



## Hung parliaments

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A crucial aspect of the British system of government is that the government of the day must enjoy the confidence of the House of Commons. General elections are held to return MPs to the House of Commons. Most commonly, one party has a majority of seats, and this party forms a government. However, the May 2010 general election has produced a result in which no party had a majority of Members. This is known as a “hung Parliament”. Hung Parliament situations also occurred several times during the twentieth century.

Following negotiations between the political parties, the Conservative and Liberal Democrat parties formed a coalition government in May 2010. The UK had not been governed by a formal coalition in peacetime since the National Government of 1931-40. The Labour/Liberal pact of 1977-78 did not go further than support on key votes. There had been negotiations between Labour and the Liberal Democrats on political reform before the 1997 election. In the event no coalition was considered necessary although the then Liberal Democrat leader did temporarily sit on the Cabinet Committee concerned with constitutional reform. There have, however, been coalition governments in both Scotland and Wales since devolution.

In February 2010 the Cabinet Office issued a draft chapter of their forthcoming Cabinet Manual. The draft chapter set out procedures for government regarding general elections and government formation, including procedures that would take place in a hung Parliament situation. The Cabinet Secretary gave evidence to the Justice Select Committee on the matter, along with academic experts and former Cabinet Secretaries on 24 February 2010. The Justice Committee published a report before the May 2010 general election proposing some changes to the draft chapter, but a final version was not published before the election was called.

This note sets out situations where there has been no overall control in the House of Commons during the twentieth century. It considers precedents and conventions governing how the monarch might decide which party should form a government, and when a request for a dissolution might be granted. The note also considers how a minority government or coalition might affect the work of Parliament. It looks briefly at the formation of coalition governments in Scotland and Wales. Lastly, it lists some sources of further information on situations of no overall control.

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# 1 Introduction

A crucial aspect of the British system of government is that the government of the day must enjoy the confidence of the House of Commons. General elections are held to return MPs to the House of Commons. Most commonly, one party has a majority of seats, and this party forms a government.

However, on a number of occasions over the last century, a general election has produced a result in which no party has a majority of Members: a situation of no overall control. This is known as a “hung Parliament”. In such circumstances, there are four likely outcomes. These have been set out by Lord Norton of Louth as follows:

...(a) a minority government; (b) a coalition; (c) a failure to produce a government at all; or (d) two or more of these things during the lifetime of a parliament.<sup>1</sup>

Situations of no overall control can also result from parties losing seats over the course of a Parliament, through by-elections and defections.

When a general election is called, the government at the time remains in office over the general election period. If the governing party is returned, they stay in office. In general terms, if the incumbent government loses their majority they resign. The monarch would then ask the leader of the party which can command control of the House of Commons to form a government. However, if no party commands a majority, the previous government might remain in position and there might be a period of negotiation whilst they try to build a coalition, or else decide to try to govern with a minority of Members of Parliament.

The United Kingdom is quite unusual in modern democracies in having no written constitution, that is, no single document comprising the rules of constitutional practice. In the UK the fundamental rules of constitutional practice are enshrined in various acts of Parliament, in the common law, in judicial decisions, in parliamentary law and customs, and in constitutional conventions. As these change and develop in part in reaction to circumstances and events it could be said that the “unwritten” constitution is constantly evolving and adapting itself. It is these conventions and precedents which inform what happens when a situation of no overall control of Parliament develops. Other countries have statutory rules about the formation of the Government. For example, in Scotland, elections must be held for the position of First Minister within 28 days of the election.<sup>2</sup>

In February 2010 the Cabinet Office published in draft the chapter from its forthcoming Cabinet Manual on general elections and government formation.<sup>3</sup> The draft manual is loosely based on a similar document produced in New Zealand.<sup>4</sup> It sets out the conventions and procedures in operation in the UK and also includes new ideas, such as the continuation of the caretaker principle until a government is formed after a general election, and allows the Prime Minister to sanction the civil service to assist other parties in government formation negotiations. The Justice Select Committee published a report, *Constitutional Processes Following a General Election* which broadly welcomed the initiative but made some

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<sup>1</sup> Lord Norton ‘The perils of a hung parliament’ in Hansard Society, *No overall control? The impact of a ‘hung parliament’ on British politics*, 2008

<sup>2</sup> Details are set out in the House of Commons Library Standard Note SN/PC/4372, *The Scottish Parliamentary elections May 2007: The formation of the Scottish Executive and the election of a Presiding Officer*

<sup>3</sup> ‘Chapter 6: Elections and Government formation (DRAFT)’, Cabinet Office, *Cabinet Manual*, 24 February 2010

<sup>4</sup> *New Zealand Cabinet Manual*

suggestions for changes. A final version of the draft chapter was not published before the general election was called.

