was obtained in negotiations in this particular Parliament. Can I ask you whether the longer time scale that is involved in setting up a coalition Government on the continent is a result of enabling the political parties and the parliamentary parties to have an iterative discussion about the possible contents of a coalition agreement? If that's so, then I can understand why it should take longer. Would you accept that that is a desirable thing—that there should be more discussion with the people's representatives who had only just got elected? That would improve the connectivity between the people and Parliament, and there is, therefore, a case for having a longer time where there is a setting up of a coalition rather than a minority Government.

Professor Hazell: The honest answer is—forgive me—I don't know enough about the practice in European countries to know the reasons why it takes so much longer and whether one of the main reasons is consultation within the party.

If part of your question implies that the consultation within the Conservative party was inadequate, that's a matter of internal party democracy within the Conservative party for the Conservatives to resolve if there are sufficient Conservative MPs who feel the rules or the tradition needs to be changed.

Q146 Mrs Laing: Perhaps we will need advice on the constitution of the Conservative Party itself, but that's another matter. I don't expect you to comment on that.

Professor Hazell: But I will only add that the Liberal Democrat parliamentary party was consulted, and I

think you've had evidence on that from David Laws. That happened very swiftly.

Dr Fox: I would simply add this. I think if you had been asking this a year ago, most political party members in the Labour and Conservative parties would have been ridiculing the Liberal Democrats for the triple-lock mechanism. Most of the other parties thought it was madness. In this instance it worked, but quite conceivably, had it gone pear-shaped through the triple lock mechanism, and had it created problems, people might have had a different perspective on it. Robert is right—it's a matter for the internal party democracy of the Labour and Conservative parties to resolve. Clearly there were concerns in the Conservative Party in some quarters. Likewise, I think there were some concerns in the Labour Party in some quarters about the negotiations being led by some unelected peers as opposed to elected Members. So there are things that the parties are going to have to grapple with.

Dr Haddon: Just to echo that point, I'd say yes; I can only imagine that were there more strengthened and stricter processes to go through in terms of those iterations, as you put it, of various negotiations, yes it would take more time, and you would therefore need to deal with both of the problems we've discussed previously about managing public expectations, about the time involved in these changes of Government or, indeed, a continuation of Government, as well as possibly clarifying it in some fashion, whether through changes to the actual statutory process of general elections, or through changes to the conventions in a more informal sense.

Q147 Mr Chope: Just one quick supplementary. None of you has really picked up on the sort of constitutional issue—whether it's desirable that following a general election, if no party has an overall majority, the people's representatives should be able to have a say publicly in the contents of a new coalition agreement that is not the basis of any of the individual party manifestos. What happens, as happened this time, is that the people are kept in the dark. Their votes for a particular manifesto count for nothing, and the people they've elected don't even have a say in discussing openly what the revisions to the deal might be. Do you think that's bad for democracy, and for the link between the people, Parliament, and its representatives or not?

Professor Hazell: Formally, you, the elected representatives, do have a say on the new *Programme for Government*. You have it in the five-day debate on the Queen's Speech, and that happened in this new Parliament. There is a different point—Madam Chairman, you must say whether or not you want this to be canvassed—which is, in terms of the link between the people, the elected representatives, and the process of forming the new Government, whether the debate on the Queen's Speech represents a sufficiently clear process for the people to understand that this is how the new Parliament expresses confidence in the new Government. We do trail in our written submission the possibility of having instead what is called an investiture vote, namely that as the first piece of parliamentary business in a new

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Parliament, the new House of Commons should be invited to nominate the new Prime Minister, which is the practice in Scotland and in Wales. That person is then formally appointed First Minister by the Queen, but after the legislature has signified, "This is the person in whom we have confidence." But that, I appreciate, wasn't your question.

Mrs Laing: You anticipated the next question. Let me ascertain if Chris has finished his line of questioning.

Q148 Mr Chope: I accept that obviously in the Queen's Speech debate all you have got is a group of Bills that are brought forward. It's a very inadequate substitute for a debate on the whole of the new coalition agreement, to which you could, for example, move amendments. There was no formal system for facilitating that.

Dr Haddon: To address your point more directly, it's part and parcel of the representative system of democracy that we have that if you elect an MP whose party contains a manifesto and they then break manifesto promises, at the moment the only possibility you have is of going to the next general election and not voting for them again. Whether or not we introduce recall, and whether or not coalition agreements become part and parcel of that whole process, in the way that manifestos have. But it's a political part of it. It's not the constitutional parts, which we're focusing on.

Q149 Mrs Laing: That does open up the whole question about the validity or the weight of a coalition agreement, as compared with an election manifesto, one having been there for the voters to peruse, should they so wish, or having been, in some form, published in newspapers before an election. The coalition agreement was not at all in existence. Just before we come on to the issue of the investiture vote, would you suggest that there ought to be any formal recognition of a coalition agreement as a manifesto? As a programme of Government?

Dr Haddon: I don't know how it would work in practicality. You can't then re-have the election on the basis of voting for the coalition agreement. In essence, a coalition agreement would be, in part, based upon the two parties' manifestos. Obviously variations exist in how far they translate into it. But again, I think, these come down to the possibility of holding people to account politically through the system of Government; I don't know; you may have other suggestions, but I can't think of any strict process you could have that could sign off a coalition agreement in that way. But I don't know enough about how other countries deal with that specific aspect of coalition agreements.

Q150 Mrs Laing: Rather than that, would you care to develop the arguments about an investiture vote? You made a very good point that although we know that Parliament voting on the Queen's Speech is, in effect, a vote of confidence in the Government's programme for that Session of Parliament, it isn't presented as such. Are you suggesting that there should be an investiture vote on the Prime Minister?

Professor Hazell: In principle, yes, I find it a very attractive notion, because I do think it then becomes much clearer to the electorate that a parliamentary election, in effect, is a two-stage process when it comes to forming a Government. First, we the people elect a new Parliament, and the new Parliament then selects the new Government. Voters in Scotland, when they elect a Scottish Parliament, can see in the first 28 days the next stage in the process, when, as its first item of business, the new Scottish Parliament elects the First Minister, or rather selects the First Minister, who is then formally appointed by the Queen.

I think in terms of democratic process and making the way in which Parliament operates more transparent to the people, it would be a significant step forward. But I do recognise—it was only in the process of writing my written submission that I worked this through for myself—that there is quite a serious practical difficulty in terms of timing. That's why we appended to our written submission a chronology of the last election and process of Government formation, leading up to the Queen's Speech as the last date.

The question that has to be raised for proponents of an investiture vote, amongst whom I include myself, is: where in this chronology would you try to place the investiture vote? It has to come quite early if it's going to be the first item of business and if people want to know who the new Prime Minister is. The difficulty is that there are conflicting principles here because I also support the small innovation in this Parliament whereby Parliament didn't meet until 12 days after the election, something I think we all recommended. Indeed this House recommended, through the report of the Modernisation Committee before the election, that there should be a longer period to induct new MPs and for the new House to settle in, and so on.

That's my dilemma. If Parliament is to meet a bit later, which I support, where in that more prolonged chronology would the investiture vote take place? I think it could only work if the UK were willing to move to the more leisurely process that we've described happening in Australia, Canada and New Zealand, where it becomes accepted that a new Government don't formally take office until 10 days or two weeks after the election, and during that longer period the incumbent Government remain in office as a caretaker Government. But for us that's quite a big change in our culture and our tradition.

Q151 Mrs Laing: If I may just clarify this point—I know that Simon wishes to go on to a different point and has to leave quite soon; I'll be quick—you would say that incumbent Government, the previous Government, would remain the caretaker Government even although the Queen had sent for someone else as Prime Minister. Or would the Queen sending for someone to be Prime Minister not happen until after the investiture vote?

Professor Hazell: It couldn't. The whole purpose of an investiture vote is for the new House of Commons formally to indicate, through its vote, in whom it has confidence. That's what happens in the Scottish Parliament, when they select the First Minister. If the investiture vote is the process through which the

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House indicates in whom it has confidence, the Queen cannot appoint anyone until the House has gone through the investiture vote. Hence my critical question that I direct back at myself: so when will the investiture vote take place in the chronology?

Q152 Mrs Laing: If Parliament didn't meet for 12 days, as happened this time—quite properly, as far as practicalities are concerned—*The Sun* would have a headline for 12 days, “Squatter in Downing Street”.

Professor Hazell: Indeed. In Australia, Canada or New Zealand, 12 days would be regarded as nothing unusual, because that's the time they take, with a Prime Minister elect gradually forming his new Government, and so on, and the incumbent Prime Minister remaining in office. But that is not our culture.

Mrs Laing: Indeed, in the USA, it is two months, I suppose, for the President. Could we suspend this part of the session just for a moment, because Simon wants to raise a different question and he has to leave? You have been very patient in giving us so much time; thank you.

Q153 Simon Hart: It's a very quick, unrelated point about the constitutional validity of the coalition agreement in the context of the Salisbury Convention. It's a point I think Dr Fox made in the Hansard Society evidence. We've tested this on politicians in front of us and not gone very far, but you've described the dilemma as having the potential for a political and constitutional crisis. I just wondered if you could expand on that and explain exactly what you mean by “crisis”, because there are one or two things floating around this building at the moment that could trigger this crisis, we might suggest. I wondered if you had a view. You obviously do, but could you expand on it?

Dr Fox: If a piece of legislation that was not in the manifestos of the two parties in exactly the same way as it appeared in the coalition agreement—probably on a constitutional issue, I think, most likely—went to the Lords, and they objected to it so vociferously that they were minded to oppose it and to resist it, under the terms of the Salisbury Convention they may have a case. Out of that, you could then have a crisis. My view, however, is that the peers would only want to push at that if they felt that they had public opinion on their side. They would have to have a very, very strong case to make. I think they would be politically mindful of the fact, on this manifesto problem, that at the end of the day, the public didn't vote for any of the manifestos in full. So what do the political parties do? There has to be some kind of deal, some kind of arrangement, so there has to be some merging of manifestos, and out of that process not every party can get everything that it wants, and you have to negotiate around it. So I think they would be highly mindful of that and recognise that.

Do I think it is likely? No, in general, I don't think it's likely, but the risk is there in terms of the Salisbury Convention, and in terms of therefore clarifying that for the future. The other way, of course, of dealing with it is that more peers will be created, so that may address it, and that brings on a whole different set of issues.

Q154 Simon Hart: You talk about a crisis. Surely, in a sense, the only crisis that would occur with this is that the House of Lords would simply reject what the House of Commons has sent to it. There's nothing particularly unusual about that, unless it is taken to its maximum extent, which is a potential threat to the Parliament Act. Is that the crisis you're talking about?

Dr Fox: That would be. If it was something of a major constitutional Bill that was at the heart of the agreement between the two parties, then you could see how a political crisis might become a constitutional crisis at some point in the future. But, again, I stress, I don't think it is likely for the reason that the peers would be very, very mindful, I think, of the politics that surrounded the negotiations and the situation that the parties found themselves in at the point of negotiation, and we then have this other option of the creation of additional peers, if it were to be problematic.

Professor Hazell: I would only add this, if I may: the thinking about the Salisbury Convention has changed quite a lot in the 60 or more years since it was first enunciated in 1945. There's a very helpful report from the last Parliament that has almost sunk without trace, and so I gladly mention it to the Committee. It's an excellent report of a joint parliamentary Committee, the Joint Committee on Conventions, from 2006, and it has a whole detailed chapter about the status of the Salisbury Convention, and how its interpretation has changed over the years and, in particular, how it should be interpreted in the post-1999 context when there isn't an overwhelming majority of one party in the Lords.

That report concluded by recommending that each House should adopt a resolution, in effect updating and clarifying the Salisbury Convention, and their formulation was: “In the House of Lords:

A manifesto Bill is accorded a Second Reading;

A manifesto Bill is not subject to ‘wrecking amendments’...A manifesto Bill is passed and sent (or returned) to the House of Commons...in reasonable time,” and “The House of Lords considers government business in reasonable time.” That was their recommended updating and reformulation of the convention. The convention is essentially one about the relationship between the two Houses and underlying it is a general principle of self-restraint on the part of the second House.

Dr Haddon: I would only add a couple of points. One is that certainly in discussions about the Salisbury Convention, this was all prior to us having the first ever coalition agreement, so there is no convention, because it has not yet occurred, so all of these questions about thinking about how it would work are important but they will be setting a precedent for the future.

But the other thing is to understand again what a coalition agreement is. It's the agreement between the two parties. It's not a manifesto per se. It's as much an agreement as to how the two parties will work together. My colleague, Akash Paun, in a recent report looking at the coalition, how it's come into being, and how it's working and going forward, and looking abroad, has pointed out the need to renew and to reconsider the coalition agreement going forward for

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the parties in terms of how they continue to work together through the course of the Parliament.

Q155 Mrs Laing: That's very helpful. Can I just clarify a point that Professor Hazell made when quoting from that 2006 report? It is indeed helpful, and we will all look at it as a Committee—thank you for pointing it out—but of course the phraseology there is “manifesto Bill”, and if you have a Government who are based not upon a manifesto but upon an agreement made post-election, then there will be Bills—indeed we are considering them now—that are not manifesto Bills.

Professor Hazell: Indeed, and there's quite a lot of discussion in the report of the Joint Committee on Conventions as to whether the doctrine might be restated in terms of a Government Bill. I was slightly surprised, re-reading the report this morning, to find that its conclusion remained expressed in terms of a manifesto Bill, because if you read in particular the chapter of the report about the Salisbury Convention, I think you'll find quite a lot of the discussion and argument does slightly undermine the manifesto doctrine. In terms of describing practice, in effect, it is Government Bills that have been recognised as having a legitimacy and authority that the House of Lords generally respects.

Q156 Mrs Laing: That's very interesting. Is it not the case that there is an enormous difference—

Simon Hart: I'm so sorry, I have to go. Thank you.

Mrs Laing: Thank you, Simon. Is there not an enormous difference between a piece of legislation that has been put before the electorate in a manifesto before an election, the result of which was a particular Government, and a Bill that could come out of nowhere in the third year of a Government that had never been mentioned in a manifesto or put before the electorate in any way?

Professor Hazell: As I'm trying, in effect, to restate it, my reading of the Salisbury Convention is that it regulates, in a soft way—because conventions are flexible and they are unenforceable—the relationship between the two Houses and the respect that the House of Lords accords to legislation, in particular legislation that has been passed by the House of Commons, but of course there is a question as to whether the Salisbury Convention should apply also to Bills introduced in the Lords. I think the current thinking now is that the convention does apply to those Bills as well. So it's recognising, in effect, a legitimacy on the part of Government Bills. In describing past practice, I think it accurately says that it is Government Bills that have that special respect accorded to them by the House of Lords, and it has some statistics in an appendix, and they show, I think, that in the 25 years previous to 2006, on only 13 occasions has the Lords opposed Second Reading, in the sense of holding a Division. On only five occasions has a Bill been defeated on Second Reading. So that is an indicator, I think, of the way in which the Lords respects the convention in practice.

Q157 Mrs Laing: That will be the convention that it is Government Bills and not only manifesto Bills?

Professor Hazell: Yes.

Mrs Laing: That is very helpful, thank you. Dr Fox?

Dr Fox: I just wanted to add to Robert's articulation of the self-restraint of the Lords, and my earlier points about the political context of this. I think it's also perhaps worth adding—this is a particular Hansard Society bugbear around the legislative process and improving scrutiny—that given that they are not manifesto Bills, there is also, it seems to me, an onus on the Government in terms of bringing forward its legislation to ensure that it does so in a way that allows for maximum scrutiny of those issues, given the broader political and constitutional issues that surround this debate about that. Clearly, in terms of some of the legislation, at present it would not meet the test of that extra time and consideration.

Mrs Laing: That is helpful, thank you. Chris?

Q158 Mr Chope: That is a very useful comment. I'm sure members of the Committee will endorse that, and hope that it's taken up in the other place when some of the current Bills are considered there. Can I just ask Dr Fox this? She indicated that one way for the Government to respond to difficulties in the House of Lords would be to create more peers. Is there any constitutional constraint at all on the ability of the Prime Minister to nominate and appoint more peers, or could he just go ahead, as it seems this is being taken seriously by the coalition as an option to increase significantly the number of peers, pro rata to the votes that each of the coalition parties had at the last general election? Is there any constraint on that at all?

Dr Fox: I'm not aware of one. I don't know if Robert's aware of one.

Professor Hazell: In effect, there are two emerging new conventions. Formally, constitutionally, there is no limit on the number of new peers that the Prime Minister can recommend the Queen should appoint. But in terms of how successive Prime Ministers in recent times have indicated they will recommend the exercise of the prerogative power to appoint peers, there are two important emerging conventions, starting with Tony Blair as Prime Minister. He articulated the very important principle that no Government should seek an overall majority in the House of Lords. Secondly, that Labour Government, and more recently the new Government led by David Cameron, have both indicated that in appointing new peers to the party Benches in the House of Lords, they will seek to do so in rough proportion to the balance of votes cast at the previous election. Votes cast, not seats won.

So there's a second principle—a proportionality principle. I did some work on this in June, in a report that was published about the Conservative-Liberal Democrat agenda for political and constitutional reform. I worked out in a section of that report what the numbers of new peers might be who could be appointed to the respective party Benches. The greatest deficit is on the Liberal Democrat Benches. From memory, the deficit on their Benches, I think, was about 55. On the Conservative Benches I was surprised to find it was only about a dozen. So if David Cameron, as Prime Minister, follows the

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principle that he's enunciated, he should, in appointing new peers to the party Benches of the coalition parties, appoint roughly four new Lib Dem peers for every one new Conservative peer. We wait to see if he follows the proportionality principle.

Mrs Laing: That's an interesting gauntlet to throw down, thank you. Sheila?

Q159 Sheila Gilmore: First of all, Chair, apologies for not being here at the beginning of the meeting. I was in the Finance Bill Standing Committee, which I can assure you was considerably more—maybe I won't say what it's more. You can imagine. The point has been made at various of our sessions, and I think the Chair made this point earlier, that during the process we had in May, some of the pressure was put on by the media. I've asked this question before of some of the other people, and I'd be interested in your view. It's my view that it is partly the absence of a clear process—for example, having a set down process that you would have an investiture vote after a certain period, and so on—that worsened that media pressure, because there was no clear understanding of conventions in place. There might have been a Cabinet Manual, but certainly as far as the media were concerned, there was a lot of suggestion that we were in a constitutional crisis, and however much experts tried to say, “No, that's not the case”, that impression was given.

So would it not be the case that, far from necessarily a long period encouraging that kind of press pressure, if we did have a clear process, and it was clearly understood and it was laid down, then a lot of that media pressure—there would be interest but not necessarily a kind of hysteria about, “You must get on with it. It's outrageous you haven't made up your mind yet” and that sort of thing, which did put pressure, I think, on the political parties, as well as everybody else in that—

Mrs Laing: We've covered some of those points earlier this morning, but this is still a good question.

Professor Hazell: I would only, if I may, venture a very brief response. I think at the last election we were in effect going through a transitional phase in terms of the new Cabinet Manual becoming recognised as the rules of the game. During the election, and in the immediate aftermath, it was left very much up to the experts. Dr Fox, Catherine Haddon, Peter Riddell and I all made a lot of media appearances trying to explain the process of Government formation and what was going on in Whitehall.

What I hoped might happen next time, if the new Cabinet Manual has been published and is much more accepted and understood as setting out the rules of the game, and if the Cabinet Secretary has a better understood role as the custodian of due process in Government formation, is that it wouldn't be left entirely up to independent people like us to try and explain what was going on. I hope that the Cabinet Office press secretary might be out there doing exactly the same thing, and he would be doing it, clearly, with all the authority of an official representing the Cabinet Secretary, rather than as amateur experts like us.

Dr Fox: The only thing I would say to that is that it may have seemed perhaps to you as a media crisis—

I don't know whether Robert and Catherine agree—but I thought the media response was more responsible than I anticipated and expected. I think in part that was the Cabinet Manual. In part it was a lot of the engagement that took place from organisations like our own with the media from pretty much February onwards, once the polls tightened.

In terms of educating the media about what the mechanics would be and what the issues and concerns might be, where the pressure points may arise—certainly, Robert's alluded to this—we all spent a huge amount of time between February and May talking to the media, both on and off the record, about what the process would be. So it was more responsible than I expected.

To echo Robert's point, this is the first time, and it will take time to bed in. There will be cultural change the more we go through this, if indeed hung Parliaments are going to be more of a factor in our system than previously. So next time I think it will be easier. You will see we've gone from three days to five days. I think you can then push the envelope a little further beyond that.

As for a formal timetable, one can see the advantages of that but, as Robert has said, you then do get into a debate about what that timetable should be, and I can easily see the media having just as much a bigger debate and concern about what that timetable would be if you tried formally to articulate it.

Dr Haddon: I thoroughly echo Ruth's point. Just to expand a bit upon it, one of our concerns in that period, and the reason why we were all engaged in this process, was that there would be some kind of 3 am making-up of the constitution, the morning after a hung Parliament. This was a very serious concern. I think it was the same sort of impetus that pushed the draft Cabinet Manual into being. I mean, again, looking at the very detailed files that we have available of the hung Parliament from 1974, which we were making available to the media, so that they themselves had something to hang all these constitutional technical points upon, such things occurred then. You had constitutional experts out in the media trying to explain it, but to a public who were only then catching up, and at a time at which most of the constitutional understanding, most of the negotiations, were so much more behind closed doors. That just wasn't acceptable in our modern society with the kind of media that we have. So it was very necessary. So, no, I think it was a lot better than we had feared.

Q160 Sheila Gilmore: Just for the sake of reinforcing some of that, I think now, whatever happens in the 2011 Scottish Parliament elections, that will be the fourth occasion we will have been through that process. I think it's definitely the case that people become more accustomed to these sorts of outcomes. It's absolutely inherent in the Scottish system because it's calibrated not to have a majority. Something very odd would have to happen before there was any possibility of having a majority. People, I think, will accept that. Even if it takes time, people say, “That's what happens.” It's partly a learning experience.

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Dr Fox: Can I just add to that and echo it to a degree? I recall the expressions that were put out by some of the media and, I have to say, by some of the politicians during the election campaign about what would happen in the event of a hung parliament—financial crisis, political collapse, disaster was nigh—but the reality is that didn't happen. So all the scare stories did not come to fruition. I think it would be very difficult next time around for anyone to advocate that kind of scare story and that sense of crisis with any degree of validity and authority. So I think the environment and climate in which the discussions will take place next time will, as a consequence, be very different.

Dr Haddon: Just to add to that point, I think also it will be interesting to see whether or not Westminster, and perhaps the public more generally across the UK, will take more of an interest in Scottish and Welsh developments than we have been finding in the period previously, and will try to use the experience—10 years of it—that we've had there of constitutional innovations to educate Westminster. Hopefully we will all learn from it.

