

Committee(s):	Date(s):
Public Relations and Economic Development Sub-Committee	19 February 2015
Subject: The General Election 2015 and the Constitution	Public
Report of: City Remembrancer	For Information
<u>Summary</u>	
<p>This report provides an overview of the constitutional issues that may fall for consideration in the event of a hung Parliament after the 2015 General Election. These include the principles of government formation, transitional arrangements, and the types of government that may be formed. It also outlines the procedural considerations in the event of a ‘snap’ second election in light of the Fixed-term Parliaments Act.</p>	
Recommendation	
<ul style="list-style-type: none"> • Members are invited to note the contents of this report. 	

Main Report

1. At the 2015 General Election, the electoral mathematics indicate that both the main parties may face significant obstacles to winning an outright Parliamentary majority. At the time of writing, most opinion polls suggest a hung Parliament.

Government Formation and Transitional Arrangements

2. If the General Election does not yield a decisive result, the political parties will doubtless enter into discussions to determine which party (or parties) is (or are) best placed to form a government. During this time, the convention is that the incumbent Prime Minister and Ministers remain in office until the Prime Minister chooses to resign, or until the Government is defeated on a motion of no confidence in the House of Commons. For example, following the February 1974 election, Ted Heath remained in office for four days while he unsuccessfully attempted to make a deal, first with the Liberal Party, and then with the Ulster Unionist Party. Less swiftly, after the Conservatives lost their Parliamentary majority in

December 1923, Stanley Baldwin remained in office for six weeks until his government was defeated on a no confidence vote in its first confrontation with the newly elected House of Commons following the King's Speech.

3. The convention that the incumbent remains in office until he resigns or is defeated on a motion of no confidence in the House of Commons appeared to be little understood following the 2010 General Election. In the five days it took the Liberal Democrats and the Conservatives to agree a coalition, Gordon Brown was referred to as a “squatter” in Downing Street by some sections of the press. But to quote the Cabinet Manual, which outlines the principles of government formation following an inconclusive election—“An incumbent government is entitled to wait until the new Parliament has met to see if it can command the confidence of the House of Commons, but is expected to resign if it becomes clear that it is unlikely to be able to command that confidence and there is a clear alternative.”
4. The Sovereign appoints a new Prime Minister on the basis of who is best placed to command the confidence of the House of Commons. As the Cabinet Manual notes, the convention is for the Sovereign to remain impartial in this process. If there is any uncertainty or doubt as to who should form a new government, “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 to the Sovereign who is best placed to be able to command the confidence of the House of Commons.” This duty will typically fall to the incumbent Prime Minister.
5. During the transitional phase, incumbents are expected by convention to continue to observe *purdah* restrictions. The Cabinet Manual recommends a caretaker government refrains from initiating any new action of a continuing or long-term character, such as entering into large or contentious procurement contracts or making senior public appointments, unless delay would compromise the national interest or waste public money. If decisions cannot wait, the recommended procedure is for temporary arrangements to be put in place, or for decisions to be made in consultation with the Opposition. An example of such consultation occurred days after the 2010 General Election when Alastair Darling attended a meeting of European finance ministers to agree a €500bn scheme to alleviate the Euro crisis.

6. It is less clear when these transitional arrangements come to an end. According to the Cabinet Manual, it “depends on circumstances”, and may be, for example, when a new Prime Minister is appointed or when a government’s ability to command the confidence of the Commons has been tested. At the very least, they will remain in place for as long as it remains unclear which party or parties can command the confidence of the House of Commons. There is no constitutional time limit on how long the negotiations may take, and thus the transitional arrangements may remain in place for a significant period of time.
7. The constitutional position is also unclear on the question of whether or not a caretaker government must remain in place until there is clearly a government in waiting. When the House of Lords Constitution Committee examined the Cabinet Manual, it concluded that no such duty existed. The Cabinet Manual has this to say:

“Recent examples suggest that previous Prime Ministers have not offered their resignations until there was a situation in which clear advice could be given to the Sovereign on who should be asked to form a government. It remains to be seen whether or not these examples will be regarded in future as having established a constitutional convention.”

Presumably, were the Prime Minister to resign before an heir-apparent emerged, the leader of the largest party or a mutually agreeable temporary candidate would be invited to continue to uphold the transitional arrangements.