A broad view of minority governments over the twentieth century has been given in a recent Hansard Society publication by David Butler, Fellow of Nuffield College Oxford:

Minority governments have survived on different kinds of understanding. From 1910 to 1914 the issue of Home Rule made the 80 Irish Nationalists eager to keep the Liberals in office. In 1924 the Liberals thought it expedient to give the first Labour government a chance and they were dismayed when, after nine months, Ramsey Macdonald opted for a general election because the Liberals had voted against him over his refusal to hold an inquiry into the Campbell case. In 1929 they again gave Labour mistrustful support in return for a promise of electoral reform. In March 1974 Harold Wilson offered no understandings but gambled on winning an election if it were forced on him. After 1976 when Labour's new majority had evaporated, Jim Callaghan negotiated with the Liberals and in 1977-78 entered into the formal Lib-Lab pact. In February 1997 John Major found that by-elections and floor-crossings had whittled his majority of 20 down to minus one; however, a general election was imminent and the loss of his current majority was the least of his problems.<sup>5</sup>

On coalition governments, David Butler wrote:

Coalitions have suffered from the over-quoted remark of Disraeli: 'England does not love coalitions'. Since the 19<sup>th</sup> century they have never occurred in a premeditated fashion. Apart from the limited 'understandings', in 1929-31 and 1977-78, they have only emerged at short notice from the special circumstances of war or 1931. However, in the October 1974 election Edward Heath put forward the idea of a government of national unity and in 1997 Tony Blair, not foreseeing his landslide victory, certainly contemplated a coalition with the Liberal Democrats.<sup>6</sup>

## **2 'No overall control' in the Twentieth Century**

### **2.1 Twentieth Century Hung Parliaments**

This note draws on commentary given in a number of sources, particularly in David Butler's *Governing without a majority*.<sup>7</sup> The election results, other than those for the 2010 general election, are taken from Butler and Butler, *Twentieth Century British Political Facts, 1900-2000*.<sup>8</sup>

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<sup>5</sup> David Butler, 'Hung parliaments: context and background', in Hansard Society, *No overall control: The impact of a 'hung parliament' on British politics*, 2008, p11

The Campbell case referred to by David Butler was that of John Ross Campbell, who was editor of the Communist Workers Weekly when it published an article which was accused of being against Mutiny laws. Although the Attorney General advised prosecution, the Labour Government forced the charges to be withdrawn. The Liberals and the Conservatives then united against Labour, accusing the party of being under the control of radical left-wing groups.

<sup>6</sup> David Butler, 'Hung parliaments: context and background', in Hansard Society, *No overall control: The impact of a 'hung parliament' on British politics*, 2008, p11

<sup>7</sup> David Butler, *Governing without a majority*, 1986

<sup>8</sup> David Butler and Gareth Butler, *Twentieth Century British Political Facts 1900-2000*, 2000

## 2.2 Minority Governments

### **1910-1915 Minority Liberal Government**

From 1906 to 1910, the Liberals had governed with the support of the Irish nationalists and Labour Members even though it was not required. However, the General Election of December 1909 (returned the House of Commons in January 1910) which was called following the rejection of Lloyd George's 'People's Budget' by the House of Lords returned more Liberals than any other single party, but a minority of Members overall. A further election in December 1910 returned equal numbers of Conservatives and Liberals.

#### **General Election January 1910**

Conservative	273
Liberal	275
Labour	40
Irish Nationalist	82

#### **General Election December 1910**

Conservative	272
Liberal	272
Labour	42
Irish Nationalist	84

The Irish Nationalists continued to keep the Liberals in office, and after the passage of the *Parliament Act 1911* the Government gave priority in the next three sessions to getting the *Irish Home Rule Bill* through the House of Commons. The Liberals were also passing social welfare and trade union legislation at the time, which had the support of Labour. The Liberals also had an electoral pact with Labour. David Butler has noted that:

Throughout the period of co-operation between Liberal whips and those of Irish Nationalists and Labour went reasonably smoothly. The lesson of the Asquith administration is that minority government presents few problems when the minor parties have nowhere else to go and when the party in power is, in any case, minded to do what the minor parties want.<sup>9</sup>

### **1924 Minority Labour Government**

In December 1923, six months after becoming Prime Minister, Stanley Baldwin called an election on the issue of tariff reform. He lost his majority; the election produced no overall control of the House of Commons. Baldwin remained as Prime Minister, despite being 50 seats short of an overall majority. However, any attempts to form a coalition did not come to fruition. When Parliament assembled in 1924, a Labour amendment to the King's speech prepared by Baldwin's Conservative Government was carried by 328 votes to 256.<sup>10</sup> The motion asserted:

it is our duty respectfully to submit to your Majesty that Your Majesty's present advisers have not the confidence of this House:—" [Mr. Clynes.]<sup>11</sup>

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<sup>9</sup> David Butler, *Governing without a majority*, 1987, p40

<sup>10</sup> HC Deb 21 January 1924 vol 169 c679

<sup>11</sup> *Ibid*, c532

## General Election December 1923

Conservative	258
Labour	191
Liberal	159
Others	7

The Labour Party under Ramsey MacDonald then took office, and operated a minority government until October 1924 when they lost a confidence vote. The party used the opportunity to show that Labour was capable of being a party of government. Meanwhile, the Liberals were nervous of a general election, so prevented an early defeat for the new government.<sup>12</sup>