Mrs Laing: I suppose so. Andrew, did you have a point?

Q161 Mr Turner: I'll believe it when I see it. People are not very interested in what is going on in the northern part of the country, let's put it that way, if they live in the south. I was going to follow up the questions about peers. First of all, am I correct still that you can only appoint two peers per day of sitting? Is that still the case?

Professor Hazell: Forgive me, I don't know. There is a procedure for the induction of new peers in the House of Lords, and sometimes there's a bit of a queue when a large batch have been appointed, but there is, in theory, nothing to prevent dozens, or conceivably even hundreds, of peers being appointed. It just might take the Lords a little time for them to take up their seats.

Q162 Mr Turner: Which, of course, would mean that the Prime Minister making the appointments isn't making the appointments all at once; that was my point.

Professor Hazell: Forgive me; in a sense, that procedural constraint, I feel, is much less important than the earlier principles that we were talking about, namely that no party and no Government should seek an overall majority in the Lords and that Governments, when making recommendations for appointments for new peers, should observe a proportionality principle. The other, more important, practical constraint in the House of Lords now is that because the numbers have crept up gradually in recent years, they are really, really short of facilities and accommodation.

Q163 Mr Turner: This is my second question: in 1910 there was a second election before the Prime Minister was allowed to make this threat that he would create or appoint more peers. Does that still have any relevance?

Professor Hazell: I don't think so, but I defer to Dr Haddon as the historian among us.

Dr Haddon: I also don't think so. I think that the issue around House of Lords reform has moved on so much, particularly with the latest coalition agreement, that I don't think so.

Q164 Mr Turner: Finally, earlier on in your answer, Professor Hazell, you said "the Government's representatives" and then you said "the parties' representatives" in the House of Lords. Now, which is it, the Government or the party? The Government are, of course, two parties.

Professor Hazell: Yes. Formally, the power to appoint peers is a prerogative power and it's exercised by the Crown on the recommendation of the Prime Minister. So that's what I meant when I was talking about "the Government". I then talked about the party balance in the House of Lords, in terms of appointing new peers to the different party Benches. I then talked about the coalition parties, namely the Conservatives and the Liberal Democrats, who, as it happens, are the two parties who could expect to see additional peers appointed to their Benches if the proportionality principle is observed.

Q165 Mrs Laing: We will conclude shortly. You've been very patient with us, giving us so much time, but it's been excellent being able to explore so many issues in depth with you; thank you very much. Can I take you back to the point that we were looking at when we stopped to consider the Salisbury Convention, and that is the possible investiture vote for the Prime Minister and the chronology of that process? Supposing there was a situation where there wasn't a hung Parliament but where a general election had a decisive result, and it was very obvious to everybody who was going to be the Prime Minister, how would the chronology then work, and would it still work supposing it was the incumbent Prime Minister?

Professor Hazell: This is why, forgive us, we keep referring you to the practice in Australia, Canada and New Zealand. In Canada, the voting system is first past the post, in Australia it's the alternative vote, but in Australia, more often than not, a single party wins an overall majority. In Canada they've had plenty of majority Governments, as well as quite a lot of minority Governments. But my understanding, and again, this is much more Dr Haddon's territory, is that even where a single party has clearly won an overall majority, the process of Government formation typically takes 10 days or so, and it's the Prime Minister elect who is forming his Government.

Dr Haddon: Yes, that's absolutely right. The point is that the acceptance of having a caretaker Government in place is so much more imbued in their political culture, and that's the big difference—the big hurdle that we would face in all of that. But to go to your point directly, yes, it would mean that a Government would not be formed until after the point of the investiture votes. So it would automatically instil some kind of delay in the whole process of handover of Government, which again seems difficult for us to accept in terms of our political culture. That is why

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we keep coming back to the point that we are the only comparable parliamentary democracy that has that process—an immediate overnight one.

Speaking to people in Canada, New Zealand and Australia, they are often so surprised that we do it, that we can manage it. I think this comes back to points that we have been going through throughout. It's not so much what process we want to go to and which one we want to change. With all of the issues we've been discussing here—investiture votes, possibly a delayed handover, allowing more time for all sorts of activities in terms of Government formation to occur—it is a question of how we address them. These issues will continue to exist whichever of the options we go for. If we choose to continue with an immediate, almost overnight, handover then we need to think through what other mechanisms we need to put in place for it. If we choose to go for an investiture vote, then we need to think, "Well, that means we must have a delayed handover." So it's about the issues behind all of these sort of constitutional changes that could occur on these conventions, as much as the debate around them.

Professor Hazell: If I could just add to that, there are separate arguments, very well set out in Dr Haddon's report on transitions and preparing for changes of Government, as to why it is reckless to expect a new Government to be formed with such extraordinary speed, as is the British tradition. The politicians involved are all completely exhausted because they've been on the stump during the election for the previous few weeks. They probably had little or no sleep the night before—election night. Last year, Lord Butler—or was it this year in evidence to the Justice Committee in February?—described very graphically greeting Tony Blair as the leader of the Labour party who had just won the election and discussing with him how to form his new Cabinet, and he described very graphically how completely exhausted Tony Blair was and, in effect, how he felt it wasn't right to be taking such hugely important political decisions in a state of such unpreparedness and exhaustion.

Q166 Mrs Laing: I think we can all, as elected Members of Parliament, attest to that exhaustion on the day after a general election. I'm sure you have an

extremely good point there. It's been very helpful to explore those issues and you have opened for us this morning new lines of inquiry. I hope you will welcome it if we come back to you to discuss them further. Thank you. Does anyone else have anything to say? Is there anything you would like to say in conclusion, or are there any matters that we have failed to raise that you consider we ought to have raised in this context this morning?

Professor Hazell: There is just one question that I had expected you to possibly ask on behalf of Graham Allen.

Mrs Laing: Please tell me that because I don't want to miss that one.

Professor Hazell: We can deal with this, I hope, very briefly, but had he been here, I think he might have said, "Well, Professor Hazell, surely we wouldn't need all this business with a Cabinet Manual if we had a written constitution," to which my answer would be that I don't know of any country that has a written constitution that specifies in sufficient detail the rules of Government formation. Indeed, many written constitutions are completely silent about the process. They simply say, "The President appoints the Prime Minister", or in the case of Australia and Canada, "The Governor-General appoints the Prime Minister". So the analogy, I think I would venture, is that a written constitution is, if you like, the architectural grand design, but the Cabinet Manual is the wiring diagram and the plumbing. We need that to understand how the process works.

Mrs Laing: That is extremely helpful. I am grateful to you for not having let that pass, as I want to make sure that any of Graham Allen's questions are considered. Of course, although this particular inquiry is into the formation of the coalition Government, we are undertaking, in the long term, a general inquiry into whether there should be a written constitution or not. That will be a very important point to consider then, and I'm sure that we will be in touch with all of you in that context in the near future. Thank you very much indeed for giving us such a long time this morning. We hadn't expected it to go on for so long but the points you raised were so interesting that it was very worth while, thank you very much indeed.

Professor Hazell: Thank you very much.

Thursday 4 November 2010

Members present:

Mr Graham Allen (Chair)

Mr Christopher Chope
Sheila Gilmore
Simon Hart

Mrs Eleanor Laing
Mr Andrew Turner
Stephen Williams

Examination of Witness

Witness: **Sir Gus O'Donnell KCB**, Cabinet Secretary and Head of the Home Civil Service, gave evidence.

Q167 Chair: Sir Gus, welcome. Thank you for coming to the Committee. We're a brand new Committee and we are very pleased to get you relatively early in our short life. Hopefully, since we now have fixed-term Parliaments, or on the way, we will have a chance to talk to you about a number of serious political and constitutional reform issues as time goes by.

Can I start off asking hopefully a straightforward question? They're always the most difficult ones, aren't they? Why haven't we had the Cabinet Manual published yet?

Sir Gus O'Donnell: Thank you, Mr Chairman. Could I start by saying I look forward to working with the Committee over the years and I very much welcome your interest in the Cabinet Manual. Perhaps if I could take you through the timing of that. I've looked through the evidence you have and there's one or two things I could respond to in that.

The Prime Minister asked me on 2 February, and announced to Parliament—I'm talking about Prime Minister Gordon Brown—to produce a manual. We did one chapter on 23 February for the Justice Committee, and the Justice Committee reported on 29 March, just shortly before the election was called on 6 April. You had some evidence that suggested that there was a different version that was used during the election. Let me be clear. After we got the Justice Committee Report, we were working on some revisions to the Chapter but we ran out of time. So the version we used during the election was the version that was published to the Select Committee. There were certain gaps in that, because it talked about civil service support but it didn't precisely say how, which is why later I published the advice that I gave to civil servants. Personally I think that worked well. Like you, I look forward to when we can publish this. I said to the Justice Committee I hope we do it by the end of the year. The draft manual has now gone around to HA Committee, Home Affairs Committee, who have said they want to consider it first, because in their view there are issues going on, for example the Fixed-term Parliaments Bill, which they would want to reflect. Now, that's their decision. I very much look forward to having your Committee's views on the Cabinet Manual, so when it is published I very much look forward to us having that debate, because we'll publish it in draft form obviously.

Q168 Chair: What date are we going to see it?

Sir Gus O'Donnell: I don't know, is the honest answer. It is a matter for the members of HA Committee.

Q169 Chair: I think in your own words, Sir Gus, you have described this as something like the closest thing we have to a written constitution, or some phrase like that I think you have used in the past. Forgive me if I have misquoted you, but I can find it if you wish. This is a pretty important document. We don't have a written constitution, and this is as close as we are likely to get. It really isn't satisfactory, is it, not to have this in the public domain?

Sir Gus O'Donnell: Well, we have lived decades without such a document. I share your view that this is an important document and what I did was get that chapter about hung Parliaments out in draft form ahead of the election. And I think, with hindsight, I'm really pleased that we did, because it meant that during the election various constitutional experts popped up and there was a great deal of clarity about what should happen, a great deal of clarity that the Sovereign should stay above politics. So I think it was incredibly useful we had that. I think it will be a very useful document for the future, but it is a Cabinet Manual, it will be owned by the Cabinet, so they will put it out in draft form for consultation, and it has to be their decision as to when that happens.

Q170 Chair: You looked a little quizzical when I said it's the closest thing we have to a written constitution. The proper quote from the Justice Committee in February of this year is, "The Cabinet Manual will be the first, comprehensive account of the workings of Cabinet Government and will consolidate the existing unwritten, piecemeal conventions that govern much of the way central Government operates under our existing constitution into a single written document". This is very, very big stuff. Clearly, our Committee must be very concerned that this has taken now—what is it—the best part of a year and still hasn't see the light of day. Quite frankly, Parliament and the public should be able to look at this without too much further delay. Sir Gus, I must press you: when would you ask that this document be released so that we can all see it and can all make comment on it?

Sir Gus O'Donnell: When you talk about the delay, remember in the middle of that we had quite a significant constitutional event, which was a change of Government, and so the start of a Coalition Government, so in the sense—

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Q171 Chair: I could argue, you might have started, as you said, perhaps even several decades ago, so you have had a little time in the civil service to figure out how the Cabinet Manual should look, and the New Zealand example has been around a little while.

Sir Gus O'Donnell: No, I agree with you and I personally have been in favour of this. The question was, having succeeded, and the former Prime Minister made clear he wanted us to do this, and it obviously has to be the decision of the Government, I'm very pleased we got on with it from 2 February to the 23rd, I think it was, and produced the relevant chapter. I think it was the most important one. I think we're in the same place on this; I share your view. I think this will be a very important document. It's not going to be legally binding. Why I kind of pulled the face about—

Q172 Chair: You won't be deciding whether it is legally binding or not, will you?

Sir Gus O'Donnell: Sorry?

Chair: That is for other people to decide.

Sir Gus O'Donnell: Absolutely. What I'm saying is the actual document itself doesn't have a legal status in that sense, so it's perfectly possible for people to decide that they want to make it legally binding, but at the moment it just brings together existing conventions, existing legislation and tries to clarify some areas that are quite grey, where things have changed in some places but not in others. If I give you the example of civil service support: the conventions had changed in the devolved authorities, so because of their different voting system they were in this situation a number of times and they had routinely used civil service support to the parties. So the question was if we were in that situation what would we do, and that's why we put that part in there.

Q173 Chair: I think we all accept that things do change and things evolve but of course that doesn't prevent anyone from having set rules and a framework of principles. I think you mentioned this morning that we have to have a look and see what happens with a fixed-term Parliament. That may not be your decision, that may be the Home Affairs Cabinet Committee, but there is always going to be something and on that basis we would never ever see a Cabinet Manual, because there is always something around the corner.

Sir Gus O'Donnell: There is a particularly strong set of constitutional changes going on at the minute, with referendum on the alternative vote, changes to constituency boundaries, House of Lords reform. I could go on. There's a lot happening, but you're right. I think one of the issues that it would be interesting to get the Committee's views on at this time is in New Zealand they have this issue about how often they change it, and indeed they've had a consideration about whether it should just be in hard copy or whether it should be on the web, because if it's on the web you can change it too easily or too frequently. I think that's quite an interesting set of issues. Do you change it every week as something happens, as Parliament makes a decision one way or the other, or do we have a self-denying ordinance and go for it once a year or whatever?

Q174 Chair: When we are allowed to see it we might be able to offer some opinions on those very important questions. I think, probably speaking on behalf of the Committee unanimously, we would be very grateful if you would take the message back home today that we would like, and Parliament itself would like, to see this in the public domain so that a proper debate can begin. This is an extremely important document. People will have different views and there needs to be an extended debate around its legitimacy and whether it needs to be in law or whatever, which at the moment we are being denied, Parliament is being denied, by the fact this is not in the public domain. Could I ask you, Sir Gus, to take that back to Number 10 and talk to whoever you need to?

Sir Gus O'Donnell: I will certainly take back that message. Like I say, I am strongly of the view that this is an important document and I very much want to put this out in draft so that we can get your views and the views of all of Parliament.

Q175 Chair: Just to take you back to the beginning of this particular episode of this story, you mentioned that the then Prime Minister asked you to do this. Why? What was different about that moment or that Prime Minister's judgement that he felt this was something that should now be written down? Was it a forerunner for a written constitution?

Sir Gus O'Donnell: We'd had discussions about what was going on in New Zealand. History has rewritten it slightly. As it happened, I was going to be going out to a meeting of the Cabinet Secretaries of New Zealand, Australia, Canada, UK and sometimes Ireland. They happen every two years. This time it was going to be in New Zealand, and I was having a discussion with him about some of the things the New Zealanders were doing, particularly the manual. He was very attracted to this idea and announced to Parliament that he'd asked me to bring this together. Also there was, I thought, an important point for me, because in the preparations we were doing for the election one of the issues was clear that it was possible there could be a hung Parliament. In the light of that I had discussions with the Palace and we all thought it would be really useful if we could get a greater degree of acceptance of what existing conventions were. And so getting that chapter out then was, I think, useful.

Q176 Chair: Presumably in the internal discussions around this manual as a whole there will be discussions about how it can be amended and how it can be authorised, because clearly it is basically an internal civil service document at the moment.

Sir Gus O'Donnell: Obviously that chapter was released with the authority of the Prime Minister. It is now being discussed by Ministers in the Home Affairs Committee. Obviously civil servants are drafting it, but Ministers may well want to make changes. Then we get into the interesting question, which you raised I think, about ownership of this document. It's a Cabinet manual and I think the Cabinet's view is the Cabinet own the manual. That's the situation in New Zealand where, with a change of government there, I think one of the first things they do at their first

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cabinet is they put the manual before them and that new government, or return of existing government says, "Yes, this is the manual and we will abide by what's in this document". We have various ways this could be done. I think you're right, there could be quite an interesting debate about that.

Q177 Chair: We are often told, although I don't believe it, that there is parliamentary sovereignty, so really Parliament owns the Cabinet, so in a sense to derive legitimate authority presumably there must be some sort of avenue coming back to Parliament to authorise it. Is this being given some consideration?

Sir Gus O'Donnell: Sure, precisely why this is being thought to be put out in draft, rather than in final form, and then presumably Parliament will debate the issue.

Q178 Chair: Would it be possible to put in your mind that this Committee might have some input to this process?

Sir Gus O'Donnell: Absolutely. I would expect that when we produce it we will have more sessions like today's.

Q179 Chair: Do you see what I am trying to get at, Sir Gus? It sounds that it's well written, it sounds like it's a good thing, although we can't see it, but it doesn't seem to have any moral or legal authority. It lacks legitimacy and, therefore, when reading the evidence from other committees, colleagues are asking you, "Why did you feel you are able to say one lot in, one lot out, or the pace of change?" That's why people feel, perhaps wrongly, that you were overstepping the mark because your authority on the Cabinet Manual has little parliamentary legitimacy.

Sir Gus O'Donnell: The issue really is, when you're talking about all of the things we're bringing together, it is a set of legislation but it's also a set of conventions. Those are not legally binding. So, in a sense, we as civil servants have to operate in a world where there are conventions, and if somebody said, "But I don't agree with that convention; show me the piece of legislation behind it", in a number of cases we would not be able to show it to you. It is a convention, and that's the way our system has operated for decades, for better or worse.

Chair: You are tempting me to go places. I have totally monopolised the questioning. I was going to call Simon but, Chris, did you have something very specific on that line of questioning?

Q180 Mr Chope: Just to follow up on this one, briefly. Oliver Letwin told us that he wanted this manual to be published soon and it seems from your evidence that the manual is in existence. You can confirm that it is in existence; it is not still being drafted?

Sir Gus O'Donnell: A draft has been circulated to members of the HA Committee, yes.

Q181 Mr Chope: There seems to be some inhibition about letting us see this, pending the parliamentary scrutiny of the Fixed-term Parliaments Bill. Is that what you're saying?

Sir Gus O'Donnell: It's one of the issues that when members of the committee were discussing whether to make this public now, they said, "Well, we're in the middle of some big changes, constitutional changes, Parliament is considering these" and their view was, "Let's pause for now".

Q182 Mr Chope: The Prime Minister has kept on saying he wants to strengthen the role of Parliament? He wants to facilitate our role in scrutinising the work of Parliament. Surely you must be advising him that if he wishes to be consistent with that that it would help us to see this manual while we are scrutinising the Fixed-term Parliaments Bill. Have you given him that advice?

Sir Gus O'Donnell: I am personally of the view I look forward to this getting out there quickly, and I said in my response to the Justice Committee by the end of the year. It has never existed before; we've been waiting decades and decades for this. Possibly I'm slightly more patient. It will be a tremendous achievement if we can get this out there and get it agreed and establish, as the Chair said, the appropriate legitimacy and what it needs to have for that. So I guess I'm slightly more patient than you, having waited decades. But when we get it, like I say, it will be in draft form and Parliament will be able to scrutinise it and decide.

Q183 Mr Chope: If it's in draft, what harm can there be in enabling us to see it now to facilitate the scrutiny of these important constitutional Bills? Surely that is consistent with what the Prime Minister has said about wanting to strengthen Parliament and give us a bigger role.

Sir Gus O'Donnell: As we put out various papers for consultation they are first of all considered by Ministers and then they're put out for consultation. We are at the stage where Ministers are considering the Cabinet Manual.

Q184 Simon Hart: Sir Gus, if I can just go back to something the Chairman said earlier on, and then apologise in advance for having to leave almost immediately after my question but I am coming back later. I think you were quoted on the BBC as saying that you felt that pace was important as part of the formation of the coalition. What I was wondering was did the absence of a perhaps more visible formal protocol during the transition, in your view, lead to a national sense of crisis, perhaps, within the media or the public? Firstly, was that a satisfactory situation as far as you saw it? Why was pace so important? And would perhaps a more formal publication of a manual or some kind of protocol have altered your view that pace was important?

Sir Gus O'Donnell: This is one of those areas where, given that we've had the experience of May, the future will be different from the past. So people have learnt from that experience. We went five days during those negotiations. So I think in future people will be more patient than they were this time, because this was very unprecedented, the markets were quite jittery. The next time they'll look back on it and they'll say, "Well actually, there were those five days and it took a while

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and in the end this came up with a Government that was able to produce the *Programme for Government* quite quickly". So I think the future will be different from the past. As they say on the small print at the end of all of those financial ads, "The past may not be a perfect guide to the future". I think that is in this case right.

The question about would it be better if we had more agreed guidance: that was the whole reason why I was very keen to get that draft chapter out to the Justice Committee, because I think it did help that we had some discussion, some parliamentary debate about those issues and that a number of constitutional experts were able to look at those things. So when it came to the election with the hung Parliament, I think you found that there was a strong degree of unanimity about the appropriate processes, and I think that helped to calm things down and allow the time that was needed for the political parties to come to an agreement.

Q185 Simon Hart: It didn't seem to reduce the press speculation. Following on, on one point: you mentioned five days and that was an appropriate period of time to suppress market volatility. If this was to happen again and it couldn't be done in five, for very legitimate reasons; it might be seven, it might be 10, it might be 12, who knows, it might be three—although Oliver Letwin indicated that five was probably the minimum but 10 would probably have ended up with a much better result; that was from his point of view, at any rate, the other witnesses may have a different view. Where I am trying to get is that there must be a maximum and minimum number of days or weeks inside which or over which it becomes a very unsatisfactory set of circumstances and market volatility is, therefore, likely to increase. I'm wondering if you could be more precise about what those limits are.

Sir Gus O'Donnell: All one can say is the average, I think, in European countries is 40 days for a coalition to be arranged. Markets get used to these things. In a number of countries, Belgium for example, it can take a very long time. It has happened before so markets expect it. What I think markets find difficult is something entirely new. So the next time round they will have learnt from this period and I think they'll be somewhat more relaxed because they'll understand what was going on.

Q186 Chair: May I say also something without rules. If there had been a clear protocol that this is a standard process wherever this happens and it's going to be a seven-day process—the first three days will be recuperation for people who are absolutely dog tired, so they can sit and think, maybe make a few private phone calls, and then there will be a formal stage where whoever it is can be invited to Number 10 or whatever—then everyone knows that's the story. But one of the big conventions that we have in this country is we have to respond to the media and we must do it fast, otherwise they will distort the process. So we were carried along with that wave. Surely, having a framework out there, a protocol of some description, which may be moveable but at least gives the players

a sense of they, the politicians, have some control over this, rather than being pushed, firstly, by the media. Secondly—again I'm going to go back to this point—on the Thursday we seemed to have forgotten there was a general election. There were 650 Members of Parliament elected by the British people who by Friday morning were wholly and totally irrelevant to this process. No Members of Parliament were involved, although we're paged to hell about getting into the House of Commons to vote for this, that and the other, or ask this question or do the other thing. I am sure you don't know anything about that, Sir Gus. There was radio silence, certainly from my lot, for five days, because it was being dealt with by people who had no part in that election, pushed along by an unelected media, in a structure designed, which we are not allowed to see, by unelected civil servants, and with Members of Parliament wholly out of the loop.