Governing Without a Majority

8. Four types of government could arise from inter-party discussions following a hung Parliament. First, a single-party minority government in which the governing party struck deals on an *ad hoc* basis with other parties to get a legislative programme through the Commons. The second option is a formal confidence and supply agreement, whereby a single party would govern as a minority, but with a formal agreement with one or more parties to back the government on motions of confidence and supply (motions proving funding for its policies). Such an arrangement existed between the Liberals and Labour from 1977 to 1978—when the Callaghan Government lost its majority as a result of several by-election defeats, the Liberals agreed to ensure it was not defeated on a confidence motion in exchange for being consulted on policy. The third option is coalition government, which (as with the current administration) consists

of Ministers from more than one party implementing an agreed programme of government.

9. A further, though unlikely, possibility is that of a coalition government, with ministers from more than one party, governing without a Commons' majority. Such a government could strike deals with other parties on an *ad hoc* basis. Alternatively, it could agree a confidence and supply agreement with an additional party, which would support the coalition government on votes of confidence, but would not occupy any Ministerial positions.
10. Minority government after an indecisive election is the historical norm. On five of the six occasions since 1900 when a general election has failed to produce a decisive single-party victory, minority government has followed. Prior to the 2010 General Election, coalitions had only emerged from war and the perceived need for national unity, or in the case of the National Governments of the 1930s, from the idea that a financial crisis demanded collective action. As in the 1930s, financial crisis appears to have been a relevant factor in the formation of the Cameron-Clegg Coalition. In less troubled times, Disraeli's maxim that "England does not love coalitions" may hold true.
11. On the other hand, it could be argued that the pre-2010 precedents date back too far to be of any relevance to modern political culture. Only two elections have produced a hung parliament since 1945, one of which resulted in a minority government and the other a coalition. Moreover, minority governments have not proved terribly successful in Britain. The Liberal minority government of 1910-15 was incapable of addressing industrial unrest, women's suffrage, 'Home Rule' and ultimately of responding to the demands of the First World War. The Labour minority government of 1924 survived for only nine months with little to show for it, while the Party's 1929-31 minority government lasted longer, but proved incapable in the face of economic crisis. In the 1970s, the Callaghan minority government presided over the 'winter of discontent'.

Beyond May 2015 – Dissolution and the Fixed-Term Parliaments Act

12. Traditionally, minority governments have not survived for the full term of a Parliament, either because they have lost the confidence of the House of Commons, or because the incumbent Prime Minister has used prerogative powers to call an election at a propitious moment in the hope of securing a majority.

13. The Fixed-Term Parliaments Act 2011 abolishes the prerogative power to dissolve Parliament and call a general election. Instead, the dates of polling and dissolution are fixed by a rule in the Act. There are two scenarios under which an early election may be called. First, if two-thirds of the Members of the House of Commons vote for a motion “that there shall be an early parliamentary general election.” Second, if a government is defeated on a motion “that this House has no confidence in Her Majesty’s Government”, a 14-day period ensues during which a new government may be formed from the House of Commons as presently constituted, or the incumbent government may attempt to regain the confidence of the House. If no government can secure the confidence of the House within 14 days through the approval of a motion “that this House has confidence in Her Majesty’s Government”, a general election will take place, with the polling day appointed by the Sovereign on the recommendation of the Prime Minister.
14. In other parliamentary jurisdictions with fixed-term parliaments, it has been possible for the head of government to engineer an early election by tabling a vote of no confidence in their own government. For example, the 2005 German Election was precipitated when the then Chancellor, Gerhard Schröder, engineered a vote of no confidence in his own government. There seems to be no obstacle to prevent British Prime Ministers doing the same, though it would seem to be very much of a last ditch option. If it were triggered, an election could still not be called until 14 days had elapsed during which no alternative government had been formed.
15. The foregoing considerations raise a final possibility not alluded to above—that no party, or combination of parties, is able to command the confidence of the House of Commons following an indecisive election. There is no automatic dissolution if inter-party negotiations are protracted or unsuccessful. Unless a motion “that this House has confidence in Her Majesty’s Government” were passed, it would seem that the caretaker arrangements outlined above would remain in place. Although the situation is unlikely, it implies the possibility of a protracted period of negotiation while the country would be presided over by a constitutionally hobbled government.

Conclusions

16. The ultimate outcome of the 2015 General Election promises to be the most uncertain in a generation. The current Government will, in accordance with the usual constitutional norms, remain in power until it

formally resigns from office. In the event of a hung Parliament, it could remain in office for a significant period of time while inter-party negotiations are ongoing. In these circumstances, the Government would be bound by convention to observe *purdah* restrictions on incurring any long-term commitments, or making contentious policy decisions. A snap second election after an indecisive result is not ruled out by the Fixed-Term Parliaments Act, but the circumstances in which that eventuality might arise have been circumscribed.

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