In 1924, the 'Campbell case' involving the decision not to prosecute the then editor of *Workers' Weekly* for sedition, resulted in a defeat for the Government, who had made it a confidence issue. The Conservatives had tabled a motion of censure, the Liberals proposed an amendment calling for a select committee of inquiry. The issue was made a matter of confidence, MacDonald told the House that "If this House passes either the resolution or the amendment now, we go. It is the end; it will be the end of ... a high adventure". Baldwin announced that the Conservatives would support the Liberal amendment, which was carried by 364 votes to 198.<sup>13</sup>

Butler has drawn the following conclusion from this period of history:

The main lesson of 1924 was surely that, even in circumstances far less favourable than those of 1910-14, minority government was still quite practicable. Another lesson was that a third party, with the power to bring a government down, is in an invidious position; certainly the 1924 election, which cut Labour from 191 seats to 142, hurt the Liberals even more, reducing them from 151 to a pitiful 40.<sup>14</sup>

## 1929 -1931 Minority Labour Government

In 1929, Labour again took office as a minority government again. Within a year, David Butler has explained:

...as the government hit a rough patch, informal consultations were opened and, to conciliate the Liberals, the Ullswater Committee was appointed to look into electoral reform. MacDonald also invited Baldwin and Lloyd George to confer about the growing economic crisis; Baldwin refused, but Lloyd George agreed. When these discussions on broad policy got nowhere, the government turned back to party tactics and by September 1930 offered to legislate for the Alternative Vote. Both sides denied that this was part of a pact but there had undoubtedly been high-level discussions.

## 1929 General Election

Conservative	260
Liberal	59
Labour	288
Others	8

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<sup>12</sup> David Marquand, '1924-1932' in Butler ed., *Coalitions in British Politics*, 1978, p52

<sup>13</sup> See Charles Loch Mowat, *Britain between the wars*, pp183-186

<sup>14</sup> Butler, *Governing without a majority*, 1987, p45

Butler comments that regular meetings took place during the 1930-31 Session of Parliament, with joint committees established to consider particular issues. He concludes that:

...the understanding of 1930-31... had its price. Sir John Simon and two other Liberals resigned the whip in June 1931 and others in the Liberal Party indicated their unhappiness. Closer collaboration between the Liberals and Labour would have led to further explosions. The lesson of 1929-31 may be that MacDonald should have made more of a comprehensive deal with Lloyd George earlier. But if such a deal had become public, the reactions in both parties might have been so vehement as to nullify the advantages to be gained from it.<sup>15</sup>

### **1974 Minority Labour Government, and the 1977 Lib Lab pact**

Between 1945 and 1974, the electorate returned majority governments. On a few occasions, these majorities were small, but in no instance was a coalition formed. In 1950-51 Labour governed with a majority of 5. In 1950, no attempt was made by the government to gain Liberal support during the 18 months of that administration. When the Conservatives won the election of 1951 with an overall majority of 17, Winston Churchill offered a Cabinet post to the leader of the Liberals (Clement Davies) who did not accept. In 1964-6 Labour held office with a majority of four and no positive approaches were made to the Liberals. Another general election was held after 18 months.

#### **February 1974 General Election**

Labour	301
Conservative	297
Liberal	14
Scottish National	7
Plaid Cymru	2
Northern Ireland	12
Others	2

#### **October 1974 General Election**

Labour	319
Conservative	277
Liberal	13
Scottish National	11
Plaid Cymru	3
Northern Ireland	12

In February 1974, the incumbent Conservative government lost its majority. Edward Heath remained as Prime Minister for a few days while he tried to form a coalition. The General Election was held on a Thursday, and it was not until Monday that Edward Heath resigned as Prime Minister. Vernon Bogdanor has written that:

In 1974, however, Edward Heath ... instead of resigning immediately, approached the Liberal Leader, Jeremy Thorpe, with an offer of coalition and Liberal participation in government. ...such a coalition would have made the Conservative/Liberal grouping the largest single grouping in the Commons, although without an overall majority. Heath therefore also approached Harry West, leader of the Ulster Unionists, and

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<sup>15</sup> *Ibid*, p46

offered the Conservative whip to 7 of the 11 Ulster Unionists. This would have been sufficient to give him an overall majority.

The Ulster Unionists, however, refused to accept the Conservative whip, while the Liberals rejected Heath's offer of coalition – although they declared their willingness to support an agreed programme from outside the government. Upon hearing of the Liberals' rejection of coalition, Heath resigned without meeting Parliament.<sup>16</sup>

Details of the events leading to the resignation of Edward Heath as Prime Minister are set out in a contemporary note written by Robert Armstrong (now Lord Armstrong of Ilminster).<sup>17</sup>

Heath was replaced as Prime Minister by Harold Wilson. Wilson then governed for six months with a minority government. John Curtice has commented that Labour were able to survive these months as a minority government “relatively easily” because of “the willingness of Conservatives to abstain on key votes – for they did not wish to precipitate an immediate second election in the wake of their earlier defeat”.<sup>18</sup>

The general election of October 1974 resulted in an overall majority for Labour of 3, but a majority over the Conservatives of 42. Labour formed a government. However, by 1977-78 the Labour government had to systematically draw on the support of the Liberals. David Butler explains how this situation arose:

...By April 1976 one by-election defeat and the desertion of two MPs to the Scottish Labour Party, together with John Stonehouse's repudiation of the Whip, had cost the Labour government its formal majority in the House of Commons, and therefore its majority in all Standing Committees. November 1976 saw two more by-election defeats for Labour. The Scottish and Welsh Nationalists had been willing to support the government in the hope that it would fulfil its promises of devolution. But when in February 1977 the defection of Labour backbenchers meant that a majority could not be mustered to enforce the essential guillotine on the Committee Stage of the Devolution Bill, the Nationalist attitude hardened.