Sir Gus O'Donnell: Let me be clear. It's not unelected civil servants holding anything back. Right?

Chair: I am not saying you are holding it back. I said you were creating the framework, which we are not allowed to see.

Sir Gus O'Donnell: What I did was, for the first time ever, produce what I could, which was the nearest thing to a framework, which was bringing together admittedly existing conventions, and some people say I was just terrible, I overstepped the mark, I shouldn't have done this. I think we did our best to help in advance and I think it worked very effectively. When it comes to the question about framework, I think that will be for the political parties to decide and Parliament, if you like, to think about do they want to have a more specified framework. The one thing I will say is it's going to be really hard to come up with something that will work for all possible circumstances.

Q187 Chair: Of course, but without that we have the volatility, which is induced by not having a framework, being pushed along by the media, and also the markets, and that is what makes the markets sensitive, because there is not a degree of certainty about the stages and the benchmarks in this process. I will return to what Parliament's role is, an MP's role in all this is, the forgotten 650, in a moment, but I know Simon has to go.

Sir Gus O'Donnell: I want to consider what the constitutional position of MPs is post-election and pre-swearing in.

Simon Hart: I think the Chairman followed; you answered the last part of my three-part question. In line with your comments, I've been told to go and ask a question, so I'm going to go now. I shall be back.

Chair: My apologies, Simon. We will take you when you come back. Excuse me, I have been away for four weeks; I'm full of enthusiasm.

Q188 Mr Turner: Can we go back to the Justice Committee, because I was on the Justice Committee before the election? My personal feeling was this is bringing out into the public a small aspect of what you are delivering, and I assumed that the rest would come out quite quickly, but that wasn't the point. The point was that that was the view of what the Labour

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Party wanted to have published, led by Gordon Brown. What we assumed at the last meeting was that you have a superior role, which is guardian of the constitution. Now, which was it?

Sir Gus O'Donnell: With respect to the manual?

Mr Turner: Particularly before the election and the draft version being published.

Sir Gus O'Donnell: Certainly I suggested to the Prime Minister that, given that I was appearing before the Justice Committee and given the probability of a hung Parliament, it would be a good idea to get this out. So your point about the guardian of the constitution, that I can somehow operate and decide myself to publish all of this without getting the clearance of the Prime Minister, no, I don't think I have that authority.

Q189 Mr Turner: Thank you very much. That is most encouraging, I must say. I would rather have the Labour Party deciding how this country is run than you as a civil servant, and I'm glad you agree with me. *[Interruption.]* No, I would absolutely be happy with that. The problem is that what you have used now is the discussion about the probability of a hung Parliament. What information did you give, and what did you ask the Prime Minister for and what did the Prime Minister believe? Who was putting in this idea of a hung Parliament?

Sir Gus O'Donnell: Well, the evidence basically.

Q190 Mr Turner: The evidence being what?

Sir Gus O'Donnell: Being opinion polls, spread betting, those sorts of things.

Q191 Mr Turner: We know now that during that election it went up quite considerably, the likelihood of a hung Parliament, and then it worked its way down, all within a week. So, how can you know what is happening in February, rather than what is happening in March? Are you saying that it was more likely to happen than ever before, or are you saying it's a possibility that may happen?

Sir Gus O'Donnell: It's a possibility that may happen. My attitude to risk mitigation: there's a risk out there that there is a hung Parliament, probability, as you rightly say, unknown. We have some indicators of probability, given by opinion polls and the like, but we know they're very imperfect. Can we mitigate that risk? Yes, we can, and we can mitigate that risk by trying to get some agreement on what the basic conventions are. In particular, I was very keen, and the Palace was very keen, that we establish that point about the Sovereign being above, so that She wasn't drawn into this inappropriately. So we put out the draft guidance in advance, and that seemed to me, in the context of our job as civil servants to help Ministers be prepared for contingencies and to mitigate worse outcomes. Then this, to me, was a very sensible piece of policy.

Q192 Mr Turner: Do you think that the availability of that evidence would, in itself, have encouraged that to become a fact?

Sir Gus O'Donnell: No. If you remember—it's quite interesting—when I did the Justice Committee Report

and we had that session, it got very, very little coverage at the time.

Q193 Mr Turner: Then after the election, we have a new Government and you are held up by publishing this information, because the Cabinet are not yet ready to publish it.

Sir Gus O'Donnell: HA Committee, I said, not the Cabinet.

Q194 Mr Turner: HA Committee being what?

Sir Gus O'Donnell: Home Affairs Committee.

Q195 Mr Turner: So it is a sub-committee?

Sir Gus O'Donnell: That's right. It's chaired by the Deputy Prime Minister.

Mr Turner: How interesting.

Sir Gus O'Donnell: All our Cabinet committees, remember, are coalitionised in the sense that there is a chair from one party, deputy chair from another.

Q196 Mr Turner: You see what we have now is we are not being allowed to see this document because it will have the wrong things in it, "You will be allowed to have this information once we have approval for AV".

Sir Gus O'Donnell: No. What I have said is—

Q197 Mr Turner: What is the evidence?

Sir Gus O'Donnell: What I have said is Ministers have decided to pause. They want to consider the document first, and one of the reasons they've put forward is that there is legislation going through Parliament at the minute, that's all.

Q198 Mr Turner: Okay. So what could the reasons be for that?

Sir Gus O'Donnell: Well, it's like any document they have. As the Chairman has rightly said, this is a very important document. A number of the members of that committee haven't immersed themselves in constitutional issues, so they want time to look at it, understand the implications of it. It is a very significant document. So I think it's perfectly reasonable for them to take a bit of time to think about it and then put it out in draft.

Q199 Mr Turner: I think you said it could be delayed as long as the House of Lords changes?

Sir Gus O'Donnell: No, I didn't say that. What I said was, in my reply to the Justice Committee, that I hoped we would be able to do it by the end of the year, but the truth is the decision is a matter for Ministers, not me. I think you'd probably approve of that.

Mr Turner: Yes.

Sir Gus O'Donnell: Indeed. So, I look forward to the time when we can have this discussion with the document in front of us.

Q200 Mr Turner: What I am worried about is that none of these things will be published until all the changes he, in particular, wishes to bring about, and we won't have a Cabinet Manual now, we will have a Cabinet Manual in six months or a year's time from

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now, and that is to shift the emphasis of the Cabinet Manual. Do you see that or don't you think that is going to happen?

Sir Gus O'Donnell: Could you explain why you think it shifts the emphasis of it?

Q201 Mr Turner: Because it would say now, "We don't use AV", whereas in six months' time we would come out and possibly say, "We're just about to have a referendum, and as we're just about to have a referendum there will be further delay. Oh well, let's have it after this". And when that is introduced and it decides one way or the other, whichever, it will be amended further, and then they will introduce the House of Lords changes and so on. And we won't get any manual. Now, is that possible?

Sir Gus O'Donnell: Like I say, the ultimate decision is for Ministers. My advice to them will be that I think it's quite a good idea to get this out and get it out well in advance of, let's say, the next election.

Mr Turner: Oh well, in that case it is just six months before the election.

Sir Gus O'Donnell: I did say I hoped to get it out by the end of the year but, like I say, it's not my decision.

Chair: Clearly we are focused at this moment on coalition making and Government making, but there are many other things in the manual, we understand: the monarchy and the Privy Council; the Executive: the role of the Prime Minister and Ministers; collective Cabinet decision making; Ministers and Parliament; Ministers and the law; Ministers and the civil service; relations with devolved Administrations and local government—our next topic, which we start next week—relations with Europe and international institutions" that possibly Mr Chope may wish to touch on. And then we are just getting down to chapter 9, which is the one that we're talking about effectively, which is on elections and Government formation. Finally, official information. This is a blockbuster, and I would suggest, Sir Gus, that that adds to Andrew's points that at least at some point in the next couple of weeks giving us some indication of the timeline for this to be out in the public domain—and you have already undertaken to do this—would be very, very helpful.

Sir Gus O'Donnell: I understand. I should just say that the actual number and form of chapters may change slightly as well.

Q202 Chair: Fine. I think though, as we've said, there will be a process of evolution once it's out there, in order to get something that is a finished article, and then the finished article itself will evolve forward, depending on what means of legitimacy and authority it requires.

Sir Gus O'Donnell: Precisely. This will be a living document, I think. Indeed.

Q203 Mrs Laing: Sir Gus, can I approach the issue of the way in which the Cabinet Manual was used in those crucial days after the general election from a slightly different angle from the Chairman, just for the sake of the exploration of the idea? Was one of the motivating factors for producing a chapter on the formation of a Government, should there be a hung

Parliament, your desire, indeed your duty, to protect the monarch from political activity?

Sir Gus O'Donnell: Indeed.

Q204 Mrs Laing: Thank you. And given that that is the case, is it then the case that you drew up a set of possible rules? Given that we are talking about conventions of the constitution—up until now, I have been a fan of the flexibility of those conventions—and given that you are only working with conventions and not rules, when you drew it up was it a set of possible rules? Was it rules in draft?

Sir Gus O'Donnell: It was a draft, very clearly a draft, but it consisted of existing legislation—so in that sense that's given, and the final document will have a lot about existing legislation covering Ministers and the like—and the conventions, as best they were understood, which is why I wanted to be clear about getting constitutional experts to look at these and tell me, and come to, as far as we could, a consensus, and that's what we ended up producing.

Q205 Mrs Laing: Did you consider that you had achieved that consensus?

Sir Gus O'Donnell: Yes.

Q206 Mrs Laing: We have had some constitutional experts before—and I think I'm not putting words into their mouths, and other members of the Committee will correct me if I'm wrong—and I had the impression they said that they hoped that they were constructive and helpful to you in doing that and that a consensus had been reached.

Sir Gus O'Donnell: They were incredibly helpful, if I could get that on the record. I think there were two groups that were really useful to this. One was a number of constitutional experts—obviously you can't consult them all, but we tried to get a good range—and the second was the Institute for Government. I think that was an interesting innovation, and they produced some reports that I thought really added to the debate. So, yes, I think the fact that we had achieved consensus was very clear from when the election result was announced on that Friday morning, all the way through, you saw some of those constitutional experts on our televisions explaining the processes that we would go through. The fact that that was not contentious, wasn't a matter of controversy, I think was really important.

Q207 Mrs Laing: That wasn't just a coincidence; that was the fact that you had pulled them together and there had been as full a discussion as you could possibly mediate?

Sir Gus O'Donnell: Indeed.

Q208 Mrs Laing: That is helpful, thank you. Having done that, let's just deal with the issue of whether a civil servant, let's not be personal about this, holding a particular position could in these circumstances overstep the mark. When the result of the election was known and various elected members of the House of Commons came together to consider the possibility of forming a Government—and we know, not just from the media but from the evidence we have before us,

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that there were various discussions taking place between three groups in different formations, to put it politely—did you then put before them your draft Cabinet Manual for their consideration?

Sir Gus O'Donnell: They all had it and they were very aware of its content, although my current Minister for Government Policy, Oliver Letwin, did say that he felt that he didn't need to consult it because they had me to ask.

Q209 Mrs Laing: Yes, he told us that as well. He did say it was far more useful to have the conversation with you personally rather than just to read it. But had they been reading it, was it open to all of them or any of them to reject it or to amend it?

Sir Gus O'Donnell: Absolutely. I mean, it's a convention. They could have said, "We'll operate in a different way". And there were various bits; remember that draft chapter doesn't cover everything. It didn't, for example, cover the role the civil service would have. It said about support, but then the question was, "Well, what does that mean?", which is why I published a further document that I had put together to say, "Well, given the code of impartiality we have, this is what I think civil service support should mean".

Q210 Mrs Laing: Would it be correct to say that it was technically impossible for a civil servant to overstep the mark, so long as there were elected representatives who could say no and put a red line through certain chapters?

Sir Gus O'Donnell: I can't stress enough it was for the political parties to decide how to operate. There was a draft chapter there but it was conventions, not legislation.

Q211 Mrs Laing: That is very helpful, thank you. You mentioned just a little while ago—if I may, Mr Chairman—an issue that I hadn't thought of before. I think you used the phrase that the manual is seen as being owned by the Cabinet, because it's a Cabinet Manual. You prompted me to think, when you said that, that that is a strange constitutional position that it should be owned by the Cabinet. As the Chairman rightly said, should it not be Parliament who has the final say on this? I can't expect you to answer that question as such now but, just talking about this in practical terms, would it be possible to put the Cabinet Manual before Parliament as draft legislation, possibly even as part of the Fixed-term Parliaments Bill?

Sir Gus O'Donnell: I don't think that has been considered yet—I'm not sure—given the Fixed-term Parliaments Bill is currently going through the House and, as the Chairman mentioned, the manual goes much, much wider than that. So I think that the legislators would have a bit of a problem with fitting it within that heading. So I don't think technically I could do that.

Q212 Mrs Laing: Of course. Therefore, that would technically be nonsense as far as the whole Cabinet Manual is concerned, but concentrating on the chapter that concerns the formation of Government and the process that follows a general election, given that the

Fixed-term Parliaments Bill concerns the formation of a future Government, would it be possible technically to take parts of the Cabinet Manual and give advice on the formation of Government and put it before Parliament for proper scrutiny as part of that Bill?

Sir Gus O'Donnell: It's possible. When you think about fixed-term Parliaments, there are some issues that that raises, particularly for the civil service. For example, we have a convention about when Prime Ministers allow the civil service to talk to the Opposition about, say, machinery of government issues that they would have if they were to win. By convention, it has tended to be 18 months before, from 1 January of year four of a Parliament. Given that you have election in most cases in year four, it gives you a few months. When you go to year five it gives you about 18 months. The question mark with a fixed-term Parliament: what is going to be the time at which the Prime Minister should ask the civil service to engage, or allow the civil service to engage?

Q213 Mrs Laing: A very good question and a very good issue you raise, because while we have not had fixed-term Parliaments, then this was very much a grey area, was it not? Whereas if we have fixed-term Parliaments then there will be a point at which the Opposition become the possible next Government. Therefore, you have raised a question. Can I ask you who do you think ought to answer that question: where should the decision be taken? Should it be taken by Parliament, by Cabinet? Where should the decision be taken on an issue like that and many others?

Sir Gus O'Donnell: Let's put it this way: at the moment there is a convention that this is something the Prime Minister does, and the Prime Minister, by convention, has said it is 1 January of year four. So we have a convention, but obviously that was in a world of non-fixed-term Parliaments. So I think it is one of those things that should be considered.

Q214 Chair: Can I just perhaps help, Eleanor and Sir Gus? There would be nothing to inhibit Parliament from passing a piece of legislation authorising the Cabinet Manual in full. It doesn't have to be the Fixed-term Parliaments Bill. It is perfectly open to Government to decide to put to Parliament, or Parliament to try to ask Government to put to Parliament, something that legitimises this in statute.

Sir Gus O'Donnell: It's perfectly possible, but remember there's a committee that deals with legislation that has to manage the differing priorities of Government.

Chair: I think how the country is governed might figure at some of top end of the priority list possibly.

Mrs Laing: Indeed. I was just having a tangential—

Chair: I could easily start again, but—

Sir Gus O'Donnell: No, no. I note your bid for legislative time, I think.

Q215 Mrs Laing: I was only suggesting the Fixed-term Parliaments Bill because that makes the matter immediate, but I appreciate that there is very little chance of the Government deciding to do that. But the real issue is who takes the decision about how those

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rules apply. Now that there are written rules, because you have put them together, Sir Gus, and quite rightly in the circumstances of this year, now that those rules exist and have been acted upon, then that is no longer just a convention. It's now on the way to becoming a constitutional piece of—well, it's rules, so the question is should it just be rules owned by the Cabinet, or should it be considered by Parliament and put into law?

Sir Gus O'Donnell: We could have a semantic discussion about what constitutes a rule, but certainly we have codified, if you like, those conventions and put out a draft chapter and, if you like, it has been tested under fire through the last election, so in that sense it has an interesting status, let's put it that way.

Q216 Mrs Laing: It has developed; we're not in the position we were a year ago?

Sir Gus O'Donnell: Yes, I think it is enhanced somewhat.

Mrs Laing: Thank you.

Q217 Chair: Good. Just one quick one, to return to Parliament's role in this. Having had a general election, the public have all been involved, we have 650 brand new Members of Parliament; how should they be involved in this process of agreeing a Government or overseeing the transition? There are a number of countries where the person who has the confidence of the House is nominated or appointed to go to see the ceremonial President, or whatever it may be, to receive the seals of office. Therefore, those people who have just participated in the election, those people who have just been elected, have a role, possibly arguably only a ceremonial one, as in Germany, to send the leader of the majority off to become the Prime Minister, or whatever, of the country. Do you see something like that again bringing some more legitimacy to this process, which otherwise might appear to be led by people who have not directly participated in the election?

Sir Gus O'Donnell: I think in a sense you are asking me to start coming up with constitutional innovations. I think what Mr Turner was arguing about was the fact that it isn't the place of a civil service to be coming up with constitutional innovations. All we described in this was the system as it currently stands. So if Parliament were to decide that that's the way it wanted to go, I think there is this technical question about post-election, prior to being sworn in, are you MPs? So there are some constitutional things we need to sort out, but it would be for Parliament to decide how it wants to do these things. At the moment, though, it's very much the outgoing Prime Minister who advises the Sovereign on who She should call.

Q218 Chair: But were the Prime Minister to feel this was an appropriate move forward, he wouldn't find any technical obstacles that would prevent you drafting either a law to that effect or something within the Cabinet Manual that that's the way this needs to be done? This is the endorsement of a process that has taken place as a result of the public and Members of Parliament being involved in a general election.

Sir Gus O'Donnell: It's possible you could do that. It would require legislation, I think, and then you need to think about whether all the parties are going to operate in the same way. But it's certainly possible.

Q219 Chair: I very strongly welcome the development of the Cabinet Manual. Even though I haven't seen it I know it has to be a good thing, so I'm on your side in this sense.

Sir Gus O'Donnell: Thank you.

Chair: But I'm trying to see if we can anchor it in the actual event that millions of people have just participated in and hundreds of new Members of Parliament, flush with legitimacy, a result of that general election, who are parked until this still rather secretive process goes on and you hear the outcome in the newspapers. It seems to me if we can reunite the democratic process in some agreeable form with that outcome that would be a very sensible way to make people feel they own the system a little more than they do currently.

Sir Gus O'Donnell: I think we're all on the same side here. I am really pleased that you're all so interested in it.

Q220 Chair: I think you're bursting to say yes, Sir Gus, but—

Sir Gus O'Donnell: It's not my call, but I think it is useful the more you can look at this document and we can come to a view. It really does help us, the civil servants—at the moment there are some grey areas and some say the civil service was irrelevant, and that we overstepped the mark; I'm trying to weigh those up. But we have to manage a path through that and the more we can get frameworks, rules, conventions established out there the easier it is. That's why for me, getting that draft chapter out in advance was so important. It helped.

Chair: Thank you, Sir Gus.

Q221 Stephen Williams: You've covered virtually all the ground I was going to ask about, but, Sir Gus, you mentioned in the context of Government formation that you thought the European average was 40 days. Have you looked at good practice or common practice in other EU member states, or Commonwealth countries that have our model of parliamentary government, to see what processes are in place in other countries?

Sir Gus O'Donnell: Yes. One of the great joys of the fact that as Cabinet Secretaries we get together every two years and is this is the kind of thing that we talk about. It would be interesting—

Q222 Stephen Williams: Which peer group is that of Cabinet Secretaries, the Commonwealth or EU?

Sir Gus O'Donnell: It's Cabinet Secretaries of Australia, New Zealand, Canada, and sometimes Ireland, and the UK. And you've just seen another interesting example in Australia, where you would have thought, "This is incredibly unlikely. It is a very strong two-party system. It's a very unlikely result that there won't be a clear majority", and that's the result they got. And they are, I think, going through a period where they're learning from a new way of

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governing—a minority situation. One of the things we'll be looking at, and I'm sure they will be looking at, is the question of how prepared were they for it, how smooth was the process. And that took some time.

Q223 Stephen Williams: Do any of those Commonwealth and Ireland counterparts already have an investiture vote that the Chairman was asking about?

Sir Gus O'Donnell: Not that I'm aware of, no. If you're talking about an investiture vote as such, certainly you could do that. In a sense, the equivalent of that for us is the Queen's Speech vote. So it's a question about what does it add?

Q224 Stephen Williams: Do any of these other countries, or indeed other countries that you might look at, like fellow members of the European Union, have a set period from election day to formation of Government and the appointment or election of the Head of Government?

Sir Gus O'Donnell: Sorry, could I go back on my first answer, because obviously there are situations in the devolveds where it is of that form.

Stephen Williams: Scotland?

Sir Gus O'Donnell: Indeed. And that's an important lesson for us, I think, to always be looking close to home as well as further away.

Q225 Stephen Williams: And local government you could say as well?

Sir Gus O'Donnell: And local government. Do they have a fixed period of time after an election? I could give you a note on that. I don't think so, but I'm not sure.

Q226 Stephen Williams: So that's something that you've not looked at or your officials haven't looked at yet? That seems quite an omission not to have looked at that.

Sir Gus O'Donnell: No, I think we looked at it. We didn't come up with anything that suggested to me there were fixed times. So that's my presumption but, like I say, can I come back to you on that?

Q227 Stephen Williams: Can I ask about something completely different?

Chair: Sure. Can I just make it clear that we'd really appreciate a note, Sir Gus, as you mentioned.¹

Sir Gus O'Donnell: Certainly, yes.

Chair: Thank you.

Stephen Williams: You mentioned in response to Andrew Turner earlier about the questions about the likelihood or otherwise of a hung Parliament. Were you giving advice to the Prime Minister and the Cabinet at the time about how they should prepare for the possibility of a hung Parliament and what they would need to do if a hung Parliament arose?

Sir Gus O'Donnell: Not other than through the draft chapter that that will be the set of processes and conventions. It's not for me to suggest to the Prime Minister what kinds of things he might want to do in preparation for a particular election outcome. I mean,

I would say to him, "This is the process and these are the sorts of things that will happen", but it would be for, I think, the heads of all the political parties to come to their own judgements about how they would want to operate in those circumstances.

Q228 Stephen Williams: Having witnessed the negotiations taking place between the three parties at different times, how well prepared do you think the three parties were?

Sir Gus O'Donnell: I didn't witness the negotiations. I expressly wasn't in the room when these negotiations took place. I was there at the start but then they were clear that they wanted to do it themselves.

Q229 Stephen Williams: I didn't mean witnessed in the sense of being in the room. I meant probably an interested bystander.

