

Submission to the Political and Constitutional Reform Committee
Lessons from the process of government formation after the 2010 election

Professor Robert Hazell and Dr Ben Yong, Constitution Unit, UCL

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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.¹
- 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.²

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.
- 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.

¹ 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%2009.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.

² "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>

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.³ 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.⁴ 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

³ “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-cameron-nick-clegg>

⁴ “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>

- 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

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 2010.⁵ 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*.⁶ 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:

⁵ The draft election chapter can be found here:

<http://www.cabinetoffice.gov.uk/media/343763/election-rules-chapter6-draft.pdf>.

⁶ 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 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.

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 10,⁷ 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.⁸

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.⁹

⁷ “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 No10’, 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>.

⁸ “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](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).

⁹ “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. [...]

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.¹⁰

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'.

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.¹¹ 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.¹²

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:

¹⁰ Para 16.

¹¹ "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>

¹² "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>.

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.¹³ 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.¹⁴

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

¹³ "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>

"Horse-trading begins as Australia votes for a hung parliament" *The Guardian* (22 August 2010) at:

<http://www.guardian.co.uk/world/2010/aug/22/australia-election-horse-trading>

"\$10bn for regions a fair share: Gillard" *The Australian* (September 7 2010) at:

<http://www.theaustralian.com.au/national-affairs/bn-for-regions-a-fair-share-gillard/story-fn59niix-1225915461509>

¹⁴ "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>

formation.¹⁵ 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’.

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".¹⁶

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

¹⁵ P Riddell and C Haddon *Transitions: Preparing for Changes of Government*. Institute for Government, 2009.

¹⁶ <http://www.telegraph.co.uk/finance/financetopics/financialcrisis/7697471/Alistair-Darling-trapped-in-euro-deal.html>

- 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....¹⁷

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.¹⁸ 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

¹⁷ Robert Hazell *Fixed-Term Parliaments* (Constitution Unit, London, 2010), pp28-29. 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>.

¹⁸ *NZ Cabinet Manual*, 6.20 and 6.58, at: <http://cabinetmanual.cabinetoffice.govt.nz/6.16> and <http://cabinetmanual.cabinetoffice.govt.nz/6.56>.

direct way of demonstrating who commands confidence in the new Parliament.¹⁹ 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.

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.²⁰

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.²¹ In the 2010 election, Number 10 indicated that Parliament would first meet on 18 May, 12 days after the election.²² 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.²³ But Gordon Brown was criticised because

¹⁹ 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.

²⁰ Peter Riddell and Catherine Haddon, *Transitions: Preparing for Changes of Government*. Institute for Government, 2009; p 32.

²¹ "Election timetables" *House of Commons Library* at:

<http://www.parliament.uk/documents/commons/lib/research/rp2009/rp09-044.pdf>

²² "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-notices/2010/04/general-election-to-take-place-on-6-may-2-23093>

²³ Draft elections chapter, para 9, fn1.

he was seen by some Conservatives as allowing himself more time in which to negotiate to continue in government.²⁴

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.²⁵

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.

²⁴ "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>

²⁵ <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmmodern/337/337.pdf>, paras 37-39.

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 subtelties 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

| Proximity to polling day | Date | Constitutional Event |
|--------------------------|--------------|--|
| -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 <i>Constitutional Processes following a General Election</i> . ^{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} |
| 19 | Tue 25 May | The State Opening of Parliament and the Queen's speech. ^{xxiii} |

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