On 17 March 1977, the Conservatives put down a motion of censure for [Wednesday] 23 March, and the government faced the prospect of defeat. Mr Callaghan had to recognise that, to survive, his administration must secure the support either of the Liberals or of the Ulster Unionists. For four days there were hectic discussions. Mr Callaghan and Mr Foot, the Leader of the House, had several meetings with Mr Steel and Mr Molyneux.

In his autobiography, Steel recounts that:

He [the Prime Minister] began by repeating that a defeat on Wednesday would mean an election and I told him that was not a prime consideration for us. I said we were not interested in any covert arrangement to stave off defeat for Wednesday, but only in an open longer-term agreement which would involve consultation with us on the Government's programme with particular emphasis on control of inflation through incomes policy, devolution and direct elections to Europe. The mood was sombre but amicable and we talked for over an hour, at the end of which he gave me some encouragement to think that such an arrangement could be possible; this was sufficient

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<sup>16</sup> Vernon Bogdanor, *No overall majority: forming a government in a multi-party parliament*, p7

<sup>17</sup> The note is available on the Institute for Government's website, courtesy of the National Archives: <http://www.instituteforgovernment.org.uk/pdfs/armstrong-3.pdf>

<sup>18</sup> John Curtice, *Dilemmas of a Hung Parliament*, March 1992, p9

for me to be able to put it to my colleagues that evening and for him to discuss it with some of his team.<sup>19</sup>

In the end, Callaghan and Steel agreed terms which the Cabinet approved, reportedly by 20 votes to 4, but there were no resignations. During the censure debate Callaghan read out a joint statement prepared with Steel:

We agreed today the basis on which the Liberal Party would work with the Government in pursuit of economic recovery.

We will set up a Joint Consultative Committee, under the Chairmanship of the Leader of the House that will meet regularly. This Committee will examine Government policy and other issues prior to their coming before the House and Liberal policy proposals.

The existence of this Committee will not commit the Government to accepting the views of the Liberal Party or the Liberal Party to supporting the Government on any issue.

We agree to initiate regular meetings between the Chancellor and the Liberal Party economic spokesperson, such meetings to begin at once. In addition, the Prime Minister and the Leader of the Liberal Party will meet as necessary.

We agree that legislation for direct elections to the European Assembly in 1978 will be presented to Parliament in this Session. The Liberal Party re-affirm their strong conviction that a proportional system should be used as the method of election...

We agree that process must be made on legislation for devolution...

We agree that the Government will provide the extra time needed...[for a Liberal Bill on homelessness]...[and that it will limit the scope of the Bill on direct labour organisations of Local Councils]

We agree that this arrangement between us should last until the end of the present parliamentary session, when both parties would consider whether the experiment has been of sufficient benefit to the country to be continued.

We also agree that this understanding should be made public.<sup>20</sup>

At the end of the 1976-77 Session, it was agreed to continue the co-operation into the next Session and in January 1978 a special Liberal Party Assembly voted to give Steel the authority to continue the Lib-Lab pact by 1,727 to 520.

However, the Liberal attempt to introduce proportional representation into the European Assembly Elections Bill failed. This had been a key issue for the Liberal Party. In his autobiography Steel writes "I had already let it be known that the pact could not and should not be broken *on this issue*..."<sup>21</sup> The outcome of the vote, and the continuation of the pact afterwards, split the parliamentary Liberal Party.

In April 1977, Steel expressed the Liberal disappointment at the failure of the Government to cut income tax. In May, the Government was defeated twice during the Finance Bill, once on an opposition amendment to the Finance Bill reducing income tax by 1p and again on an amendment raising the threshold for the 40 per cent tax bracket.

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<sup>19</sup> David Steel, *Against Goliath: David Steel's Story*, 1989, p127

<sup>20</sup> As quoted by David Steel, *Against Goliath: David Steel's story*, 1989, p129-130

<sup>21</sup> *Ibid*, p 135

On 13 May 1978 Steel declared that minority government was not only tolerable, but desirable, and on 25 May he announced the end of the Lib-Lab pact at the end of the session as it had achieved its main objective of providing political stability.<sup>22</sup> In his autobiography Steel explains that early in 1978 he had begun to discuss election prospects with Callaghan, and had told him that the Liberals needed a quarantine period before the formal ending of the pact and the general election. At the time, it was still undecided whether the election would be called for the autumn, or if Labour would hold on until 1979. In March Steel told Callaghan that he would probably seek to end the agreement in July.<sup>23</sup> In March 1979 the minority Callaghan government was defeated by one vote on a confidence motion.