Sir Gus O'Donnell: Okay. Well, certainly it was clear—I can talk about the current Government. It was impressive how quickly they could move from negotiations to the documents that came out which were quite comprehensive.

Q230 Stephen Williams: The reason I ask this, is that when Andrew Adonis was before the Committee I asked him how well prepared was the outgoing, as it turned out to be, Labour Government for coalition negotiations, and I felt he gave the impression that they hadn't seriously prepared for coalition formation.

Sir Gus O'Donnell: To be honest, that's the Labour Party's business, not mine. It was for each individual party to make its preparations, and I don't think it's my role to have suggested to parties that they should be doing that.

Q231 Chair: Again, you're putting out a framework that is there for all parties to use. The fact one particular party, if I may speak personally, seemed very slow off the mark is their responsibility. It's not for you to say, "Actually, you should be getting in there and making the calls and negotiating". That's a political call, rather.

Sir Gus O'Donnell: I would absolutely steer well clear.

Q232 Chair: But the phone has been installed by you and they're at liberty to pick it up, and if they choose not to then they take the consequences.

One final little one from me, just to put on the record, although our questioning hopefully has been robust and enjoyable. We, if there is to be a fixed-term Parliament, will be here for five years, and we would like a very positive and constructive relationship through this process of the evolution of the Cabinet Manual. And so in that sense, I just put the Committee at your disposal if you need a sounding board, if there are things where we could be involved, not necessarily in a formal evidence-taking way but just to use some of the expertise around the table to help this process. It's a process that is going to take place. It will be in the public domain, it will be part of a greater public discussion than perhaps you may have thought a year ago, and there is the new politics. I think it will be a

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matter of we could help, if you feel that that was appropriate.

Sir Gus O'Donnell: Indeed. I am very pleased by that, because I think there are a lot of issues now, having had the coalition Government, where we're in this world where there aren't existing conventions and so new things are happening all the time and, as I stressed, I think it's really important that those issues are discussed and decided and we get democratic answers to them.

Q233 Mr Chope: Just following up on that, one of the issues that you've raised today is the issue of the constitutional position of MPs post-election and pre-swearing in. I don't want to get drawn down that avenue today, because I think it might be a bit of a distraction, but you've obviously got a view on what the constitutional position is. If so, is that something you could put in the form of a note to us? I think that would be quite helpful, what your understanding of that position is.

Sir Gus O'Donnell: Certainly, yes. I always find it slightly odd that you elect the Speaker before you're sworn in.

Mr Chope: But if he's going to preside over swearing-in then—

Sir Gus O'Donnell: Yes, exactly. No, it's a kind of chicken and egg thing. It's not a big issue, don't get me wrong.

Q234 Mr Chope: But going back to what happened on Monday, 10 May, we've heard that on that morning, there was a document in existence, a six-page document I think we've been told, which was a draft confidence and supply agreement, which would have been available for a minority Administration—a confidence and supply agreement with the Liberal Democrats. Was that a document that you or your civil servants were involved in drawing up?

Sir Gus O'Donnell: No.

Q235 Mr Chope: When did you first see that document?

Sir Gus O'Donnell: I was aware that such a document had been drawn up, certainly, but it wasn't drawn up by civil servants at all. We were not asked to comment on it. It just existed as—I think it was part of the work that had been done in preparation for contingencies.

Mr Chope: By the political parties?

Sir Gus O'Donnell: By the political parties, I stress, not by civil servants. We had nothing to do with it.

Q236 Mr Chope: So when that was discussed on the Monday morning between the different Members of Parliament, you weren't involved in that at all and it was only after the event that you would have seen the document?

Sir Gus O'Donnell: Well, I knew that such a document existed, let's put it that way.

Q237 Mr Chope: Can I ask you when you knew and at what stage you knew that it existed?

Sir Gus O'Donnell: Reasonably early.

Mr Chope: Reasonably early—when? After the election, you mean?

Sir Gus O'Donnell: No, no, during the time that the negotiations were underway.

Mr Chope: So, on the Monday morning or on the Sunday or—

Sir Gus O'Donnell: To be honest, I can't remember exactly, but certainly at the time I was very much aware that there was a document, there was a supply and confidence agreement that they would have negotiated around if they were going to go down the minority Government route.

Q238 Mr Chope: Can I ask you, on a separate issue, one of your predecessors, the noble Lord Turnbull, gave a ballpark figure that he estimated that the cost of supporting a Minister is about £500,000 a year. Is that a figure that you would go along with? I'm not asking for a precise answer.

Sir Gus O'Donnell: No, it varies. Some Ministers have smaller private offices than others. We've certainly reduced the cost because of things we've done on transport and support, so it will vary according to Ministers. Some Ministers will travel a lot—Foreign Office Ministers, for example—others won't. So on the costs, there's quite a wide variety.

Mr Chope: But as an average rule of thumb, you wouldn't disagree too strongly with that £500,000?

Sir Gus O'Donnell: I would never disagree with my predecessor. That's a very bad thing to do.

Q239 Mr Chope: Then we get on to the issue of the number of Ministers, and I know you've said last week, quite rightly, that that's a matter for the Prime Minister to decide, how many Ministers there are. But do you think that in setting up a coalition rather than a single-party Government, it's inevitable that there will be more Ministers than if you have a single-party Government?

Sir Gus O'Donnell: No.

Mr Chope: You don't?

Sir Gus O'Donnell: I don't think it's inevitable.

Q240 Mr Chope: We've heard as one of the justifications for having more Ministers now—because we've now got up to the maximum of 95, whereas there were only, I think, 90 or 89 in the last Labour Government in the Commons—Members in the Commons.

Sir Gus O'Donnell: Well, that's different, isn't it?

Mr Chope: Yes, but there are now a record number of Ministers, an all-time high number of Ministers in the Commons, and the explanation for that is that that's because of the coalition, but you wouldn't see any inevitable reason why there should be more Ministers just because we've got a coalition?

Sir Gus O'Donnell: Not inevitable, but it's one of the factors, I would say, that is relevant. When you're trying to make sure that the coalition operates effectively, there are various ways of doing it. You can do it through the business going through Cabinet committees, but another way is you can make sure that within each Department it works, because you've got one Minister of the other party, but we do have a number of Departments where they are single party and that's an added complication for us.

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Q241 Mr Chope: So do you think Coalition Government is more expensive for the taxpayer than single-party Government?

Sir Gus O'Donnell: Not necessarily. I think there are certain steps you have to go through in terms of making sure that things are, if you like, coalitionised. Obviously we have a Coalition Committee, for example—it hasn't met that often—which you wouldn't have if it was single party, but I think in a sense that's a fairly odd way of accounting. I think you'd want to kind of take into account what's the quality of government that emerges from those processes as well as the input? You want to think about are you getting better decisions by more things going through Cabinet committees, for example.

Q242 Mr Chope: Can I ask you about parliamentary private secretaries? Do you see any reason why in a coalition Government there should be more parliamentary private secretaries than in a normal Government?

Sir Gus O'Donnell: Well, again, you've got this issue about some Departments where there aren't Ministers from one party, but in terms of parliamentary private secretaries, I'd say again, not necessarily, but there are pressures, I think, on coalition, which aren't there on other areas, where you need to have both parties aligned. So the links with Parliament may be rather more important in the sense of making sure that when you go to Parliament you can get across what the Government is trying to do, because by its very nature, with a coalition, you went into power with two manifestos but you've ended up with a Programme for Government, which is rather different. So it could well be that that places more emphasis, more need on managing Parliament.

Mr Chope: And is there a taxpayer cost associated with parliamentary private secretaries?

Sir Gus O'Donnell: They are unpaid, aren't they?

Q243 Mr Chope: Yes, they don't get a salary themselves, but is there a support cost associated with them—rooms that they have to have?

Sir Gus O'Donnell: It's quite small.

Mr Chope: Small. There is a cost, but it's a small one?

Sir Gus O'Donnell: A small one.

Q244 Mr Chope: Can I just ask you this: when the Government was formed, we know that it was a very small cohort of elected Members of Parliament from each of the two parties that were actually involved in that formation of the Government.

Sir Gus O'Donnell: Oh, I see. The negotiating committees.

Mr Chope: In the negotiating committees and obviously, going back to your earlier point, they didn't necessarily have any status other than that they'd been appointed by the leader of their particular party and they'd been elected as Members of Parliament. In giving your evidence to the Public Administration Committee last week, you volunteered the responsibility of trying to define what we mean by the post-bureaucratic age, and you said that it was moving decision making down towards individuals. Applying

that principle of post-bureaucratic age to the decision making surrounding the contents of a coalition document, do you think that what happened with the minimal involvement of ordinary Members of Parliament was consistent with the principles of the post-bureaucratic age?

Sir Gus O'Donnell: I am not sure the Prime Minister had thought of applying it to the circumstance you're talking about when he made that reference. I think that by its structure, and again, given our conventions, what you will have is a small group needing to come together and agree how they are going to operate. If you're going to move to full coalition and come up with some of the answers to some of the key policy differences that they have, which they did, I think, very quickly and came up with that document, it's for the political parties involved to decide how they do that and I think they have different traditions in terms of how they would involve their individual MPs. I think you saw differences between the Conservatives and Liberal Democrats in that respect.

Q245 Mr Chope: And would you expect, if this happened again, that there would be more consultation between the leaders of parties and their political parties than took place on this occasion?

Sir Gus O'Donnell: That is very much a choice for the leaders and the parties themselves to decide.

Mr Chope: As far as you are concerned, if that resulted in it all taking a bit longer, that wouldn't have been an issue?

Sir Gus O'Donnell: Again, we will deal with whatever we have to deal with. It's for the political parties to decide how they want to manage this process of consulting their members.

Mr Chope: Thank you.

Chair: Stephen, you had a follow-up question.

Q246 Stephen Williams: It was said by one of Sir Gus' predecessors, I think, that under Prime Minister Blair we had sofa government. Would you say under Prime Minister Cameron and Deputy Prime Minister Clegg we now have Cabinet Government restored?

Sir Gus O'Donnell: I've never got into comments about sofas. What I will say is Coalition Government forces the use of Cabinet committees more, and in order to make sure that it's agreed with the coalition, you have to make sure that things go through Cabinet committees. By virtue of the fact that they have a chair from one party, a deputy from another, and the fact that if there are serious disagreements they can take them up to the Coalition Committee, which is 50:50, you have a process for dealing with these things, and in the nature of wanting to keep the coalition working effectively and trusting each other, you are finding a lot more business going through Cabinet committees.

Q247 Stephen Williams: And would you say that leads to better government, given that we have a parliamentary and Cabinet Government system in this country?

Sir Gus O'Donnell: Well, I'm in favour of important decisions going through Cabinet committees, yes.

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Q248 Sheila Gilmore: First of all, apologies for missing the beginning. I was rash enough to be over-enthusiastic in a second reading debate and therefore was cornered to be on the Finance Bill. Well, this is actually the Savings Accounts and Health in Pregnancy Grant Bill; it's got a long name. Then I realised afterwards, because somebody said the way that you get fingered is that you get too enthusiastic in the second reading debates; lessons to be learned. So I'm sorry, and if anything I say covers ground that has already been covered, I apologise for that.

In the process of dealing with no one having a majority, is there any sense in which civil servants have a preference for a coalition over any other arrangement because of its perceived stability?

Sir Gus O'Donnell: Our job is basically to work with whatever outcome political parties come up with, so if it had been a supply and confidence arrangement with a minority Government, we'd have had to do our best to make that work, or a Coalition Government. Actually, the civil service has had very little experience of either, so we're in a learning situation and we're learning about what Coalition Government is like in practice. So I think to say, as some people have said, that we had a preference one way or the other, no. Our preference really was to support the political parties to make sure that they came to an arrangement and whatever arrangement they came to, it's their responsibility, we would then try and make that work as effectively as possible.

Q249 Sheila Gilmore: At the time, in the context of this year in particular—and that might not be the case at other times—there appears to have been a view expressed in certain parts of the media, certainly expressed by politicians of various parties, perhaps by others, that a minority Government would be particularly dangerous at a time when it was considered there was a major financial crisis and that you yourself may have been of that view.

Sir Gus O'Donnell: My view is it's for the political parties to determine what Government they go for. They're in negotiation. I'm not part of those negotiations, and we get on with whatever Government is organised. Certainly it was the view of the markets, and market commentators were of the view, that there were differences in their view about minority versus coalition government, but that's a separate thing entirely.

Q250 Sheila Gilmore: In terms of the future arrangements, one of the closest minority Government arrangements to hand of late has been the one in Scotland, and I think there has also been experience in Wales of that too. I think perhaps initially there was a belief in Scotland that you kind of had to have a coalition, otherwise it would be unworkable. The last three and a half years perhaps suggest that that was not the case. Is that something that you would be wanting to look at so that your staff, your civil servants, would become a bit more familiar with how that works?

Sir Gus O'Donnell: It's a very good point, and when I was doing the preparations for what might be thrown at us, we used extensively some of our colleagues

from Scotland, civil servants in Scotland, who had lived through negotiations and sorted things out. Their message, which I think was a really good message for us to take, was "Don't make any assumptions, prepare for all possible outcomes". I think before we had the minority SNP Government, I think people were kind of "Could that possibly work?" and the lesson from our colleagues in Scotland was to be ready for whatever might happen. You just don't know, and you can't predict sometimes how effective Governments will be, which is why, coming back to your point about did we have a preference one way or the other, actually we didn't know and we still to this day will never know precisely how effective a minority Government would have been in these circumstances. We're learning about the effectiveness of coalition government every day.

Q251 Sheila Gilmore: Do you think the role of the civil service would be different if there was a minority Government, which is in the business of probably having to create alliances on different subjects in terms of supporting the other parties? Is there a role for the civil service in supporting the other parties who might be part of that process on an ongoing basis, rather than forming a coalition? To a large extent I think at the moment it feels, at least from the Opposition point of view, as if we just have a majority Government rather than the coalition. But if you had a minority Government where you're almost having ongoing negotiations, would the civil service have a role in that?

Sir Gus O'Donnell: It's interesting. I was just thinking about whether I'd been through that already, and it certainly felt like that, I think, at times under Prime Minister John Major when the Maastricht Treaty was going through and a lot of the legislation was going through with majorities of one, I think, at times. But in terms of what the civil service should do, it's very clear, we support the Government of the day. You could have a different regime, but our regime is very much that we work for the Government of the day and we do not support other parties, other than the parties that are in Government. Obviously we can do briefings on a Privy Council basis. There are various accepted ways in which we can brief the Opposition, but in general, those are done with the explicit support of the Prime Minister.

Q252 Sheila Gilmore: It's interesting, in local government, it is not uncommon for council officers to provide support, particularly through a budget process, for example, to actually provide support to an opposition. I think they set up rules about how that would be managed. Is that something that has ever been considered for national Government?

Sir Gus O'Donnell: Under our system, the civil service is expressly set up to support the Government of the day. I think this is one of the areas where the Institute for Government can play a really important role—they are there as a separate body that I think can perform that role. I think in the run-up to the last election, they did various work for the Opposition. I personally strongly support that work, and I think that's a very good thing, that there should be that sort

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of thing going on, but I don't think the civil service can do it.

Chair: And I would just add to Ms Gilmore's view that in local government, that also includes all elected members, very often not just the people who are the cabinet members or the alternative cabinet members. So perhaps the Institute of Government could stretch to including colleagues in the House of Commons who have a role to play.

Sir Gus O'Donnell: And I suggested to Andrew Adonis that I think that that will be a very good area to go down.

Q253 Chair: Just to get something on the record, Sir Gus, which other witnesses have alluded to—concept of a sort of mid-term review, which Sheila also mentioned in her contribution. Once where we are now is established in the melting pot of high pressure immediately after a general election, there should come a point, no doubt, where, “Okay, this will last us for two years, three years or whatever. Circumstances have changed globally or politically”—that concept of refreshing an agreement somewhere in the middle of the process to take you through to the end of a five-year Parliament. Have you had any thoughts about that and whether that might actually be quite a valuable thing to do and what the civil service role might be in that?

Sir Gus O'Donnell: Again, if Ministers were to want to do that, and I can understand why they might well want to do that, to refresh the *Programme for Government*, then I think just as we went from a stage where there was a document that had been agreed by the negotiating teams, and the civil service then worked on that to produce the *Programme for Government*, which was actually published, then if Ministers want to go down that route, we would expect civil servants to be very heavily engaged in preparing such a document.

Q254 Chair: And might that in future form some clause in the protocols or whatever they are in the Cabinet Manual?

Sir Gus O'Donnell: Well, I don't think it's something that we've thought about at any great length, to be honest. It's an interesting question. I think it flows from the fact that with a fixed-term Parliament, suddenly you've got five years and you know that, whereas I think in the absence of that you could have an election at any time. So I think this is one of those interesting things. As part of one constitutional change, the question is what does that mean for other areas? At the moment, that's not something that is, I think, covered in the draft manual.

Q255 Chair: Clearly there will be things that in the heat of the moment you can't get agreement on, and if there's a useful pocket somewhere to say, “Let's come back to that in our review that's in the rules or that we have agreed or that's the framework”, that might be a helpful thing in a high-pressure situation.

Sir Gus O'Donnell: Yes. An interesting analogy would be the agreement that there will be a defence and security review once every Parliament. I think that's a very big step forward.

Q256 Chair: Okay, just to go back then, away from the immediate coalition making to the bigger picture. I don't think you quite got around to answering my question about whether, when the then Prime Minister raised this question of doing a Cabinet Manual, that could at some point in your internal thinking have been a step on the way to a fully-fledged written constitution?

Sir Gus O'Donnell: Yes. The Prime Minister was very clear in what he said to me, which was bringing together existing law and existing conventions. He did not put it in the context of, “And then please turn it into a written constitution”. That's not what he said to me.

Q257 Chair: But there was work going on and the civil service were doing work on the outline of what a written constitution might be?

Sir Gus O'Donnell: That's right. There were some people who were thinking about that subject; Lord Stevenson, for example.

Q258 Chair: Okay. Would you be able to provide us a note on what was going on at that point, that's in the public domain?

Sir Gus O'Donnell: I'm only pausing because the papers are of a past administration and all the rest of it.

Chair: Can we leave that thought with you?

Sir Gus O'Donnell: Can I come back to you on that?²

Q259 Chair: It would be useful to know what, if any, work was going on on that broader question. And again, another very broad one, you work for the Government; you don't work for Parliament. However, as someone who wants to see Government work and society work effectively, you probably have a professional view on the balance of power between Parliament and the Executive. How do you see that relationship? Is there an imbalance or is it actually working very well at the moment?

Sir Gus O'Donnell: That's a very, very big question.

Chair: Well, we've got 40 minutes. Take your time.

Sir Gus O'Donnell: I think the first thing to say is I think we're learning every day, because we've got a new situation with the Government, with a coalition, that has two of the three main parties in it. So that involves rather more of Parliament than we did in the past. On the exact balance between Ministers and Parliament: I would say that I think it certainly works from the sense of the Government being able to manage its business. I think some of the changes we've had *vis-à-vis* Backbench Committees and the like I think have been very positive. I think the fact that you are now an elected Select Committee is interesting and I would say a step forward. So I think some of these changes are working well, and I personally think when I compare our system of government with those in other countries that we do have a very effective system.

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Q260 Chair: And pre-legislative and post-legislative scrutiny, is that a hindrance to the civil service or do you feel that has been a good development?

Sir Gus O'Donnell: I think pre-legislative scrutiny is a good development. It has, I think, been used very sensibly so far.

Q261 Mrs Laing: It's tempting, Sir Gus, to continue on the line of questioning about comparing different forms of government or styles of government—sofa government, Cabinet government, and the way in which the Government is held accountable by Parliament. It occurs to me that you might be able to provide a good comparison between Prime Ministers of the last 30 years who have had, on the one hand, large majorities, small majorities and now no majority, but it might be that you would prefer to leave the answer to that question until you write your memoirs.

Sir Gus O'Donnell: I've gone on the record, I'm pleased to say, that I will not be writing my memoirs.

Mrs Laing: Oh, that's a pity. So you could answer it now then?

Sir Gus O'Donnell: No, so I won't be doing myself out of some future revenue. But no, I think for precisely the reason I won't write my memoirs, I take the view that it's important for people in my position not to go into details of how they operate, how they work with other Prime Ministers. I think it's just one of the privileges of the job that you get to work very closely with Prime Ministers, and I think one of the responsibilities that goes with that is that you should just keep certain things confidential.

Q262 Mrs Laing: I'm sure that is entirely right, and there will be plenty of academic studies on the subject from which this Committee and others can draw in the future, but you have mentioned over this last hour or so about matters developing now and learning about a completely different form of government.

Can I take you to the issue of the caretaker period, moving on to something completely different? We have had evidence here before the Committee from academics, who are being very helpful to us on this subject, and we gather as a Committee that they have suggested that instead of using the term "purdah" the term "caretaker" would be more appropriate, and you kindly set out some of your considerations on this matter in your letter of yesterday's date to the Committee.³ But so we can get it on the record, can I ask you to explain to the Committee the relative difference, between not the semantics but the practicalities between a mere purdah and the fact of having a caretaker Government, in the context that we have so far in this country, in recent modern times, never had more than a few days of uncertainty about who was the Government? If we were to go down the route of having what the Chairman has suggested of that calming-down period and then a timetable for the formation of Government, how would a caretaker Government work?

Sir Gus O'Donnell: What I've said in the letter is I think that the people who have suggested the caretaker should be extended, there are two things I don't like about that. One is that I think that there are two

different periods. The first is the period during the election, when the election is called, when we are in what we used to call purdah, and there's a fairly well understood set of rules for that. Post-election, we are in a slightly different world, where certain announcements may well need to be made then, so I think there is a distinction between those two periods. With regard to the semantics, I don't like the word purdah. I'm not sure I very much like the word caretaker either, because I think it's a bit too passive. I personally think there are times when Governments will have to do things: imagine if we'd gone through a terrorist event, a successful terrorist event, and you want strong Government out there operating.

So, although caretaker has been used in various things, I just think it somehow underplays it. And your point about timing, this is very important, because, for example, in a fixed-term Parliament, under the five-year Bill, you have the ability to post a no confidence motion. You've got that 14-day period, and there are some questions, I think, then about whether that is a caretaker period. Is it a purdah period or a pre-election period? So I think that's one of the issues that we will need to resolve as well.

Q263 Mrs Laing: Thank you. You've set out a very important point there on whether caretaker is too passive. When the academics gave evidence, we discussed at some length the caretaker issue, and I came to the conclusion that caretaker was a much more accurate term than purdah, which is rather old-fashioned. But let me just clarify: you were saying that caretaker is also not a good enough term, because in fact the Government is still in post—there has to be a Government and that Government still has powers and still has to act on them?

Sir Gus O'Donnell: Well, two things, really: if you take the pre-election period, as we used to call it, that's one thing, and I think we all accept that—let's find a good word for that, maybe pre-election or whatever. The next period, when you've got a Government formed but it hasn't gone to the House, so it hasn't had its Queen's Speech through, it does have to make lots of announcements then. It will say things about what it expects to do as a Government. A new Prime Minister on the steps of Downing Street, and a Deputy Prime Minister in this case, will say things about what they intend to do. They will talk about their forthcoming Queen's Speech, or, as in this case, there was a kind of draft Programme for Government that they were talking about. So I think it's perfectly reasonable for there to be announcements, although they won't have the strength, because, whatever form of Government, it hasn't yet been given the legitimacy of winning a Queen's vote.

Q264 Mrs Laing: I think you're now identifying that there are actually three distinct periods. There is the period between dissolution of Parliament and the general election.

Sir Gus O'Donnell: That's right.

Mrs Laing: And then there's the period between the general election day and the formation of a new Government. That's the period that was worrying me.

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And then there's the third period that you're now describing when the new Government is acting before its Queen's Speech has been ratified by Parliament.

Sir Gus O'Donnell: Yes, yes, and that second period, I would just put that as the period from the election until the monarch calls for a new Prime Minister.

Mrs Laing: Now, that period, traditionally and historically, has usually been, I think I am right in saying, less than a week, and therefore we had the situation this year, for example, where Alistair Darling, who was still Chancellor of the Exchequer, continued international negotiations and nobody objected to that.

Sir Gus O'Donnell: Well, he did consult the Opposition—the shadows.

Q265 Mrs Laing: Yes, we have been given evidence to that effect, and that appears to have worked perfectly well. But, again, we're talking about conventions. There's no codification and there's no clarity about what should happen. Can I ask you, if the way in which Governments are formed in our country were to change so that that period of what has always been a few days became a few weeks, would there have to be some form of rules properly set down for those three separate periods?

Sir Gus O'Donnell: I think ideally we would have clear rules for all three periods, and if you take a world where there is the possibility of the five days being a longer period, all the more reason why you'll need some clarity. I would have thought during that period, one of the principles that you'd want to operate on is consultation with the other parties.

Q266 Mrs Laing: Would you say that there are no clear rules at present as to how those operate? Perhaps the first period that I described is fairly well dealt with, but those other two periods have not really been dealt with at all or examined properly?

Sir Gus O'Donnell: No. I think that there is a proposal that the caretaker period or the pre-election period continues for your second point, and in terms of the not making long-term commitments and the like, I think it makes a lot of sense to do that. But is it specified in great detail? No.

Mrs Laing: Thank you.

Chair: I think there's clearly a continuation of Executive authority, which is very apparent, but there—

Sir Gus O'Donnell: Yes. The Prime Minister remains the Prime Minister and the Cabinet remains the Cabinet, even if, as in this case, you end up with a situation where a Minister who previously attended Cabinet actually ceased to be an MP but still remained a member of—

Q267 Chair: We're missing the mesh of Executive authority with parliamentary authority, because of this weird "you get elected one day and then you hang around until the Executive decide to call Parliament, thank you very much", rather than, "I want you all in the House of Commons the day after the election" and then we can all get our meetings together and see where we are and make some decisions politically. The assumption is from the civil service, quite rightly,

that the leaders of the political parties are the people they deal with, because their responsibility is to continue Executive authority, so in a sense it is for us and it is for our leaders to also make similar arrangements for the parliamentary structure.

Sir Gus O'Donnell: Yes, it's very clear, as the civil service, we're there to support the elected Government of the day.

Q268 Stephen Williams: Chairman, I think it was you who said earlier that the Cabinet Manual, when it finally emerges, may be the nearest thing we have to a written constitution, and I just wonder whether Sir Gus, while he's finessing the Cabinet Manual in consultation with Ministers, thinks that the manual eventually will be a good starting point leading to a written constitution?

Sir Gus O'Donnell: I absolutely have no view that I wish to express about the merits or otherwise of a written constitution—let me be absolutely clear about this. But it is certainly true that if one were working towards such an event, you would want to start off by bringing together existing laws and conventions. I think in that sense, the Cabinet Manual will be useful very much in its own right, but it will also be useful and I think those who are in favour of a written constitution would start with it. They may well not end with it, but they would certainly start with it.

Q269 Stephen Williams: You mentioned earlier that you have biennial discussions with your peer group in Commonwealth countries. Have any of them offered you an opinion on the strengths or otherwise of a written constitution?

Sir Gus O'Donnell: No.

Q270 Stephen Williams: Do you study written constitutions of other countries?

Sir Gus O'Donnell: I have looked at them briefly, but for now, forgive me, I'm concentrating on the first bit, which is the Cabinet Manual.

Q271 Stephen Williams: So the Cabinet Manual could well be the first bit leading to a written constitution?

Sir Gus O'Donnell: I'm sorry, I'm concentrating on the Cabinet Manual. I take the first bit back.

Q272 Stephen Williams: You say you don't want to offer opinions, but do you see any advantages for Cabinet government of a written constitution?

Sir Gus O'Donnell: You are trying to get me to offer opinions. All I would say is that I think there will be great advantages from having a Cabinet Manual that brings together the existing issues. I think it's for others to think about whether they want to turn that into a written constitution.

Stephen Williams: I think you're stonewalling me, Sir Gus.

Sir Gus O'Donnell: It's a matter for you is what I'm saying.

Q273 Stephen Williams: Given that we're going to have quite a lot of constitutional change and innovation over a relatively short period of time in

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terms of how we develop that constitution in this country—we may have before the end of this Parliament a wholly or mainly elected House of Lords—the powers of the second Chamber are going to have to be codified in some way. Does that not lead inextricably to us having to have a written constitution so we know what our powers are as Members of Parliament, or elected senators maybe in the other Chamber? We're hopefully going to change the relationship between central and local government. Doesn't that all suggest that we're going to have to have rather more than a Cabinet Manual within a very short period of time?

Sir Gus O'Donnell: I don't think it means there's any inevitability about the need for it. I think you're absolutely right that it will be odd to separate out the discussion about whether you have an elected House of Lords from the question of powers. I think those two things have to intimately go together, so you would have to sort that out.

Chair: I think, Sir Gus, just as we rightly expected, you read everybody's minds about being ready for a Coalition Government. No doubt you are thinking about whether there is indeed a refresher agreement in the middle of the Parliament. Certainly one of the coalition parties is committed to codification or a written constitution and may want other things worked up to keep its radical edge, or whatever you'd like to call it. I think Stephen must probably leave that with you to continue your mind-reading process, which I'm sure you're doing.

Q274 Mrs Laing: On the same subject, just going back to what we were exploring earlier. I'm sure that at this very moment, there will be academics throughout the country teaching their students something along the following lines. There is in existence a Cabinet Manual. It is a codification of rules. It has been acted upon, therefore it is a document of some importance." It has never been before Parliament, it is the property, as you've said, Sir Gus, of the Cabinet. It is a useful, practical tool that has been very useful and acted upon in recent months. If it is Parliament that makes important rules—all the rules in the United Kingdom—should it not be that a document of this kind should come before Parliament for scrutiny and authentication?

Sir Gus O'Donnell: I put forward the draft chapter to the Justice Committee, so I would expect in due course, when the draft manual is there, it will come to this Committee, absolutely.

Mrs Laing: Thank you.

Chair: But I think you were talking about legislative authority.

Mrs Laing: I mean legislative authority.

Sir Gus O'Donnell: Oh well, then that's a question that Ministers will have to consider.

Q275 Mrs Laing: Yes, I appreciate that you can't answer that question, and I realise that I, who have always argued against a written constitution, am convincing myself in this hour and a half that perhaps we're well on the way to a written constitution. If we are, then if it has already happened by development, as these things do—because you had to act on the

circumstances that were before you, and rightly so—and if this document could be part of a written constitution or the beginnings, the first step to a written constitution, it should come before Parliament, not just before Committees for scrutiny, but for legislative authority. But you don't have to answer that.

Sir Gus O'Donnell: I should stress, the draft manual is a long, long way away from a written constitution.

Q276 Simon Hart: Can we leave the manual behind just for a moment? Just to pick up on a point you made earlier on. I think I heard you correctly, when you suggested that the relationship between the Executive and Parliament was a satisfactory one, in your view. Was that a correct assumption?

Sir Gus O'Donnell: All I can operate on is I think Government is operating effectively, in the sense of when I compare and contrast with other legislatures, I think we have a legislature that works.

Q277 Simon Hart: It's a pretty obvious question, the next one: to what extent is that sort of satisfactory balance dependent on the relative numbers—you can see what I'm coming to—and to what extent is it about something that is far more of subtle? If it is affected at all by numbers, to what extent do changes in numbers need to be, if you like, written down and included in some kind of constitutional arrangement?

Sir Gus O'Donnell: I think you have two issues here. How many Ministers do you need to do Government business? That could give you one way of looking at this. An alternative would be to say that it's important to have a fixed ratio of Ministers to MPs. Now, people will have different views about that, but on the degree of Government business, I suggest there's no reason to expect that to change very much as we go forward.

Q278 Simon Hart: The Government's rejection of attempts to make sure that the Executive and Parliament were sort of proportionate was—I'm thinking of a polite word to use to describe it, but anyway, leave that to one side—it's suggested that you couldn't look at this in isolation just in the House of Commons. It would have to be Parliament as a whole, and therefore we're slightly playing for time. But again, it's going back to the question I asked earlier, there must be advice somewhere—not that you give but the civil service gives—or something that we can enshrine in law that suggests that a Government cannot go outside certain limits as far as that relationship is concerned.

Sir Gus O'Donnell: I think it's fair to say, this is a matter for Ministers, but Mark Harper in the Cabinet Office, who is responsible for constitutional matters brought into the DPM, has said that this issue about the number of Ministers is something that will need to be returned to during this Parliament.

Simon Hart: During the Parliament rather than during the passage of the Bill?

Sir Gus O'Donnell: He said during Parliament.

Q279 Chair: One other thing, which I mentioned briefly earlier on, Sir Gus, just to put on your radar. It's not a question, but this Committee's next big

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inquiry is about not the localism agenda but the balance between local and national Governments and their constitutional relationship. So we'd like to examine that up until Christmas and see if everybody's on a square footing. So, again, just one other little thing to stick on your radar there, which again might be helpful for anything that colleagues are considering inside the Government machine.

Sir Gus O'Donnell: Thank you.

Q280 Mr Chope: quick question. What about the Coalition Committee? Do we know who sits on that? Is that public knowledge?

Sir Gus O'Donnell: I don't see any reason why it shouldn't be, but it's 50:50 between the two parties.

Q281 Mr Chope: So who are the people who sit on that?

Sir Gus O'Donnell: It's jointly chaired, Prime Minister, Deputy Prime Minister, and there are—I'll give you the list. It's the people you would expect: the Chancellor, Chief Secretary, I think. I can give you the list.⁴

Q282 Mr Chope: So would it be fair to say that we didn't have a Cabinet government so much as Coalition Committee government, because the Coalition Committee seems to be the ultimate decision-making body within the Government, more powerful than the Cabinet itself?

Sir Gus O'Donnell: No, I wouldn't say that. It's actually not more powerful than the Cabinet. On day one of a coalition, you're thinking about, "What's the appropriate committee structure?" so we said, "Well, what about chairs of one, deputy chairs of the other and a dispute resolution mechanism, which would be the Coalition Committee, 50:50?" That was all set up. In fact, the Coalition Committee has met very, very rarely. I think it's fair to say that Ministers from both parties and I thought that it would meet much more regularly. It has met, I think, a couple of times, whereas Cabinet is obviously meeting every week, Cabinet committees have met very regularly. So it is there, but it's interesting that the business has been done through Cabinet committees and Cabinet, not through that Coalition Committee.

Q283 Mr Chope: the Coalition Committee doesn't report to the Cabinet?

Sir Gus O'Donnell: Yes, absolutely, it would report to Cabinet.

Mr Chope: So it could in theory be overruled by the Cabinet?

Sir Gus O'Donnell: Indeed.

Mr Chope: I see.

Sir Gus O'Donnell: Cabinet is the ultimate authority.

Q284 Mr Chope: Towards the end of this Parliament, whether it be a fixed-term Parliament or whatever, you're going to have two rival political parties vying for votes and they're going to be out trying to draw up their separate manifestos, emphasising their differences rather than what they've

got in common. How is all that going to work while at the same time you've got these two parties tied up together in government and even in government together as Government Ministers during the course of the ensuing general election campaign? How do you see all that working out?

Sir Gus O'Donnell: It's interesting. I've always thought year fives of government are always somewhat difficult. In the past, just with single party government, they've been quite rare, and obviously when you go to a year five it's probably because you didn't think you could win in year four, so you're probably not the most popular Government of all time. As we think about what will happen in the last year, you are right, parties will be trying to differentiate, as it were. I think we've already had that—a test with a by-election—so you've had the two parties having to compete while being in the same Government. We may have a number of by-elections before the end.

There will be issues like the AV referendum, where the parties may be in different positions. So I think we're going to go through a number of periods where we're going to have to learn that there's a coalition Government, but at times they will operate as individual parties. We'll go through that learning process and then we'll come up to the point when we move towards an election. It is uncharted territory, what that final period will be like.

It's interesting, this point about the purdah rules that we were talking about earlier. Well, the point about them is that the purdah rules govern that period when an election is called, because up until then you didn't quite know when it would be, because you've never had a fixed end point. Parliament might well create a fixed end point, and then I think you're into an interesting question as to, yes, there will be the period when the election is actually called, but everyone will know what date it is. So I think we've got an as yet somewhat unanswered question about how you operate during that period. It won't be, I think, as black and white as one day there's an election called and previously there wasn't, because people will know that end date in advance.

Q285 Mr Chope: And this is something that the Cabinet Manual is going to address?

Sir Gus O'Donnell: No, not yet. It's one of those issues that I'm pondering. I think it's something that people will need to think about. I think as we go through, as I said, the experience of coalition and some of these areas where the parties do have to operate as separate parties, we'll be learning from that. But it is one of the consequences of a fixed term that needs to be considered.

Q286 Chair: I think, Sir Gus, it's obviously right that all of us consider some of the problems of a fixed-term Parliament, but equally I'm sure you're considering the opportunities as well, and I'm speaking very personally. I'm interested in this concept of early intervention with babies, children, and young people, to give them social and emotional capability. That's breaking an inter-generational cycle, which is destroyed by the old electoral cycle and the uncertainties, because it doesn't allow you long-term

⁴ <http://www.cabinetoffice.gov.uk/sites/default/files/resources/cabinet-committees-system.pdf>

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planning, whereas blocks of five-year capability will hopefully allow consensus building on stuff like that. That's *apropos* of nothing really, but just to say there are some very important things. For our own work, to set out a stall for five years, rather than, "Well, let's do it for a couple, because we're not quite sure what's going to happen" I think will be—

Sir Gus O'Donnell: Yes, I stress since this is going through Parliament, I'm not trying to offer a view—

Chair: No, no, I'm not trying to draw you on it.

Sir Gus O'Donnell: However, I do think we should consider anything that allows Governments to become more long-termist, if you like, and think about long-term consequences. When you think about the issues we face—your much awaited review on early intervention; climate change; ageing—you think that lots of them are very long-terms issues.

Q287 Chair: I have one last question and then if you'd like to take a couple of minutes to wind up and give us your thoughts on the overall picture. This inquiry starts with a look at coalition making, because we'd like coalition making to be even more effective than it was on the last occasion. I think it was done very well but nonetheless there are, from our remit, political and constitutional matters that arose from that, where we feel perhaps we can improve. We'd certainly like your continued advice on how we can help produce even better structures, and you've probably got the sense of structures that allow the politicians to make the decisions insofar as it is possible under less immediate pressure from media and market forces, but I appreciate that's a very difficult ask.

That leads us to the Cabinet Manual. Very helpfully, the relevant chapter was out and available, and I want to put on record our thanks that that happened, because I think that was very important and was a breakthrough. That leads us, because we thought it was good, to be greedy and want to see the full Cabinet Manual and to be able to discuss that and make a very positive and hopefully constructive contribution to that. Certainly from my point of view, that then leads me to the whole question of Executive authority and the role, above all, of Prime Ministerial prerogative or the former Royal prerogatives, which in this essence are now Executive prerogatives.

In the Cabinet Manual there is a section entitled "The Executive, the Prime Minister and Ministers". Will that, Sir Gus, encompass most of those issues that we normally would think of as prerogative powers—the powers of the Prime Minister—or are we still needing to look beyond the Cabinet Manual to draw in even more of those powers whenever, if ever, we choose to have an inquiry into the area?

Sir Gus O'Donnell: Well, I think we will try and cover some of those areas. Again, I would doubt if

it'll be completely comprehensive in that area, but there are very important areas—prerogative powers, international treaties, all those sorts of things—that I think are very important and will need to be there, no question about that. We will definitely try and do that.

Chair: But even the fundamental that, "There shall be a Prime Minister, the powers of the prime ministership shall be", that's not covered in this.

Sir Gus O'Donnell: No, exactly. I come back to what is codified is existing legislation and conventions. It doesn't start off attempting to be a written constitution.

Chair: No, no, but at some point it might be useful just to give the incumbent a sense of job security, that he has a job in statute and it's official.

Sir Gus O'Donnell: I can certainly say that we were very pleased that Parliament chose to put the civil service on a statutory basis and I'm really grateful to them for that.

Chair: Well, I think Tony Wright had a great deal to do with that, but it did take a long time. It wasn't something that necessarily the Executive felt should happen as quickly as some of us in the House. So you have got allies even in places you don't know sometimes, Sir Gus.

Sir Gus O'Donnell: Thank you.

Q288 Chair: Thank you very much for taking your extremely valuable time to talk to the Committee today. We've appreciated it. You've been very frank in your answers and very, very helpful. We, I repeat, would like to be equally helpful over the five-year period that we will serve in this capacity. Since we've got a couple of minutes left, would you like to summarise or round up?

Sir Gus O'Donnell: In response to what you said, I stress I'd really welcome the Committee's interest in these constitutional matters. It is a period when there's going to be lots of constitutional change—there are proposals for lots of the constitutional change, many of them with Parliament at the minute. On the Cabinet Manual, I'm very, very pleased that you're interested in it. I was somewhat surprised that it got less coverage than it might have done, but with hindsight I think we're all pleased that we got that chapter out there. But absolutely, there are lessons to be learned. We are learning lessons about coalition government every day and how to make it work effectively, and so it would be good if we can work on that together and certainly the way in which the Cabinet Manual evolves. I very much look forward to working with the Committee on that.

Chair: Sir Gus, thank you very much for your time, much appreciated.

Sir Gus O'Donnell: Thank you, much appreciated. Thank you.

Written evidence

Written evidence submitted by the Hansard Society

THE CABINET MANUAL

1. The drafting of the Cabinet Manual amounts to partial codification of aspects of our constitutional arrangements. With one exception (the extension of the rules governing the purdah/caretaker period beyond the election until a government formed) it did not set out anything that is constitutionally “new”, rather the novelty lay in setting out the existing arrangements (both conventions and legislation) in clear written form. That chapter six on elections and government formation was published in draft form before the rest of the Manual was understandable due to the pressing nature of the political and electoral circumstances that pertained in spring 2010 and the understandable desire of both the civil service and Buckingham Palace that the arrangements should be clear to the politicians, media and the general public in the event of a hung Parliament at the general election.

2. The original draft was revised to take account of comments made at the Justice Committee’s public session on 24 February and it was this revised draft that was used by the civil service in May 2010. This revised draft was not published due to a lack of time before the election was announced—we therefore do not know exactly how the changes were made. A number of issues arise:

- (a) The Justice Committee recommended that the wording in relation to the extension of the purdah/caretaker period should be clarified and strengthened but how this was subsequently achieved is not in the public domain. The guidance needs to be clear in setting out how the opposition parties are to be consulted if action beyond that usually permitted in the purdah /caretaker period is deemed necessary by the incumbent government. In April–May 2010 two specific situations arose—the closure of air space following the eruption of the Icelandic volcano, and the deteriorating economic situation and problems specifically in relation to the Greek economy—where the conventions of the purdah/caretaker period might conceivably have come under pressure. In the latter case the Chancellor, Alastair Darling MP, did consult his opposite numbers, George Osborne MP and Vince Cable MP, about the Ecofin meeting he attended over the course of the weekend immediately following the election. In the absence of any significant criticism of the handling of this event it would suggest that the wording of the revised draft did provide the politicians and the civil service with the necessary guidance to deal with such situations.
- (b) Additionally, the position about what support the civil service can provide to inter-party negotiations needs to be clear, albeit flexible, in light of the political permutations that might emerge. In May 2010 the civil service appear to have played a very limited role. However, in the event of a minority government being formed and some form of supply arrangement being reached it is conceivable that an opposition party(ies) might seek some civil service support and policy advice if only on an ad hoc basis. In 1977–78 during the Lib-Lab Pact, for example, some, albeit limited, civil service support was provided to the Liberal Party leader, David Steel, through the workings of the inter-party Joint Consultative Committee whose secretariat was staffed by civil servants from the Privy Council Office. Throughout the period of the Pact, government ministers steadfastly refused to answer questions about the Joint Consultative Committee, including its resourcing arrangements, in the House of Commons on the grounds that it was an inter-party not a governmental arrangement. This clearly stretched the boundaries of accountability. In February 2010 the Cabinet Secretary indicated to the Justice Committee that he and his fellow Permanent Secretaries would have to come up with some guidance, “about what constitutes the right level of support” to give to the parties because they might be supporting a party which then turned out to be in opposition to the government. If such guidance were developed, it should be incorporated into the revised Cabinet Manual chapter.
- (c) The drafting of the chapter was handled largely by officials within the Cabinet Office in consultation with a small number of eminent constitutional experts. The House of Commons Justice Committee was then consulted on the draft. For political reasons associated with the proximity of the general election the parties themselves, although consulted, did not want to be closely associated publicly with the document for fear of how it would be interpreted. However, there is now time for a proper period of consultation with a wider range of interested individuals and bodies thus ensuring that a broader range of opinions and ideas are brought to bear on the document than was possible with the small number of constitutional experts hitherto consulted. Thus:
 - (i) the final draft of the chapter of the Cabinet Manual should be published for further consultation and consideration;
 - (ii) the full draft of the Cabinet Manual—which Sir Gus O’Donnell had previously indicated would be completed soon after the general election—should be published at the earliest opportunity for consultation;

- (iii) it should be made clear which minister at the Cabinet Office now has ministerial responsibility for the process and is therefore accountable to Parliament for it.