Writing in 1978 Butler stated:

It is premature to evaluate the party understanding of 1977. It fell far short of coalition. It took place in a time of economic crisis but it was born of parliamentary tactics rather than national necessity. It was not the child of war, as in 1915 or 1940 and it was not a reaction to a fear of imminent national disaster, as in 1931...But in 1977, as in earlier in the earlier instances, considerations of national interest were not wholly absent: politicians can easily convince themselves that the success of their principal opponents is the worst disaster that can befall the country...<sup>24</sup>

Butler and Kavanagh have explained that:

...The consultative machinery which consisted of three ministers (Mr Foot, Mr Rees and Mr Cocks) came into operation when ministers and their Liberal shadows could not agree, with a Callaghan/Steel summit occasionally invoked as a final court of appeal. It certainly gave Liberal MPs a taste of government and most of them enjoyed it. Serious difficulties only arose between Mr Benn and Mr Penhaligon over energy questions, and still more, between Mr Healey and Mr Pardoe over a wide range of economic issues...<sup>25</sup>

David Coates has made the following analysis:

...in practice, the Labour Government seemed only slightly and intermittently embarrassed by them. Certainly the Cabinet's decision to include a form of proportional representation (the regional list system) in its Bill on elections to the European Assembly, in the face of opposition from within the Parliamentary Labour Party, reflected Liberal pressure. So did the Chancellor's temporarily embarrassing inability to add a 5½p tax to petrol as part of his 1977 budget strategy. ... The eventual government proposals on industrial democracy also reflected Liberal views, as did the revamped proposals on devolution for Scotland and Wales which were presented to the 1977-78 session of Parliament. But over time it was the Liberals who were most embarrassed by their new role as maintainers in office of a government whose main lines of policy were already set. ...

...The main attraction of the pact, to both parties, was its ability to delay the electoral annihilation to which both seemed liable in the first half of 1977... The two year Liberal pact, that is, saw the Labour Government through a period in which they were 16.5 per cent behind the Conservatives in the Gallup Poll to one in which they were only 2 per

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<sup>22</sup> Geoffrey Foote, *A chronology of post-war British politics*, 1988

<sup>23</sup> David Steel, *Against Goliath: David Steel's story*, 1989, p144

<sup>24</sup> David Butler, *Coalitions in British politics*, 1978, p111

<sup>25</sup> David Butler and Dennis Kavanagh, *The British General Election of 1979, 1980*, p94

cent behind, and to a period in which by-election results (both in Scotland and in England) gave only an average 5 per cent swing against them.<sup>26</sup>

However, as well as the policy influence, the Liberal Party had had other motivations: they had wanted to show how a bi-party coalition could work in the UK, and to have a taste of government.

Ben Seyd, writing in a 2002 Constitution Unit publication states that:

We can learn from this episode that the main collective forum, cabinet, was indeed, downgraded as decisions were taken in small meetings of the party leaders. The 'top down' nature of the collaboration between the parties was one of its weak points, since important actors outside the elite group, notably the parliamentary parties, were not committed to its success and subsequently brought it down. However, the Lib-Lab pact has so far been a one-off, limiting the extent to which we can draw general lessons for power sharing situations. And it should be remembered that the pact was an example of minority government, not coalition government proper, since the Liberals were never formally brought into government. The experience thus hints at various considerations that will need to be taken into account should Westminster move to coalition government, but it hardly provides a rich source of information.<sup>27</sup>

### **1997 Minority Conservative Government**

In 1992 John Major won the General Election with a majority of 21. This majority was tested by a series of by-election defeats, defections, and divisions within the Conservative Party. In 1992 the *Financial Times* commented that:

It is now clear that what was elected on April 9<sup>th</sup> was not a Conservative Government with a majority of 21, but a hung parliament in which the parties that must loathe one another, the Thatcherites and the Majorites, stand beneath the Tory flag.<sup>28</sup>

The differences between members of the Conservative party came to a head over the votes which took place in May and 4 November 1992 on the Maastricht Treaty. In May, 22 Conservative MPs voted against the Maastricht Bill's second reading. In November, there were two votes: a Labour Amendment proposing to delay consideration of the Treaty; the second was the Government's Paving Motion inviting the Commons to resume progress on the legislation. The key vote was won by 319 to 316 votes with 26 Conservative Members voting against the Government and another 6 abstaining, with the earlier Labour Amendment lost by 319 to 313 votes.<sup>29</sup>

By February 1997 Conservatives had lost their majority. Butler and Kavanagh recorded that:

Due to by-election attrition, the government's clear majority, 21 in 1992, had sunk to 11 by the end of 1994. It virtually disappeared for six months while the nine Euro-sceptic MPs were denied the whip. It was further dented when Alan Howarth crossed the floor to Labour, and Emma Nicholson, followed by Peter Thurnham, went over to the Liberal

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<sup>26</sup> David Coates, *Labour in power? A Study of the Labour Government 1974-1979*, 1980, p154

<sup>27</sup> Ben Seyd, *Coalition Government in Britain: Lessons from overseas*, Constitution Unit, 2002, p16