GOVERNMENT FORMATION—ISSUES ARISING

3. The previous benchmark for negotiations in the event of an uncertain election result was the three days of February/March 1974. That has now been pushed to five days by the events of May 2010. It is likely that in future this limit can, if required, be pushed still further given that the events of May demonstrated that political and financial collapse need not follow an inconclusive election result as many had threatened and feared. However, clearly constraints on the ability of parties to conduct negotiations over a longer period remain: the longer that talks go on the stronger will be the media and market pressures, and the parties themselves will come under increased internal strain (in relation to confidentiality, leaks etc).

4. In constitutional terms the only test for government formation is whether or not it is able to command the confidence of the House of Commons in the votes at the end of the Queen's Speech. This year the Queen's Speech debates and votes did not conclude until 8 June. There was therefore a month between the election and the actual demonstration, in constitutional terms, of political certainty with regard to the formation of the government. Were the period for inter-party negotiations to require more than five days then this period of constitutional uncertainty might be extended still further in the future. In the event of the negotiation of a minority government, it is also conceivable that a government might be in office for five weeks or more following an election during which period it would not necessarily be clear whether they commanded the support of the House of Commons. This cannot be regarded as ideal. There is therefore a strong case for holding an "investiture vote" (as for example in the Scottish Parliament) to confirm the identity of the Prime Minister and Government shortly after Parliament reconvenes, perhaps after the Speaker's election, rather than waiting for the later date of the conclusion of the Queen's Speech debates.

5. It has been suggested in some quarters that Prime Minister Gordon Brown's decision to resign on the evening of 11 May was precipitous because the coalition agreement between the Conservatives and Liberal Democrats had not been finalised. The incumbent Prime Minister had a constitutional obligation to stay in Downing Street until such time as the political position was clear as to who could form a government. There is clearly a difference between the point of political clarity with regard to the identity of the future government and the point of readiness in terms of that government being ready to assume the reins of office in full. Our constitutional system does not provide for a formal period of transition and therefore political clarity takes precedence over subjective perceptions of readiness. When, for example, would the coalition government in-waiting have been deemed ready to take over from the caretaker government: when the inter-party agreement was completed by the negotiating teams; when the agreement had been endorsed by the Liberal Democrat Party via its triple lock mechanism (which had there been any real opposition in the party could have added a week or more to the process); or when, for example, all appointments had been agreed (the new Prime Minister took a week to complete the appointment of his ministerial team)? Any one of these scenarios would have left Gordon Brown in Downing Street for anything between an additional day or a week or more. Politically, if not constitutionally, such a delay would not be deemed appropriate.

6. It was decided this year that Parliament would reconvene on 18 May, a week later than the usual timetable adopted after the general election. This implemented a recommendation of the Modernisation Committee in 2007 in order to facilitate improved induction and orientation of new members of the House. The Hansard Society is currently conducting a new study—A Year in the Life—exploring the experience of new MPs in their first 12 months in post, part of which explores their views on the induction programme that was offered. Our interim findings suggest that the induction programme was well received by new members. The extended timetable certainly helped and we would recommend that it be repeated after the next general election with consideration given to extending it by a further week in order to improve it still further. This would also beneficially relieve some of the pressure on inter-party negotiations in the event of an uncertain election outcome.

SALISBURY CONVENTION

7. The coalition's policy commitments reflect a meshing of the two parties' manifestos with a number of additional measures that did not appear in either of their manifestos. In terms of a popular mandate most members of the public will have had only a broad sense of each party's policy commitments and few will have read the manifestos prior to marking their ballot paper on election day. In political terms however, the emergence of measures that are not contained in either manifesto may have implications once the legislation reaches Parliament as it is conceivable that members of the House of Lords might not feel bound by the terms of the Salisbury Convention and amend or reject the legislation accordingly. There has long been a legal academic debate about whether the Convention really exists anymore, but this could be put to the test if peers feel that they are on safe political ground in challenging the government on an item of its legislative programme. Whether this constitutional convention unravels will ultimately be a matter of peers' political judgement—if they sense strong public support for their stance they may feel empowered to face down the government. On contentious issues, particularly of a constitutional nature, they may therefore not feel bound to acquiesce to the will of the Commons if the proposed measures do not carry the authority of having

been manifesto commitments. If this occurs, we could face a political and constitutional crisis. Ultimately however, whether it comes to pass will depend on the circumstances of the moment and the application of acute political judgement as to the attitude and reaction of the general public on the issue.

15 October 2010

Written evidence submitted by the Institute for Government

INTRODUCTION

In the year and a half prior to the May 2010 general election the Institute for Government considered a number of issues relating to preparations for, processes and consequences of UK general elections and subsequent government formation. This work included the publication of two reports, *Transitions: Preparing for Changes of Government* and *Making Minority Government Work* (the latter published jointly with the UCL Constitution Unit) and looked in particular at the implications of an unclear electoral result, or hung parliament.

Subsequently, the Institute in general, and the authors of this submission in particular, followed the election and government formation process very closely, and provided comment to numerous media outlets as events were unfolding. In the paragraphs below we set out our responses to six of the specific questions posed by the Political and Constitutional Reform Committee inquiry into the 2010 government formation process.

What constitutional and practical lessons are there to be learned from the process of government formation after the 2010 general election?

In the six months before the election there was wide agreement on the need for better understanding about the constitutional conventions for an unclear election result by politicians, civil servants, and the media and in the City—as well as the general public. Alongside this were questions about how prepared these groups were. The outcome of the election result itself has reinforced the importance of this understanding and the need for more coherent preparation.

The main gain was the public discussion ahead of, and after, the general election about the constitutional conventions surrounding an unclear result. The decision by the Cabinet Office to publish the chapter of a draft Cabinet Manual that dealt with the subject was timely and practically useful.

Another precedent set was in managing, and potentially changing, expectations about the time needed for this process to be allowed to take its course. The media, financial markets and politicians saw that government did not fall apart—and, indeed, operated smoothly—over the five days, instead of the usual one day, that it took to form a new administration. The experience of the 2010 election may have made it easier, in future, for there to be a less hurried process of government formation.

Were there any departures in practice from the principles of government formation set out in draft before the general election? Were these justified?

The events following the 2010 general election were a specific test for the draft Cabinet Manual chapter on government formation. However, it is important to note that the process of government formation did not see departures in practice from the principles set out in the draft. There were, however, evolutions from past practice.

One area in which the draft conventions marked a shift was in the role of the Civil Service in facilitating the negotiation process. This was not entirely unprecedented, members of the Civil Service were involved in facilitating negotiations in February 1974. What was new was the move towards formalising this role, as embodied in the permission given by Prime Minister Gordon Brown to the Cabinet Secretary for the Civil Service to support the coalition negotiations between the Opposition parties. This development was part of a wider effort to ensure that the process was more transparent than in the past. In the event, the Civil Service appear to have played a very limited direct role in the coalition negotiations during the immediate post-election period, but did play a considerable role in the process of developing the more detailed second Programme for Government that was drawn up after the coalition took office.

Another evolution was in the extension of *purdah* from Election Day until a new government was formed—affecting new appointments, new contracts and ensuring consultation with Opposition leaders on any major policy issues. More specific definition of the “caretaker” role, of a government remaining in office following an unclear result but before it is clear who was likely to be able to command confidence in the House of Commons, could be seen as a departure from previous practice. The wording and detail of these principles were an extension of the pre-election “*purdah*” conventions. However, there was one area in which further clarity may be required. Namely, how to determine what constitutes a “stable” government, meaning one to which the caretaker convention would not apply. Attempting to clarify this matter in the draft Cabinet Manual was a sensible step. However, introducing a Scottish-style “investiture” vote (discussed below) might be a more effective way of providing clarity.

Was the draft Cabinet Manual chapter on elections and government formation drafted in a satisfactory way, and has the subsequent consultation been adequate?

Given the pressures of time in which the draft Cabinet Manual chapter was produced the process was about as good as could have been expected. The Cabinet Office did talk to outside experts and, crucially, the Justice Committee held a hearing and produced a report. Now, with more time available and the ability to reflect upon the Election result itself, there is clearly a role for Parliament in being consulted on the draft of the full Cabinet Manual, though it should remain the property of the Cabinet Office.

What impact did media pressure have on the position of the incumbent Prime Minister and coalition negotiators?

The impact of media pressure on the position of the incumbent Prime Minister and coalition negotiators was clearly considerable. However, this pressure was markedly less than many had feared in the period before the election—considering the expansion and immediacy of media and 24 hour news compared to 1974, let alone concerns about the potential reactions of financial markets. One reason for this may have been the efforts to educate media and markets, including by the Institute for Government, in the period before the election, as well as the behaviour and messages of politicians in the period after the results began to suggest an unclear result. Education and public discussion of the possibility of the process taking longer does appear to have mitigated its effects. Clearly, however, there are still lessons that can be learnt, particularly in terms of how other countries approach the period following an election result and whether the UK process is rushed in a way that is detrimental to the quality of governance.

A particular question of interest is whether the Prime Minister should have gone to the Palace at the time he did. He left at the point when it had become evident that he could not remain in power, and that David Cameron was the only political leader able to form a government that could command confidence in the House of Commons, although it remained uncertain whether that might be through minority government with “supply and confidence” support from other parties or formal coalition. Under existing conventions this course was constitutionally correct; he was able to recommend to the Monarch who his successor should be, and further consideration of the exact form that the government would take was subsequent. However, there is a case to be made that there should be a longer handover period after the election whatever the result. This would ensure that an outgoing PM would wait until not only his/her successor, but also the composition of the new government was known. Thus it is not merely a question of media pressure, but of political and personal pressure which is inherent in a system accustomed to seeing a handover of power within a day of a general election result—something not seen in any other comparable democratic system.

Are there more satisfactory models for coalition and government formation in use elsewhere in the world, or in other parts of the United Kingdom?

One major difference between government formation in the UK and elsewhere in the western democratic world is the time set aside for this process. The five-day government formation period in May 2010 was long in British terms, but remarkably short compared to many other western democracies. Allowing for a slightly slower pace in future might be sensible, since an overly compressed timetable can lead the parties to put to one side difficult decisions or to agree upon policies without sufficient consideration. Certainly, we would not desire months of negotiations as in the Netherlands or Belgium, but two weeks or so, as is common in Scotland, Canada and New Zealand, might strike a sensible balance between the two extreme positions.

In some systems, including Scotland and Wales, there is also a statutory time limit for the government formation process, or at least for the election of a First Minister (28 days in both cases). Given that the Government proposes (in its Fixed Term Parliaments Bill) to place in statute a 28-day limit for government formation in the event that a no confidence motion is passed during the lifetime of a Parliament, it would be worth considering whether a similar provision at the beginning of a Parliament would also be desirable.

In the devolved systems, and also in some European legislatures including Germany, heads of government (and sometimes other Cabinet ministers too) formally take office only after having been nominated by means of an “investiture” motion in the legislature. In the final section of our submission we set out reasons why introducing a similar mechanism at Westminster might be beneficial.

Finally, in other countries such as New Zealand and Canada, an outgoing Prime Minister is expected to remain in office (in a caretaker capacity) until the new government is fully ready to assume power, even after it is apparent that there will be a change of power. Thus in 2008, the outgoing New Zealand PM Helen Clark remained in office for 11 days after the election while the victorious National Party negotiated “confidence and supply” agreements with smaller parties. Establishing such a convention in the UK (perhaps through the Cabinet Manual) could provide for a clearer transfer of power from one fully-formed government to another, and avoid excessive haste in concluding negotiations.¹

¹ Had such a convention been in place in May 2010, Gordon Brown would have been expected to delay his resignation until the coalition agreement between Conservatives and Liberal Democrats had been finalised, rather than resigning as soon as it became apparent that David Cameron would lead the new government one way or the other.

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

In *Making Minority Government Work*, the Institute for Government (in partnership with the UCL Constitution Unit) concluded that there were arguments in favour of holding an investiture vote following a general election. This change could be made without undermining the personal prerogative powers of the Crown, as it could be on a motion that simply made a recommendation to the monarch as to whom to appoint as PM (as is the case in the Scottish Parliament).

First, a formal vote among MPs on who should be invited to form the new government would be more comprehensible to the general public than the current mechanism for testing the confidence of a new government—the vote traditionally held during or at the end of the Queen’s Speech debate.

Second, an investiture vote would make explicit the fact that governments in the UK are made and broken on the basis of their ability to secure the confidence of the House of Commons. This public education function could become particularly important in the event that the leader of the second largest party emerged as the person best able to form a government, when questions of legitimacy may come to the fore in public debate.

Third, if it were unclear whether or not a prospective PM enjoyed the confidence of parliament an investiture vote would clear up the uncertainty relatively quickly. If the answer was in the negative, then an alternative government could be formed at that stage, rather than waiting for the Queen’s Speech vote which may be some weeks later. The case of 1923–24 springs to mind, when six weeks elapsed between the election and the defeat of Prime Minister Stanley Baldwin in a confidence vote.

Fourth, if an election result were very close, such that more than one party leader had plausible aspirations to form a government, debate on the investiture motion would offer an opportunity for the competing leaders to state their cases, and for parties or Members holding the balance of power to explain their reasons for backing a particular candidate. This would help to assuage fears that government formation following an inconclusive election takes place largely behind closed doors and away from public scrutiny.

Fifth, putting government formation so transparently in the hands of the House of Commons would reduce the chances of the monarch being drawn into the political process of determining who is best placed to form a government.

Peter Riddell, Akash Paun and Catherine Haddon

14 October 2010

**Written evidence submitted by Professor Robert Hazell and Dr Ben Yong, Constitution Unit,
University College London**

1. SUMMARY OF KEY POINTS

The process of government formation after the 2010 election was very successful. This was mostly thanks to the careful preparation of the civil service. The system of government was not brought into disrepute, and the key actors all understood their roles. In particular:

1.1 *What was successful*

- The Cabinet Office chapter on Elections and Government Formation was useful to those involved in the process, and to the media in explaining it.
- The Monarch remained above the fray. Before the election there were concerns that the Monarch might make political decisions were a hung parliament to result, but this did not happen.²
- The new caretaker convention was observed.
- The civil service had prepared carefully for a hung parliament, and were able to provide guidance to the parties about the government formation process, and to support their negotiations.³

1.2 *What could be improved*

- Informing the public and media of the basic principles of the government formation process following a hung parliament.
- Clarifying the extent of the caretaker convention.

² Robert Hazell and Akash Paun (eds) *Making Minority Government Work: Hung Parliaments and the Challenges for Westminster and Whitehall* (Constitution Unit and Institute for Government, London, 2009) http://www.ucl.ac.uk/constitution-unit/files/research/in-the-round/IFG_making%20minority%20government_final%20proof%2020%20nov%202009.pdf;

“How to stop the Queen picking the next PM” *The Times* (25 November 2009) at:

http://www.timesonline.co.uk/tol/comment/columnists/daniel_finkelstein/article6930463.ece.

³ “Conservatives and Lib Dems get first experience of full civil service support” *The Guardian* (9 May 2010) at: <http://www.guardian.co.uk/politics/2010/may/09/gus-odonnell-civil-service-chinese-wall>

- Clarifying the duty of the incumbent Prime Minister to remain in office until the new government is formed.
- Allowing more time for the parties to negotiate.
- Holding an investiture vote to help the public understand that it is Parliament which selects the new government.
- Removing from the Prime Minister the power to determine the date for the first meeting of the new Parliament.

2. LESSONS TO BE LEARNED FROM THE PROCESS OF GOVERNMENT FORMATION IN 2010

Overall, the process of government formation following the 2010 general election was successful—“successful” in the sense that the actors all understood their roles and did not bring the government formation process into disrepute; and that it led to a relatively stable government.⁴ This was mostly due to the careful preparation of the civil service and the good sense and civility of the political parties.

3. *Departures from principles of government formation set out before the election*

The key actors all followed the draft Cabinet Manual guidance. The departures were rather from the practices of previous elections. These included:

- The extension of the guidelines on the restriction of government activity during the election into the post-election period.
- Greater specificity about the kinds of decisions which are subject to restrictions.
- The provision of civil service advice to the political parties during the process of government formation following a hung parliament.
- A clearer articulation of the constitutional conventions concerning elections and government formation.

These departures from previous practice were all needed, and in the event were justified in order to ensure a smooth and orderly process of government formation.

4. *The draft Cabinet Manual chapter on elections and government formation*

The Cabinet Secretary Sir Gus O’Donnell initiated the Cabinet Manual project as part of preparations for the possibility of a hung parliament, with the authorisation of the then PM Gordon Brown.⁵ The draft elections chapter is but one chapter of a much larger Cabinet Manual which will cover:

- Elections and Government Formation.
- The Sovereign and the Privy Council.
- The Prime Minister and Ministers.
- Collective Cabinet decision making.
- Ministers and Parliament.
- Ministers and the Law.
- Ministers and the Civil Service.
- Relations with Devolved Administrations and Local Government.
- Relations with the EU and international institutions.
- Official Information.
- Government Finance and Expenditure.

The draft elections chapter covered:

- The mechanics of holding a general election in the UK.
- The mechanics of proroguing, dissolving and summoning Parliament.
- The principles and processes of government formation.

⁴ “Tory-Lib Dem coalition: The Queen, Britain’s top civil servant and Germany’s chancellor sigh with relief” *The Guardian* (12 May 2010) at:

<http://www.guardian.co.uk/politics/wintour-and-watt/2010/may/12/david-meron-nick-clegg>

⁵ “Towards a new politics”, Speech by the Prime Minister to the IPPR (2 February 2010) Available from:

<http://www.totalpolitics.com/speeches/speech.php?id=422>.

The Cabinet Manual project may have also been inspired by recommendations made in Hazell and Paun (eds) *Making Minority Government Work*. See also Robert Hazell and Peter Riddell “Opening the Door to the Secret Garden/A Plea for Revised Public Guidance on How Governments Are Formed and Operate”, reproduced in an appendix to the report of the Justice Committee *Constitutional Processes Following a General Election* (HC 396, 2010) at:<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/396/396.pdf>

The guidelines on government formation had three objectives. First, they make clear that if a general election has an uncertain result, the previous government remains in office until a new government can be formed. Second, they aim to guide the key actors and provide the framework in which they can form an effective and stable government. Finally, the guidelines make clear that government formation is a political matter, the province of the political parties, with the Monarch in the background.

The draft chapter was made public before the Justice Committee on 24 February 2010.⁶ A number of concerns were raised at the Justice Committee, including restrictions on government activity during the pre- and post-election period (the caretaker convention); the principles and proper procedures for government formation; dissolution; and the role of the incumbent Prime Minister. On March 29, the Justice Committee published its report *Constitutional Processes Following a General Election*.⁷ The report set out a number of proposed recommendations, many of which related to restrictions on government activity during the election and government formation period.

On the whole, these recommendations were fairly straightforward, and should have been incorporated into the draft. But the Brown Government did not respond to the Justice Committee's Report; and a new, updated version of the elections chapter, or the Cabinet Manual as a whole has still to be published. We set out below a number of suggestions which would improve the draft elections chapter. We have two sets of suggestions, one relating to process, the other to substance.

4.1 Process

4.1.1 Legitimacy and legitimation

The New Zealand Cabinet Manual, from which the UK Cabinet Manual draws its inspiration, has gained its legitimacy over many years. It commands considerable respect, and is regularly updated. The NZ Prime Minister says in the most recent Foreword that:

[The Cabinet Manual] is a primary source of information on New Zealand's constitutional arrangements, as seen through the lens of the executive branch of government . . . The Cabinet Manual does not effect change, but rather records incremental changes in the administrative and constitutional arrangements of executive government.

The NZ Manual is now in its fifth edition, and has changed significantly over the years, from a guide primarily for officials (originally named the Cabinet Office Manual), to a guide primarily for Ministers, and the outside world. It retains its status as an authoritative guide. Each new edition is subject to extensive consultation within government (of ministers and officials), but is not put out to external consultation, save to officials such as the Clerk of the Parliament and the Ombudsman.

The UK Cabinet Manual faces the challenge of trying to achieve the same degree of legitimacy and authority in its first edition that the NZ Manual has acquired over many years. It also faces the dilemma of whether it merely summarises existing conventions or tries to improve upon them. We believe that in certain respects it should improve upon them (eg, the caretaker convention). But we recognise that this requires a wider process of consultation than has happened in New Zealand. This process of external consultation can include constitutional experts, to check that the Manual accurately describes the existing constitutional conventions; and parliamentary committees, to check that the Manual commands cross-party support.

But Parliament has no veto, and (as in all parliamentary scrutiny) can only propose changes, not require them. The Cabinet Manual remains a document of the executive, and its authority derives from the fact that it is approved by the Prime Minister and Cabinet as a guide to how they will conduct the business of the executive. As with the Ministerial Code, the Cabinet Manual will need to be submitted and approved by each new government; and each new government will be free to make its own changes.

4.1.2 Informing the media and the public

The Cabinet Office provided an important public service in publishing the draft chapter on elections and government formation prior to the election. Their objective was to provide guidance to the political parties and the media about the process of government formation; and to reassure the public and the markets that the process would be orderly and reasonably swift. There were three key messages to get across:

- The incumbent government remains in office as a caretaker government until a new government is formed.
- The test of who should lead the new government is who can command the confidence of the House of Commons.
- The political parties have to work out who can command confidence, with the Monarch playing a very limited role.

⁶ The draft election chapter can be found here: <http://www.cabinetoffice.gov.uk/media/343763/election-rules-chapter6-draft.pdf>.

⁷ Justice Committee *Constitutional Processes Following a General Election* (HC 396, 2010) at: <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/396/396.pdf>.

In general the media did well in the way they reported the election outcome. None of the media declared that the Conservatives had “won” simply by being the largest single party. And none suggested that it was up to the Queen to decide. But *The Sun* and *The Mail* unfairly attacked Gordon Brown for “squatting” in No 10,⁸ when constitutionally it was his duty to remain in office. And Nick Clegg may have misled people into thinking that he was asserting constitutional doctrine when he said

whichever party gets the most votes and the most seats, if not an absolute majority, has the first right to seek to govern, either on its own or by reaching out to other parties.⁹

In reality Clegg was laying out the Liberal Democrats’ negotiating position, which he was perfectly entitled to do. The constitutional doctrine remains that stated in the Cabinet Manual, that:

It is for the Monarch to invite the person whom it appears is most likely to be able to command the confidence of the House of Commons to serve as Prime Minister and to form a government.¹⁰

That person is likely to be the leader of the largest single party, but not necessarily so. It could be the leader of the second largest party: as it was in January 1924, and as it might have been in 2010 if the Liberal Democrats had reached an agreement with the Labour Party instead of the Conservatives.

A final point raised by Nick Clegg’s statement is whether any party has the “first right” to seek to govern. Strictly only one person has the “first right”, and that is the incumbent Prime Minister. As the draft Cabinet Manual puts it:

An incumbent Government is entitled to await the meeting of the new Parliament to see if it can command the confidence of the House of Commons or to resign if it becomes clear that it is unlikely to command that confidence.¹¹

The last Prime Minister to exercise his right to meet the new Parliament and be defeated was Baldwin in 1924. Similarly in 2010 Gordon Brown had the right to meet the new Parliament. But the right is heavily tempered by the political realities. It did not confer on Brown any significant political advantage. It did not give him the right to initiate talks with other parties: when the Liberal Democrats started talking to the Conservatives he was left on the sidelines. And although he had the right to meet the new Parliament, it would have been disastrous for him and the Labour Party if he had insisted on doing so. He chose instead to resign as soon as it became clear that he could not command confidence.

4.2 Substantive

4.2.1 The role of the incumbent Prime Minister

In accordance with the draft Cabinet Manual and established constitutional practice, Gordon Brown remained in Number 10 after the general election, once it became clear that no party had an overall majority. We must always have a government. As the doctrine was expressed in former times, “the Queen’s business must be carried on”, and “the Queen must never be without responsible advisers”.

⁸ “Squatter, 59, holed up in No 10” *The Sun* (8 May 2010) at: <http://www.thesun.co.uk/sol/homepage/news/election2010/2964713/Gordon-Brown-squatting-in-No-10.html>; and “From green-eyed Chancellor to the ‘squatter of No 10’, Gordon Brown finally admits he can’t hang on to job he coveted for so long” *Daily Mail* (10 May 2010) at:

<http://www.dailymail.co.uk/news/election/article-1272278/From-green-eyed-Chancellor-squatter-No10-Gordon-Brown-finally-admits-hang-job-coveted-long.html>.

⁹ “Nick Clegg’s statement on the results of the election” *Liberal Democrats Website* (7 May 2010) at:

http://www.libdems.org.uk/ncorguk_news_details.aspx?title=Nick_Clegg%27s_statement_on_the_results_of_the_election&pPK=910a0064-f1e8-430c-afb6-49ccc4fd32e0.

¹⁰ “Chapter 6: Elections and Government formation (DRAFT)” at:

<http://www.cabinetoffice.gov.uk/media/343763/election-rules-chapter6-draft.pdf>

The principles of Government formation

14. Governments hold office by virtue of their ability to command the confidence of the House and hold office until they resign. A Government or Prime Minister who cannot command the confidence of the House of Commons is required by constitutional convention to resign or, where it is appropriate to do so instead, may seek a dissolution of Parliament. When a Government or Prime Minister resigns it is for the Monarch to invite the person whom it appears is most likely to be able to command the confidence of the House of Commons to serve as Prime Minister and to form a government. However it is the responsibility of those involved in the political process—and in particular the parties represented in Parliament—to seek to determine and communicate clearly who that person should be. [. . .]

“Hung” Parliaments

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

17. If the Prime Minister and Government resign at any stage, the principles in paragraph 14 apply—in particular that the person who appears to be most likely to command the confidence of the House of Commons will be asked by the Monarch to form a government. Where a range of different administrations could potentially be formed, the expectation is that discussions will take place between political parties on who should form the next Government. [. . .]

¹¹ Para 16.

The departure of Gordon Brown from Number 10 on the evening of May 11 was arguably premature, because at that stage it was not clear what form the new government would take.¹² True enough, Brown was able to advise the Monarch that there was an alternative Prime Minister who might command the confidence of the Commons. But David Cameron has noted that when he went to see the Queen, he was not yet clear what the form of the government should be; and a formal deal between the Conservatives and the Liberal Democrats had not been finalised.¹³

To clarify that it is not merely the right, but the duty of the incumbent government to remain in office, the Cabinet Manual could perhaps say:

The incumbent Prime Minister should not resign until it is clear that someone else is better placed to command the confidence of the House of Commons.

If it was felt desirable to have complete clarity about the new government before the incumbent PM resigns, the guidance could add “and the form of the alternative government has also become clear”.

4.2.2 Time for negotiation and government formation

German observers were horrified at the time taken to form the new UK government. By European standards it was indecently, recklessly short. But even by the standards of other Westminster countries it was rushed. Australia, Canada and New Zealand have typically allowed at least 10 days for the formation of a new government after an election. It took 17 days before Julia Gillard formed her new minority government after Australia’s September 2010 election.¹⁴ But New Zealand provides an example closer to the UK’s 2010 experience. After their 2008 election the major party in the incumbent government, Labour, won only 43 out of 122 seats, while the National Party won 58 seats—just short of a majority. The incumbent Prime Minister, Helen Clark, conceded on election night, as well as resigning as Labour leader. However, the leader of the National Party, John Key, remained “Prime Minister elect” until formally sworn in; and it was to take him 11 days before formally forming a government. In the meantime, Clark acted as caretaker PM.¹⁵

It may seem strange in the UK for the “Prime Minister elect” to form his new government from outside Downing Street, but there are strong arguments for allowing more time for a more orderly and reflective process of government formation.¹⁶ The UK may gradually develop new norms in terms of what politicians, the media and the public expect about the timescale after an election. The old norm was for a new government to be announced within 24 hours. The new norm from 2010 is that it takes at least five days if there is an uncertain result. The hope must be that this norm might gradually increase, to allow greater time and space for the political parties to negotiate with each other. They need to discuss and think through substantive policies, their cost, timing and feasibility; areas of compromise; portfolio allocation; to allow for possible negotiations with different parties; and to ratify any decision made in accordance with their respective party constitutions. Stable government is not best served by having all of these matters compressed into an unreasonably short time frame.

4.2.3 The caretaker convention

The guidelines concerning restrictions on government action during the election period were revised and adapted in preparation for the 2010 election. In particular, the restrictions on government activity were extended into the period follow an inconclusive election outcome (see para 20 of the draft elections chapter of the Cabinet Manual). These guidelines are becoming known as “the caretaker convention”.

¹² “Gordon Brown, Nick Clegg and the scramble for power” *The Guardian* (19 September 2010) at: <http://www.guardian.co.uk/politics/2010/sep/19/gordon-brown-andrew-rawnsley>

¹³ “Cameron ‘unsure of government’s form’ as he met Queen” *BBC News Website* (29 July 2010) at: <http://www.bbc.co.uk/news/uk-politics-10794180>.

¹⁴ “Shock of election outcome felt across the world” *The Australian* (23 August 2010) at: <http://www.theaustralian.com.au/business/media/shock-of-election-outcome-felt-around-the-world/story-e6frg996-1225908598772>

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¹⁵ “Clark concedes NZ election to Key” *New Zealand Herald* (8 November 2008) at: http://www.nzherald.co.nz/nz-election-2008/news/article.cfm?c_id=1501799&objectid=10541856;

“John Key announces he has numbers to govern” *New Zealand Herald* (16 November 2008) at: http://www.nzherald.co.nz/nz-election-2008/news/article.cfm?c_id=1501799&objectid=10543317;

“Tearful goodbye turns to smiles for new leader” *New Zealand Herald* (20 November 2008) http://www.nzherald.co.nz/nz-election-2008/news/article.cfm?c_id=1501799&objectid=10544031.

It is also worth noting that the NZ Cabinet Manual provides for the situation where there is a clear electoral outcome, and in particular the role of the incumbent (but perhaps unsuccessful) government. See NZ Cabinet Manual, para 6.24, which reads:

Where it is clear which party or parties will form the next government but Ministers have not yet been sworn in, the outgoing government should:

(a) undertake no new policy initiatives; and

(b) act on the advice of the incoming government on any matter of such constitutional, economic or other significance that it cannot be delayed until the new government formally takes office—even if the outgoing government disagrees with the course of action proposed.

<http://cabinetmanual.cabinetoffice.govt.nz/node/35#6.24>

¹⁶ P Riddell and C Haddon *Transitions: Preparing for Changes of Government*. Institute for Government, 2009.

It appears that the caretaker convention was followed by the incumbent Labour Government during the period of government formation. For instance, Alistair Darling apparently consulted with Vince Cable and George Osborne on 8 May over an extraordinary meeting of European finance ministers in Brussels for a €60 billion “European stabilisation mechanism”.¹⁷

Traditionally, the restrictions on government activity during elections have been known as “purdah”, and have applied mainly to government announcements. The rationale was that the party in government should not use the government’s publicity machine for electoral advantage. We believe that this rationale is too narrow; that the restrictions should apply to more than just government announcements; and that they should apply in a wider set of circumstances than just during elections.

First, the rationale. The underlying principle is that during and immediately after the election the incumbent government remains in office, with all the lawful authority of a government to take executive action. But until it can demonstrate that it can command the confidence of the new House of Commons it has lost the political authority to govern. So it must not take any action which binds the hands of a future government which can command confidence.

Once that is understood as the rationale, it follows that a caretaker government should not:

- Make any new policy which binds a future government, or new expenditure commitments (other than of a routine kind).
- Make public appointments which bind a future government.
- Enter significant government contracts.
- As well as being cautious in terms of public announcements.

And once it is understood that any government which can no longer demonstrate that it has the confidence of the House of Commons has lost its political authority to govern, it follows that the caretaker convention applies in three possible contexts:

- During a general election, because Parliament has been dissolved, and there may be a change of government.
- After a general election, until a new government has been formed which commands the confidence of the new House of Commons.
- Mid term, if the government is defeated on a confidence motion.

The draft Cabinet Manual needs to recognise that the caretaker convention applies in this third context as well. It is pertinent because of the government’s proposals for fixed term parliaments, which specifically provide for a situation where the government has lost the confidence of the Commons and no alternative government can be immediately found. The bill provides for a period of up to 14 days in which the search for an alternative government can take place. As we noted in our report on Fixed Term Parliaments:

If a no confidence motion is passed, the government remains in office until a new government can be formed in which the House has confidence. It cannot immediately resign, because there must always be a government. But once it has lost confidence the government should be subject to the caretaker convention . . .¹⁸

The clearer justification we have advanced for the caretaker convention, and wider set of circumstances in which it applies, is how it essentially operates in Australia and New Zealand. In New Zealand, the caretaker convention operates whenever there is a loss of confidence.¹⁹ Any Prime Minister who no longer has the confidence of the House has lost the political authority to govern. He or she remains in office as a caretaker Prime Minister, and must consult with the other political parties before making any significant decisions which might tie the hands of a future government.

4.2.4 An investiture vote to determine who commands confidence

In Scotland the first substantive business of a new Parliament is to hold an election to nominate the First Minister, who is then appointed by the Queen. It has been suggested that an investiture vote might be introduced at Westminster, as a more direct way of demonstrating who commands confidence in the new Parliament.²⁰ It would be easier for the public to understand as a test of confidence than the traditional debate on the Queen’s Speech. It would make it clear that in a parliamentary system of government electing a government is a two stage process, in which the public first elect a parliament, and the parliament then selects the government. An investiture vote would perform a public educative function, demystifying and legitimising the outcome of the government formation process.

¹⁷ <http://www.telegraph.co.uk/finance/financetopics/financialcrisis/7697471/Alistair-Darling-trapped-in-euro-deal.html>

¹⁸ Robert Hazell *Fixed-Term Parliaments* (Constitution Unit, London, 2010), pp 28–29. This report was reproduced in the Political and Constitutional Reform Committee report *Fixed-Term Parliaments Bill* (HC 436, 2010) at: <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpolcon/436/436.pdf>.

¹⁹ *NZ Cabinet Manual*, 6.20 and 6.58, at:

<http://cabinetmanual.cabinetoffice.govt.nz/6.16> and <http://cabinetmanual.cabinetoffice.govt.nz/6.56>.

²⁰ Robert Hazell and Akash Paun (eds) *Making Minority Government Work: Hung Parliaments and the Challenges for Westminster and Whitehall* (Constitution Unit and Institute for Government, London, 2009) p 82.

The main difficulty for proponents of an investiture vote is to show how it might work in terms of timing. In the Appendix we set out a chronology of the election and government formation process in 2010. David Cameron was appointed Prime Minister on the evening of 11 May, and the first meeting of Parliament was on 18 May. If Parliament is first to hold an election to nominate the Prime Minister before he or she can be appointed by the Queen, Parliament would have to meet earlier, or the new Prime Minister must be formally appointed a week or so later.

This would be feasible if the UK adopted the same practice as happens in Australia, Canada and New Zealand, where there is an interval of about 10 days between the election and the swearing in of the new government. But it would be a big change in terms of the traditional practice at Westminster. The process of government formation would take place away from Downing Street, and new ministers would not fully engage with their new departments until about a week later than usual. There are strong arguments for a more orderly and more deliberative process for the appointment and induction of new ministers; but traditional expectations are strong, and the government in waiting may prove impatient to get their hands directly on the levers of power.²¹

4.2.5 The summoning of a new Parliament

The proclamation to summon a new Parliament also specifies the date on which the new Parliament will meet. The appointed day is chosen on the advice of the Prime Minister. Recent custom had been for Parliament to meet on the Wednesday following the election.²² In the 2010 election, Number 10 indicated that Parliament would first meet on 18 May, 12 days after the election.²³ This followed a recommendation of the Commons Modernisation Committee that the interval between polling day and the first meeting of Parliament should be 12 days to allow more time for the induction of new MPs.²⁴ But Gordon Brown was criticised because he was seen by some Conservatives as allowing himself more time in which to negotiate to continue in government.²⁵

The decision to have a longer 12 day period between polling day and the first meeting of Parliament was sensible, and proved successful. It allowed for the possibility of a protracted period of government formation, which was entirely appropriate given concerns about a hung parliament. It also gave the incoming MPs and ministers more time for induction and adaptation to working in Parliament and in government.²⁶

There is a wider issue, which is who should decide on the return date for Parliament: the outgoing government, or Parliament itself? Historically it has been the government, because the power to dissolve and summon Parliament is a prerogative power, exercised on the advice of the Prime Minister. But the Fixed-term Parliaments Bill abolishes the prerogative power to dissolve Parliament, on the ground that it confers too much discretionary power on the Prime Minister. In future only Parliament should have discretion to dissolve itself. Following the same logic, the power to appoint a date for the first meeting of the new Parliament should be determined by Parliament, with the Speaker of the outgoing Parliament setting a date for the return of the new one.

5. CONCLUSIONS

We end with some suggestions for the new Cabinet Manual:

- Include the recommendations from the March 2010 Report of the Justice Committee.
- Clarify that it is the duty of the incumbent Prime Minister to remain in office until a new government is formed (or the existing government is confirmed in office).
- Specify that the caretaker convention includes restrictions on new policy, public appointments and government contracts, as examples of the general need to exercise “discretion”.
- Extend the caretaker convention to any period when the government does not command the confidence of Parliament: including post election, before a new government is formed; and mid term, if the government is defeated on an issue of confidence.
- Remove from the Prime Minister the power to determine the first meeting of the new Parliament.

²¹ Peter Riddell and Catherine Haddon, *Transitions: Preparing for Changes of Government*. Institute for Government, 2009; p 32.

²² “Election timetables” *House of Commons Library* at: <http://www.parliament.uk/documents/commons/lib/research/rp2009/rp09-044.pdf>

²³ “General Election to take place on 6 May” *Number 10 Website* (6 April 2010) at: <http://webarchive.nationalarchives.gov.uk/+/number10.gov.uk/news/press-notice/2010/04/general-election-to-take-place-on-6-may-2-23093>

²⁴ Draft elections chapter, para 9, fn1.

²⁵ “Conservative anger at rules that may let Labour cling to power after election” *The Guardian* (4 May 2010) at:

<http://www.guardian.co.uk/politics/2010/may/03/conservative-anger-rules-labour-cling-power> and

“General election 2010: What if we can’t make our minds up?” *The Telegraph* (4 May 2010) at:

<http://www.telegraph.co.uk/news/election-2010/7678833/General-election-2010-What-if-we-cant-make-our-minds-up.html>

²⁶ <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmmodern/337/337.pdf>, paras 37–9.

This last could be effected by an amendment to the Fixed-term Parliaments Bill, which retains the existing procedure for the proclamation summoning the new Parliament. Other issues which the Committee might like to consider are:

- How to inform the public about the basic principles of government formation, without going into the inevitable complexities and subtleties of the Cabinet Manual.
- Whether, as part of the process of public education, there should be an investiture vote to determine who can command the confidence of the new House of Commons, before the debate on the Queen’s Speech.

APPENDIX

THE 2010 ELECTION TIMELINE

<i>Proximity to polling day</i>	<i>Date</i>	<i>Constitutional Event</i>
– 71	Wed 24 Feb	Justice Committee hearing on Constitution Processes following a General Election. ⁱ Draft elections chapter published. ⁱⁱ
– 52	Mon 15 March	Gordon Brown declares that he will not resign as Labour leader if there is a hung parliament. ⁱⁱⁱ
– 37	Mon 29 March	Justice Committee publishes Constitution Processes following a General Election. ^{iv}
– 30	Tues 6 April	Brown announces election to be held 6 May; Parliament to meet again on 18 May. ^v
– 28	Thur 8 April	Prorogation of Parliament. ^{vi}
– 24	Mon 12 April	Dissolution of Parliament. ^{vii}
0	Thurs 6 May	Polling day. Buckingham Palace indicates to senior civil servants that in event of a close result, the Queen will only consider seeing the politician who is likely to form the next government after 1pm, rather than the traditional morning meeting when there is an outright winner, thus imposing a “cooling off period.” ^{viii}
1	Fri 7 May	BBC News declares a hung parliament. ^{ix} Brown signals he will remain as Prime Minister and extends civil service support to all parties in negotiations. ^x Nick Clegg asserts that the Conservatives have the first right to try to form a government. ^{xi}
2	Sat 8 May	Conservative and Liberal Democrat negotiating teams meet in the Cabinet Office, facilitated by civil servants. ^{xii} Alastair Darling appears to act in accordance with the caretaker convention when representing Britain at a meeting of European finance ministers in Brussels. Apparently consults with opposition counterparts in the Conservatives and Liberal Democrats before the meeting. ^{xiii}
4	Sun 10 May	Brown resigns as Labour leader, but remains as acting Prime Minister. Labour and Liberal Democrat negotiating teams meet. ^{xiv}
5	Mon 11 May	Brown resigns as Prime Minister. The Queen appoints David Cameron as Prime Minister. ^{xv} Cameron announces he intends to create a full coalition with the Liberal Democrats. Liberal Democrat parliamentary party and Federal Executive meet and approve coalition participation by the requisite majority. ^{xvi}
6	Tues 12 May	Coalition negotiation agreement published, setting out broad policy direction of Coalition. ^{xvii} Clegg appointed Deputy Prime Minister; four other Liberal Democrats granted cabinet seats. ^{xviii}
12	Tues 18 May	First meeting of the new Parliament. ^{xix}
14	Thur 20 May	<i>Coalition’s Programme for Government</i> published, outlining substantive Coalition policies. ^{xx}
15	Fri 21 May	<i>Coalition Agreement for Stability and Reform</i> published, setting out the Coalition’s inner organisation. ^{xxi} <i>Ministerial Code</i> published. ^{xxii}

<i>Proximity to polling day</i>	<i>Date</i>	<i>Constitutional Event</i>
19	Tue 25 May	The State Opening of Parliament and the Queen's speech. ^{xxiii}

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21 October 2010

Written evidence submitted by the Cabinet Secretary

In advance of appearing before the Political and Constitutional Reform Committee to give evidence in relation to the inquiry into the process of government formation following the 2010 election, I thought it would be helpful if I wrote to you on progress on the Cabinet Manual and views on the Justice Committee’s recommendations on the draft chapter on elections and government formation.

I am of the view that the process of forming the first coalition government for over half a century was very successful. The report from the Justice Committee in March 2010 said that it “welcomed the evidence of significant thought and effort being put into preparations for the full range of Parliamentary election outcomes by the Government, and in particular by the Cabinet Secretary” and it was widely recognised that the civil service needed to be ready to support the government from day one—I believe the civil service achieved those aims. As had been set out in the draft chapter on elections and government formation, the civil service was also able to offer support to all political parties during the negotiations, helping to ensure a swift and smooth transition after the election.

Since publication of the draft chapter on elections and government formation, the Cabinet Office has been continuing work on the Cabinet Manual. I indicated in July, when I wrote to the Justice Committee, that I hoped to publish a draft later this year. Following discussions with Ministers, there is Government support for a Cabinet Manual. It is, however, important that careful thought is given to how best to reflect the experiences of government formation in 2010 and the impact that the Government programme of constitutional reforms will have on existing conventions, for example, the Fixed-term Parliaments Bill, which is currently being considered by Parliament. In particular, should the Bill proceed to Royal Assent, the draft chapter on elections and government formation will need to be revisited to ensure that it reflects the new arrangements. Whilst I think it important that the draft Manual is published as soon as possible, we should take the time to get this right.

For the purposes of your inquiry and in advance of publishing a revised draft of the Manual, I have set out initial views on the conclusions and recommendations of the Justice Committee in their report on constitutional processes following a general election, which made a number of recommendations in relation to the draft chapter.

The Justice Committee felt that there should be more clarity on a number of points:

- using the term “caretaker” instead of “purdah” in formal guidance;
- defining the principles that apply during the “caretaker period”, including the types of decisions that would need to be avoided and where there should be consultation with the opposition;
- announcing the commencement and conclusion of any “caretaker” period; and
- a procedure for mediating, and if necessary, making public differences of opinion between Ministers and the civil service on the application of principles that apply.

The Committee was also of the view that in circumstances where there was no overall majority, it was for the politicians to clarify who was most likely to command the confidence of the House. They argued that the Sovereign should not be expected to take a role in that process and that arrangements for civil service support should be set out in the Manual.

After reviewing the chapter, whilst the principles in the February version were right and hold true for any revised versions of the Manual, there are a number of areas where I agree the chapter could be developed. There should be greater clarity on the restrictions on government activity, although the Manual will need to make clear that there are three distinctive periods in which those restrictions would apply: before a general election; where there is no overall majority following a general election; and, following a vote of no confidence.

A revised draft of the chapter would need to acknowledge that slightly different restrictions apply in different circumstances, for example, following an election where there was no overall majority and for so long as there is significant doubt over the government's ability to command the confidence of the House of Commons, restrictions on agreeing to long-term commitments should still apply. However, the Government should be able to announce its policy intentions, including those that it might wish to include in a Queen's speech, since restrictions on announcements that would be appropriate during an election campaign would not apply.

The chapter must still set out the principle that the Government retains the responsibility to govern, that Ministers are in charge of their departments and that the essential business of government must be carried on. My current view is that the term "caretaker" may not adequately reflect those principles, although I recognise that the term is adopted in other jurisdictions. Also, I do agree that "purdah" may no longer be suitable for the Manual. Essentially though, the question of whether to adopt "caretaker" or retain "purdah" is a matter of terminology and is therefore a secondary issue.