<sup>28</sup> As quoted by David Baker, Andrew Gamble and Steve Ludlam in 'Whips or Scorpions? The Maastricht vote and the Conservative Party' in *Parliamentary Affairs*, Vol. 46 No. 2, April 2003

<sup>29</sup> For a detailed account of events surrounding these votes, see David Baker, Andrew Gamble and Steve Ludlam in 'Whips or Scorpions? The Maastricht vote and the Conservative Party' in *Parliamentary Affairs*, Vol. 46 No. 2, April 2003

Democrats. Finally, when Barry Porter died in Wirral South on 3 November 1996, Mr Major ceased to have a majority.<sup>30</sup>

The by-election was held on 27 February 1997; Labour won the seat. The general election was announced on 18 March for 1 May.

## 2.3 Coalition Governments

No formal coalition governed from Westminster between 1945 and 2010. For significant parts of the first half of the twentieth century, there were coalition administrations. However, these twentieth century coalitions only occurred at times of war, economic crisis, or as a prelude to mergers between political parties.<sup>31</sup> For example, between 1931 and 1940 a national government, led at various points by MacDonald (1931-35), Baldwin (1935-37) and Chamberlain (1937-40) included National Labour, Conservatives, Liberal Nationals, and until 1932, the Liberals. In 1940, a wartime government of national unity was formed under Churchill which included Conservatives, Labour and Liberals, lasting until 1945. A wartime government of national unity had also been established during the First World War, which continued until 1922.

### 1915-1922

During the First World War a coalition was formed in 1915 under Asquith with the Liberals as the dominant party. The Conservatives were given 8 Cabinet positions out of 21, with one given to Arthur Henderson as the spokesman for the Labour members who supported the war. In 1916, following difficulties between the coalition parties, Lloyd George became Prime Minister of what became a predominantly Conservative coalition. Whilst the Conservatives were supportive of the coalition, Lloyd George had the support of only a minority of Liberal Members and Henderson's continued involvement was endorsed by "the narrowest majority" in Labour's National Executive Committee.<sup>32</sup>

At the end of the First World War, the Conservatives and Lloyd George Liberals formed an electoral pact in what became known as the 'coupon' election of 1918. The Coalition Conservatives won a majority of seats and formed a Government with the Lloyd George Liberals. The coalition ended with a vote at the Carlton Club in October 1922 (when Conservative MPs voted by 198 to 88 to withdraw from the coalition).

### December 1918 General Election

#### Coalition

Unionist	335	
Liberal	133	
Labour	10	478

#### Non-coalition

Conservative	23	
Irish Unionist	25	
Liberal	28	
Labour	63	
Irish Nationalist	7	
Others	10	156

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<sup>30</sup> Butler and Kavanagh, *The British General Election of 1997*, p13

<sup>31</sup> Vernon Bogdanor, *Coalition Governments in Western Europe*, 1983, p11

<sup>32</sup> David Butler, *Governing without a Majority*, 1987, p41

## Abstentionists

Sinn Fein 73

### 1931

David Butler described the events of 1931 as follows:

The crisis of August 1931 produced the only full-scale coalition to be formed in peacetime in this century. Faced with a run on sterling which led banking opinion to demand more cuts in government expenditure than the Labour cabinet would tolerate, MacDonald, instead of resigning, was persuaded to accept the offers of support from the Conservatives and the Liberals. He formed what was intended to be a National Coalition before a general election in which the parties would fight separately, with 'no coupons, no pacts'. But almost the whole of the Liberal party went immediately into opposition and the other parties, after only a few weeks, decided to fight the election as a National government, with candidates of each party withdrawing in favour of whoever was the sitting tenant. The outcome was the biggest landslide in British history and, effectively, it transformed the National government into a Conservative government.

The Liberals withdrew after a year, but MacDonald remained Prime Minister until 1935; and the National label continued until 1940 with the Liberal National and National Labour parties preserving separate whips' offices and national headquarters. Yet it is hardly realistic to talk about coalition government after 1932, or to draw any lessons about how parties should work together.<sup>33</sup>

### October 1931 General Election

Conservative	473
National Labour	13
Liberal National	35
Liberal	33
<i>National Government</i>	<i>554</i>
Independent Liberal	4
Labour	52
Other	5
<i>Opposition</i>	<i>61</i>

### 1940-45

In May 1940 Winston Churchill formed a coalition government which lasted until May 1945, after the end of the war in Europe. During the coalition the Liberals had one Cabinet Minister, Sir Archibald Sinclair, who was Secretary of State at the Air Ministry. Until the formation of the 2010 coalition government, he was the last Liberal to serve in the Cabinet.

### 1997 - *The Lib-Lab consultative committee on constitutional reform*

Although not a coalition government, the cross-party talks which occurred before the 1997 general election between the Labour and Liberal Democrat parties continued for some time once Labour were in government, in the form of a joint cabinet committee. The origins of the Committee are detailed in the *Report of the Joint (Labour Party-Liberal Democrats) Consultative Committee on Constitutional Reform*:

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<sup>33</sup> *Ibid*, p47

In summer 1996 Tony Blair and Paddy Ashdown asked Robin Cook and Robert Maclennan to explore the possibility of co-operation between the Labour and Liberal Democrat parties in relation to constitutional reform. Both parties had for some time been committed to a programme of constitutional change and shared a common view of the need to reform our democratic institutions and to renew the relationship between politics and the people. Following progress in the initial discussions the two parties agreed in October 1996 to establish a Joint Consultative Committee with the following terms of reference:

'To examine the current proposals of the Labour and Liberal Democrat parties for constitutional reform; to consider whether there might be sufficient common ground to enable the parties to reach agreement on a legislative programme for constitutional reform; to consider means by which such a programme might best be implemented and to make recommendations.'<sup>34</sup>

Following the 1997 General Election, Labour-Liberal Democrat co-operation was formalised in a Cabinet Committee, known as the Joint Consultative Committee. This was listed in the 'Ministerial Committees of the Cabinet' chapter of the December 1997 edition of *Vacher's Parliamentary Companion* (it was not included in the September 1997 edition). It had the following entry:

#### **Composition**

The Committee will be chaired by the Prime Minister

Other Ministers and Liberal Democratic spokesmen will be invited to attend as necessary.

#### **Terms of Reference**

To consider policy issues of joint interest to the Government and the Liberal Democratic Party.<sup>35</sup>

After the 2005 General Election, there was some press coverage of the establishment of Cabinet Committees. *The Independent's* report noted that the Joint Consultative Committee had been abolished:

In another decision that signals his opposition to PR, Mr Blair formally abolished the Joint Consultative Committee (JCC), he set up with the former Liberal Democrat leader Paddy Ashdown as a vehicle to discuss PR. The scrapping of the JCC slammed the door on the prospect of Labour-Liberal Democrat talks on voting reform and sent a powerful signal that relations between Labour and the Liberal Democrats have hit a new low. Mr Prescott has told colleagues: 'That's all dead now.'<sup>36</sup>

## **2010**

The General Election of May 2010 resulted in a hung parliament. The creation of the Conservative-Liberal Democrat coalition took place after a series of negotiation meetings between the political parties.

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<sup>34</sup> *Report of the Joint (Labour Party-Liberal Democrats) Consultative Committee on Constitutional Reform*, paras 1-2, cited by Robert Blackburn and Raymond Plant (eds) *Constitutional Reform: The Labour Government's Constitutional Reform Agenda*, 1999, Appendix 2

<sup>35</sup> *Vacher's Parliamentary Companion*, Number 1088, December 1997, p135

<sup>36</sup> Marie Woolf and Colin Brown, " 'Sceptical' Prescott made head of committee on PR", *Independent*, 25 May 2005

## May 2010 General Election

Conservative <sup>37</sup>	305
Labour	258
Liberal Democrat	57
Others	29

### 3 Constitutional issues

The appointment of the Prime Minister and the granting of a dissolution of Parliament are both prerogative powers of the monarch.<sup>38</sup> On the former, the Sovereign must appoint that person who is in the best position to receive the support of the majority in the House of Commons. On the latter, in the absence of a regular term for the life of Parliament fixed by statute, the Sovereign may by the prerogative dissolve Parliament and cause a general election to be held. However, in a situation of no overall control, these conventions may be put under some strain by the absence of a clear way forward.

In his 1986 pamphlet, *No overall majority: forming a government in a multi-party parliament*, Vernon Bogdanor wrote that there were “two major constitutional questions” which arise from a hung Parliament:

- what conventions govern who the Queen should send for to form a government; and
- what conventions govern the Queen’s use of the prerogative of dissolution.<sup>39</sup>

Vernon Bogdanor writing in 2008 has, upon “further reflection”, concluded that:

A hung parliament or even a succession of hung parliaments need not lead to a constitutional crisis. A hung parliament may lead to a political crisis, but that is something for the political leaders, not the sovereign, to resolve. A hung parliament merely makes transparent the fundamental principle of parliamentary government, a principle which has often been overt since 1866: a government depends upon the confidence of Parliament.<sup>40</sup>

The personal prerogatives of the monarch are subject to discussion and disagreement within the academic community.<sup>41</sup> Due to the nature of the British constitution as unwritten, and in relation to prerogative powers, a largely uncodified set of conventions based on precedents, predictions of what would occur given any set of circumstances of a hung parliament are to a large degree hypothetical.

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<sup>37</sup> This does not include the Member elected for Thirsk and Malton, where the election was delayed due to the death of a candidate.

<sup>38</sup> For more information on the Royal Prerogative see the Library Standard Note, SN/PC/3861, [The Royal Prerogative](#)

<sup>39</sup> Vernon Bogdanor, *No overall majority: forming a government in a multi-party parliament*, 1986, p4

<sup>40</sup> Vernon Bogdanor, ‘A hung parliament: a political problem, not a constitutional one’ in Hansard Society, *No overall control? The impact of a ‘hung parliament’ on British politics*, 2008

<sup>41</sup> For recent discussions see Robert Blackburn “Monarchy and the Personal Prerogatives” *Public Law*, Autumn 2004; Rodney Brazier “Monarchy and the Personal Prerogatives- A personal response to Professor Blackburn”, *Public Law*, Spring 2005.