I have also given thought to the Justice Committee's recommendations that there should be a process in place where there was a disagreement between Ministers and Civil Servants on the application of the restrictions. It is my view that this can be addressed through the existing rules which apply to accounting officers, which will continue to apply during the three periods outlined above. Any restrictions on government activity in place during those periods will be relevant to the application of a Ministerial direction to accounting officers, as any commitments of public resources for political purposes must be avoided.

I agree with the Committee that there is benefit in ensuring such directions are made public immediately, although issues of commercial or other sensitivities would need to be taken into account. In normal circumstances the direction would be sent to the Comptroller and Auditor General, who would then forward it to the Committee of Public Accounts. However, if there is a period when restrictions on government activity are in place and Parliament is not sitting, then the direction together with the reasoning provided by the accounting officer could be made public by the department immediately and laid before both Houses at the first opportunity after Parliament meets. The direction should also be sent to the Comptroller and copied to the Treasury Office of Accounts at the time of publication.

In relation to negotiations where there is no overall majority, I absolutely agree that this is a matter for the political parties and the Sovereign should not be involved in that process, although the Sovereign's representatives may be kept informed of progress.

On civil service support for government formation, I have published a summary note on the support provided in 2010 which can be found at: <http://www.cabinetoffice.gov.uk/media/421449/coalition-negotiations.pdf>. It is my intention to expand the text of the draft chapter on elections and government formation to include more on the nature of the support that can be provided by civil servants in these circumstances, as suggested by the Justice Committee.

A copy of this letter has been sent to Sir Alan Beith, Chair of the Justice Select Committee.

3 November 2010

Further written evidence submitted by the Cabinet Secretary

I appreciated the chance to speak to the Political and Constitutional Reform Committee on 4 November on the 2010 government formation. It was very useful to hear the views of the Committee, and I await the outcome of your inquiry with interest.

Thank you also for your letter of 8 November 2010, asking about the relationship between the Cabinet Manual and a written constitution. As I said last week, when I appeared before the Committee, the Cabinet Manual brings together existing laws and conventions that govern the operation of Government. It is not a written constitution, which would be a fundamentally different document with a completely different status, and broader in scope and application.

As you point out in your letter, it is of course the case that the then Prime Minister's announcement in February was made in a speech to IPPR, and not to Parliament, and I apologise for the mistake. As set out in Annex B, the group announced by the then Prime Minister, Gordon Brown (to consider the aspects of law and the relationships between each part of the state and between the state and the citizen that should be deemed "constitutional"), was never convened due to the General Election, and so did not publish any reports or other documents.

I also promised to follow-up on three points during my evidence last week, and I include information on those issues in this letter:

First, on the work done by the civil service under the last Government on investigating a written constitution, I attach a note (see Annex A) which sets out the publications and initiatives in which a written constitution was discussed.

Second, I said I would write about the status of MPs between a general election and when a member takes the oath or affirms. A person becomes a Member of the House of Commons on the day on which the writ for his election to the House is returned (usually the day after the election).

The law prohibits Members who have not taken the oath or affirmed from voting in the House or sitting during any debate at any time after the Speaker is chosen by the House. Members who decline to take their seats do not receive a salary but they are entitled to claim expenses and to use the facilities of the House provided for Members.

The entitlement to expenses and the use of facilities originates in resolutions of the House in 2001. IPSA's MPs' allowances scheme operates in that context. In future, the time from which Members' salaries are payable will be fixed by section 4 of the Parliamentary Standards Act 2009 (as substituted by section 29 of the Constitutional Reform and Governance Act 2010), when it comes into force. Government departments treat correspondence from Members who have not taken the oath or affirmed in the same manner to letters from Members who have. Members who have not taken the oath are also disregarded for the purposes of some references to MPs in Part 1 of the Political Parties, Elections and Referendums Act 2000. More information about the law and practice relating to the oath can be found in House of Commons Library Research paper 01/116. The issue of how to involve MPs in post-election negotiations is a matter for the party leaders.

Lastly, I also enclose a summary (see Annex B) detailing whether other countries (in the EU or the Commonwealth) have a set period between a general election and the formation of a government.

I hope this is helpful, and I will be in touch in due course to discuss the Cabinet Manual further.

12 November 2010

Annex A

A WRITTEN CONSTITUTION—PUBLICATIONS AND INITIATIVES

This note summarises work undertaken by the previous government between 2007 and 2010 on:

1. The Governance of Britain” Green Paper
2. “Rights and Responsibilities: developing our constitutional Framework”: Green paper
3. Deliberative events—“People and Power: shaping democracy, Rights and responsibilities
4. A Written Constitution Group

1. THE GOVERNANCE OF BRITAIN GREEN PAPER²⁷ 3 JULY 2007

The Ministry of Justice published the Governance of Britain Green Paper. The proposals in the green paper sought to address two fundamental questions: how should we hold power accountable, and how should we uphold and enhance the rights and responsibilities of the citizen?

Part 4, “*Britain’s future—the citizen and the state*”, set out a case for a written constitution and these sections are reproduced below:

Constitution

- 211. In parallel to consideration of the articulation of the rights of each citizen is the articulation of our constitution. Constitutions should allow the citizen to understand and fully engage with the state and state institutions. The vast majority of countries have codified, written and embedded constitutions. The UK has not. Instead, the British constitution has four principal sources—statute law, common law, conventions and works of authority, such as those of Walter Bagehot and A.V. Dicey—among which, under the doctrine of parliamentary sovereignty, statute law is preminent. Partly by virtue of the political stability since the end of the 17th century, there has been no key event that has led to the need for one document setting out the rules on issues such as the length of parliamentary terms, the method of election to the House of Commons and appointment to the House of Lords, the powers of the judiciary, the powers of the devolved authorities, and the method whereby bills become law.
- 212. Today, we have to ensure that our country remains a cohesive, confident society in dealing with the challenges of the 21st century. Previous sections of this document have discussed the need to provide a clearer articulation of British values, and greater clarity about the nature of British citizenship. But there is now a growing recognition of the need to clarify not just what it means to be British, but what it means to be the United Kingdom. This might in time lead to a concordat between the executive and Parliament or a written constitution.
- 213. It is clear that neither a Bill of Rights and Duties nor a written constitution could come into being except over an extended period of time, through extensive and wide consultation, and not without broad consensus upon the values upon which they were based and the rights and

²⁷ <http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/publications/governanceofbritain.htm>

responsibilities which derived from them. The process of national debate through which the Government proposes to develop a British statement of values provides an opportunity to begin exploring the issues that would need to be considered. But this can only be considered as the start of a much longer process. The fundamental and constitutional nature of the guarantees provided in such instruments—as fifty years’ experience of the European Convention on Human Rights has demonstrated—require both government and Parliament to proceed with caution.

- 214. Our national identity is founded in the values we hold in common, manifest through our history and our institutions. If we are to forge the shared sense of national purpose we need to meet the economic and social challenges ahead, our institutions must reflect those values.
- 215. The programme of constitutional reform set out in this document seeks to meet that objective by renewing our democracy. This task does not fall to government alone, but to all the people of these islands—and the discussion now begins.

2. RIGHTS AND RESPONSIBILITIES: DEVELOPING OUR CONSTITUTIONAL FRAMEWORK (GREEN PAPER)²⁸ MARCH 2009

The Ministry of Justice published a Green Paper exploring whether our rights and responsibilities should be drawn together in one place, perhaps in a Bill of Rights and Responsibilities, where they might be easily accessible and understood.

There is one specific reference in this Green Paper to a written constitution (on page 22):

While it would not be appropriate in the UK context for a Bill of Rights and Responsibilities to impose a series of new legally enforceable duties upon individuals, it is nonetheless instructive to see how other countries have chosen to give constitutional expression to such duties. Of course, what works in another country, which may have a codified system of law, a written constitution or a different social and political context, will not necessarily translate into our system.

The Green Paper also includes various references to a constitutional instrument/document:

- Page 8—*A new constitutional instrument, reflecting the values that give rise to these rights and responsibilities, could act as an anchor for people in the UK.*
- Page 9—*Although not necessarily suitable for expression as a series of new legally enforceable duties, it may be desirable to express succinctly, in one place, the key responsibilities we all owe as members of UK society, ensuring a clearer understanding of them in a new, accessible constitutional document and reinforcing the imperative to observe them.*
- Page 10—*The time is right to discuss whether our existing framework is sufficient or whether we need a new constitutional expression of our freedoms and responsibilities and the values which underpin them.*
- Page 14—*The Government believes that any new constitutional instrument should encapsulate the responsibilities we owe towards one another.*
- Page 31—*The Government believes the time is right to explore the case for drawing together and codifying such rights in a new constitutional instrument.*

The written constitutions of other countries were mentioned ranging from the US to South Africa.

3. DELIBERATIVE EVENTS AND REPORT—“PEOPLE AND POWER: SHAPING DEMOCRACY, RIGHTS AND RESPONSIBILITIES”²⁹ OCTOBER 2009—MARCH 2010

As part of the consultation on rights and responsibilities, the Ministry of Justice ran a series of deliberative events around the UK with members of the public to discuss constitutional reform. A broadly representative sample of 457 people was independently recruited to participate in these events.

A report on the deliberative events was produced and published on the Ministry of Justice website,³⁰ which included several passages about a written constitution:

Executive Summary / Conclusions (pages 5 and 6)

- Participants valued the principle of providing greater clarity about constitutional arrangements. However, debates around the benefits and limitations of introducing a written constitution to this end revealed a more mixed response: specifically that a written constitutional should explore the potential for reform rather than merely codify existing rights.
- People were undecided on the need for a written constitution.

²⁸ <http://www.justice.gov.uk/publications/rights-responsibilities.htm>

²⁹ <http://www.justice.gov.uk/publications/rights-responsibilities.htm>

³⁰ <http://www.justice.gov.uk/publications/rights-responsibilities.htm>

Section 5—Key findings—Written Constitution (pages 52-54)

- Participants were given a very high level introduction to the possibility of introducing a written constitution. While participants valued the principle of providing greater clarity about constitutional arrangements in the United Kingdom; debate highlighted the complexities involved in drafting a constitution in practice. Participants also struggled to make the connection between a written constitution and improving levels of trust between the public and the government, MPs and courts.
- Potential benefits highlighted by participants included providing clarity and certainty to individuals about how constitutional arrangements worked. A further benefit could be that the process of introducing a written constitution has the potential to invigorate democracy in the United Kingdom. In addition, participants felt that this could instil a sense of pride in Britain's democracy thereby building national identity. It could also provide an insight for migrants into how the British system of government is organised and what key principles are upheld. Finally, participants felt that a written constitution could provide a transparent, secure framework which would constrain future governments from making substantial changes to existing rights and responsibilities.
- Participants also identified a number of potential limitations of introducing a written constitution. A key theme centred on concerns about the possible unnecessary replication of existing legislation which would waste time and financial resources. Participants also raised concerns about the perceived inflexibility of a written constitution which would mean that once formalised, it could not be changed in light of social changes. This was most strongly stated in light of international examples, such as negative perceptions of the entrenched right to bear arms in the US, which was an argument cited against a written constitution by one of the “talking heads” as part of the balanced stimulus material presented to participants. A further issue highlighted by participants was the possibility of negative financial impacts, both in relation to the cost associated with producing the document and from potential increases in litigation resulting from it.
- In particular, the polling results revealed an overall mixed response to introducing a written constitution, with just over 4 in 10 ten participants supporting the introduction of a written constitution, compared to just under 4 in 10 who did not support.
- Participants struggled to make the connection between a written constitution and improving levels of trust between the public and the government, MPs and courts.

Section 6—Conclusions—Written constitution (page 58)

- There was only limited discussion on a written constitution and it was the only substantive issue explored by participants where there was no clear preference on an option to move forwards.
- Nonetheless, three key issues emerged that will be instructive in taking forward debate in this area.
 - First, while participants valued the principle of providing greater clarity about constitutional arrangements in the United Kingdom, debate highlighted the complexities involved in drafting a constitution in practice. One of the key benefits was that it would provide a transparent framework for how power worked in the UK and circumscribe the ability of future governments from eroding rights and liberties. However, this strength was also one of its flaws—with the inflexibility of a written constitution meaning that once formalised, it could not be easily changed in light of changing social circumstances.
 - Second, a written constitution was not seen as the most pressing issue for parliament to wrestle with, given other social and economic priorities. Participants struggled to make the connection between a written constitution and improving levels of trust between the public and Parliament—though this may well have been because there was insufficient time to discuss constitutional reform options. Trust in government was seen as very important, and there is certainly potential to use reform as a means to reinvigorate the relationship between citizen and state. If the written constitution merely aimed to codify existing rights, there were substantial concerns about the potentially unnecessary replication of existing legislation which would waste time and financial resources.
 - Finally, while the courts were the most trusted institution to protect people's rights, they were generally seen as the least bad option. While not subject to political pressures and restricted through law as to what action they could take—ultimately it was recognised that judges were not accountable to the electorate and there were difficulties in them shaping public spending priorities. Much of the kick back against Parliament related to the expenses scandal and a perception that MPs are motivated more by personal interests than the common good. When this controversy dies down, there is scope for exploring reform options in more depth.

4. A WRITTEN CONSTITUTION GROUP MARCH 2010

The Ministry of Justice published a summary of responses to the Rights and Responsibilities Green Paper, which contained a reference to a speech by the then Prime Minister, Gordon Brown, on the 2 February 2010 in which he outlined how work on a written constitution would be taken forward:

- 53. It is worth recording also that the Green Paper consultation and complementary programme of deliberative research has contributed to the Government’s decisions to take forward other important constitutional changes. In a speech on transforming politics on 2 February 2010 the Prime Minister announced that the Cabinet Secretary would “lead work to consolidate the existing unwritten, piecemeal conventions that govern much of the way central government operates under our existing constitution into a written document”; and second, that “a group will be set up to identify ... what aspects of law and relationships between each part of the state and between the state and the citizen should be deemed “constitutional””.
- 54. This work is progressing. The Cabinet Office is leading work on consolidating existing conventions about the way central government operates. This material will follow the pattern set out in the New Zealand Cabinet Manual, although its contents will of course reflect UK practice. A draft of the chapter on elections and government formation was presented to the House of Commons Justice Select Committee on 24 February. The final document should be ready for an incoming government to consider after the general election.
- 55. The Government is also working on setting up the group to look at the aspects of law and relationships between each part of the state and between the state and the citizen that should be deemed ‘constitutional’. The Government envisages that after the group looking at principles has reported, there will then be detailed consideration of how our existing laws and conventions fit in with those principles and which should be given the status of constitutional. The Government believes we have reached a cross-road on our constitutional journey. Now is the time to create a new constitutional settlement that meets the aspirations of the UK public with a more equitable distribution of power that places Parliament and the people at its heart.

The group mentioned by the Prime Minister was never convened due to the General Election, and so did not publish any reports or other documents.

Annex B

A REPRESENTATIVE SAMPLE OF EU AND COMMONWEALTH COUNTRIES: PERIOD BETWEEN GENERAL ELECTION AND FORMATION OF GOVERNMENT

<i>Country</i>	<i>Is there a fixed period of Government formation after an election?</i>
Austria	No
Belgium	No
Denmark	No
Finland	No
France	No
Germany	Yes

Basic Law for the Federal Republic of Germany

Article 63

[Election of the Federal Chancellor]

(1) The Federal Chancellor shall be elected by the Bundestag without debate on the proposal of the Federal President.

(2) The person who receives the votes of a majority of the Members of the Bundestag shall be elected. The person elected shall be appointed by the Federal President.

(3) If the person proposed by the Federal President is not elected, the Bundestag may elect a Federal Chancellor within fourteen days after the ballot by the votes of more than one half of its Members.

(4) If no Federal Chancellor is elected within this period, a new election shall take place without delay, in which the person who receives the largest number of votes shall be elected. If the person elected receives the votes of a majority of the Members of the Bundestag, the Federal President must appoint him within seven days

Country	<i>Is there a fixed period of Government formation after an election?</i>
Greece	<p>Yes</p> <p>after the election. If the person elected does not receive such a majority, then within seven days the Federal President shall either appoint him or dissolve the Bundestag.</p> <p>Constitution, Article 84: “1. The Government must enjoy the confidence of Parliament. The Government shall be obliged to request a vote of confidence by Parliament within fifteen days of the date the Prime Minister shall have been sworn in, and may also do so at any other time. If at the time the Government is formed, Parliament has suspended its works, it shall be convoked within fifteen days to resolve on the motion of confidence. . . “4. The debate on a motion of confidence or censure shall commence two days after the motion is submitted, unless, in the case of a motion of censure, the Government requests its immediate commencement; in all cases the debate may not be prolonged for more than three days from its commencement. “5. The vote on a motion of confidence or censure is held immediately after the termination of the debate; it may, however, be postponed for forty-eight hours if the Government so requests.”</p>
Iceland	No
Italy	<p>Yes</p> <p>Constitution, Art.94: “The Government must receive the confidence of both Houses of Parliament. “Each House grants or withdraws its confidence through a reasoned motion voted on by roll-call. “Within ten days of its formation the Government shall come before Parliament to obtain confidence. “An opposing vote by one or both the Houses against a Government proposal does not entail the obligation to resign. “A motion of no-confidence must be signed by at least one-tenth of the members of the House and cannot be debated earlier than three days from its presentation.”</p>
Luxembourg	No
Netherlands	No
Norway	No
Portugal	<p>Yes, in practice</p> <p>Constitution, Art.125: “(1) The President of the Republic shall be elected during the sixty days prior to the end of his predecessor’s term of office, or during the sixty days after that office becomes vacant. “(2) Elections shall not take place during the ninety days prior to or following the date of elections to the Assembly of the Republic. “(3) In the case provided for in the previous paragraph, the election shall take place during the ten days following the end of the period set out therein, and the term of office of the outgoing President shall automatically be extended for the necessary period of time.”</p> <p>Art.187: “(1) The President of the Republic shall appoint the Prime Minister after consulting the parties with seats in Assembly of the Republic and in light of the electoral results. “(2) The President of the Republic shall appoint the remaining members of the Government upon a proposal from the Prime Minister.”</p>

Country	<i>Is there a fixed period of Government formation after an election?</i>
Spain	<p>Art.192: “(1) Within at most ten days of its appointment, the Government shall submit its Programme to the Assembly of the Republic for consideration, by means of a Prime Ministerial statement. “(2) In the event that the Assembly of the Republic is not in full session, its President shall obligatorily call it for this purpose. “(3) The debate shall not last for more than three days, and until it is closed, any parliamentary group may make a motion rejecting the Programme, and the Government may request the passage of a confidence motion.”</p> <p>Art.194(2): “No confidence motions shall only be considered forty-eight hours after they are made, and the debate thereon shall last for no more than three days.”</p> <p>The Government shall resign following the rejection of the Government’s Programme, the failure of a confidence motion, or the passage of a no confidence motion.</p>
Sweden	<p>Yes</p> <p>Constitution, Section 99</p> <p>(1) After each renewal of the Congress and in the other cases provided for under the Constitution, the King shall, after consultation with the representatives appointed by the political groups with parliamentary representation, and through the Speaker of the Congress, nominate a candidate for the Presidency of the Government.</p> <p>(2) The candidate nominated in accordance with the provisions of the foregoing subsection shall submit to the Congress the political programme of the Government he or she intends to form and shall seek the confidence of the House.</p> <p>(3) If the Congress, by vote of the overall majority of its members, grants to said candidate its confidence, the King shall appoint him or her President. If overall majority is not obtained, the same proposal shall be submitted for a fresh vote forty-eight hours after the previous vote, and confidence shall be deemed to have been secured if granted by single majority.</p> <p>(4) If, after this vote, confidence for the investiture has not been obtained, successive proposals shall be voted upon in the manner provided for in the foregoing paragraphs.</p> <p>(5) If within two months of the first vote for investiture no candidate has obtained the confidence of the Congress, the King shall dissolve both Houses and call for new elections, with the countersignature of the Speaker of the Congress.</p> <p>Yes</p> <p><i>The Instrument of Government:</i> Chapter 6. The Government Art. 1. The Government consists of the Prime Minister and other ministers.</p> <p>The Prime Minister is appointed in accordance with the procedure laid down in Articles 2 to 4. The Prime Minister appoints the other ministers.</p> <p>Art. 2. When a Prime Minister is to be appointed, the Speaker summons for consultation representatives from each party group in the Riksdag. The Speaker confers with the Deputy Speakers before placing a proposal before the Riksdag.</p>

<i>Country</i>	<i>Is there a fixed period of Government formation after an election?</i>
	<p>The Riksdag shall proceed to vote on the proposal no later than the fourth day following, without prior preparation in committee. If more than half the members of the Riksdag vote against the proposal, it is rejected. In any other case, it is adopted.</p> <p>Art. 3. If the Riksdag rejects the Speaker's proposal, the procedure laid down in Article 2 is repeated. If the Riksdag rejects the Speaker's proposal four times, the procedure for appointing a Prime Minister is abandoned and resumed only after an election for the Riksdag has been held. If no ordinary election is due in any case to be held within three months, an extraordinary election shall be held within the same space of time.</p>
Switzerland	No
Australia	No
Canada	No
India	No
Ireland	<p>Yes in practice.</p> <p>Art.12(7):</p> <p>“. . . every subsequent President shall enter upon his office on the day following the expiration of the term of office of his predecessor or as soon as may be thereafter. . .”</p> <p>Art.13(1)-(2)</p> <p>“The President shall, on the nomination of Dail Eireann, appoint the Taoiseach, that is, the head of the Government or Prime Minister.</p> <p>“The President shall, on the nomination of the Taoiseach with the previous approval of Dail Eireann, appoint the other members of the Government.”</p>
New Zealand	<p>Art.16(4)(2):</p> <p>“Dail Eireann shall meet within thirty days from that polling day [viz. the general election].”</p> <p>No</p>
South Africa	<p>Yes in practice.</p> <p>Art. 51(1):</p> <p>“After an election, the first sitting of the National Assembly must take place at a time and on a date determined by the Chief Justice, but not more than 14 days after the election result has been declared.”</p> <p>Art. 83:</p> <p>“The President-</p> <p>“(a) is the Head of State and head of the national executive.”</p> <p>Art. 86(1) of the Constitution:</p> <p>“At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be the President.”</p> <p>Art. 91(2):</p> <p>“The President appoints the Deputy President and Ministers, assigns their powers and functions, and may dismiss them.”</p>
Northern Ireland	<p>Yes</p> <p>Within a period of seven days beginning with the first meeting of the Assembly after an election, the offices of First Minister and deputy First Minister shall be filled.</p>

<i>Country</i>	<i>Is there a fixed period of Government formation after an election?</i>
Scotland	Yes Following a general election, the Parliament shall within 28 days nominate one of its members for appointment as First Minister. (This is subject to extension in set circumstances.)
Wales	Yes Following a general election, the Assembly must, within 28 days, nominate an Assembly member for appointment as First Minister. (This is subject to extension in set circumstances.)

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