The draft Chapter of the Cabinet Manual on 'Elections and Government Formation', published in February 2010 has been widely welcomed for promoting clarity by setting out existing conventions clearly. On two areas, the Cabinet Secretary has explained the guidance covers new ground:

The purpose of the chapter was to bring together existing conventions and legislation but there are two parts to which I would like to bring the Committee's attention. First of all, paragraph 19 explains that the Prime Minister can ask the Cabinet Office – and I stress, I think in the draft it says Cabinet Secretary but I think in this sense it will be the Cabinet Office in general – to support both the Government and Opposition parties in their discussions about forming a stable government. Just to say that I have discussed this with the Prime Minister and he has indicated to me that he would support that use of civil servants; so that means we would be ready to do this in the event of a hung Parliament. Secondly, I know you had some discussions about the caretaker principle and at paragraph 20 the draft proposes - and again this is new – that the rules covering the election period would be extended beyond the election, to the post-election period when we do not have a stable government.<sup>42</sup>

No final draft of the guidance was published before the General Election was called.

### **3.1 Who should be called to form a government?**

The draft chapter of the Cabinet Manual published by the Cabinet Office in February 2010 stated that:

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. These are the principles that underpin the appointment of a Prime Minister and formation of a government in all circumstances.<sup>43</sup>

The document continued:

If the Prime Minister and Government resign and 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. The Monarch would not expect to become involved in such discussions, although the political parties and the Cabinet Secretary would have a role in ensuring that the Palace is informed of progress.<sup>44</sup>

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<sup>42</sup> Uncorrected transcript of oral evidence taken before the Justice Select Committee on 24 February 2010, to be published as HC396-i, Q87

<sup>43</sup> Cabinet Office, '[Chapter 6: Elections and Government Formation \(DRAFT\)](#)', *Cabinet Manual*, February 2010, para 14

<sup>44</sup> *Ibid*, para 17

Robert Blackburn, Professor of Constitutional Law at King's College London, has written that the choice of the Prime Minister is not, and should not, be a personal matter for the monarch of the day:

...it is unreal politically and inappropriate constitutionally to acknowledge – and indeed to advocate – a personal discretionary power for an hereditary monarch to operate as the means for determining the outcome of a general election. There needs to be, and is already in existence, an established procedure and basis for the resolution of who will be Prime Minister after a general election that produces a House of Commons with no overall majority for a single party:

*Procedures for prime ministerial appointment under “hung” Parliaments*

- The incumbent Prime Minister has the first opportunity to continue in office and form an administration.
- If he is unable to do so (and resigns, or is defeated on the Address at the meeting of Parliament), then the leader of the largest opposition party is appointed Prime Minister.

There is really no problem in establishing the constitutional answer to the question of who is appointed Prime Minister under a hung Parliament...<sup>45</sup>

Rodney Brazier, Professor of Constitutional Law at Manchester University, has argued that after an inconclusive general election “the guiding light should be: political decisions, politically arrived at”.<sup>46</sup> However, in a situation where:

...a majority coalition might turn out to be on the cards, with or without a change in the Leadership of one party, but the largest minority party might insist that it had a right to take office on its own. In such a case of irreconcilable disagreement the guiding light would be extinguished and the Queen would have to become involved.<sup>47</sup>

He explains his position in a *Public Law* article as follows:

Far from encouraging royal intervention, I actually urge the opposite: that the Queen's undoubted legal power to choose a Prime Minister should be used to enhance the democratic process, rather than to pre-empt it. Only if politicians failed to produce a way forward in a hung Parliament – which might be highly unlikely – would any royal action be necessary. It would then – and only the – that my idea ... of the Queen receiving party leaders in turn might possibly come into play.<sup>48</sup>

However, in their 2009 report for the Institute for Government, Professor Robert Hazell and Akash Paun suggest that “the golden rule is not to draw the Monarch into controversy or political negotiations”.<sup>49</sup> Writing in 2008 Vernon Bogdanor stated that:

...the fundamental convention of parliamentary government – that a government must retain the confidence of the House of Commons – remains in a hung parliament situation. Admittedly, after an inconclusive election, it may not be immediately clear

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<sup>45</sup> Robert Blackburn, 'Monarchy and the Personal Prerogatives', *Public Law*, Spring 2004, p552. See also Robert Blackburn, *King and Country: Monarchy and the Future King Charles III*, 2006, pp79-107

<sup>46</sup> Rodney Brazier, *Constitutional Practice*, 3<sup>rd</sup> Edition, 2001, p37

<sup>47</sup> *Ibid.*

<sup>48</sup> Rodney Brazier, 'Monarchy and the personal prerogatives: A personal response to Professor Blackburn', *Public Law*, Spring 2005, p46

<sup>49</sup> Robert Hazell and Akash Paun eds, *Making Minority Government Work: Hung Parliaments and the challenges for Westminster and Whitehall*, 2009

who is best placed to secure that confidence. In such a situation, there would have to be negotiations between the political leaders. The political colour of the new government would be determined by political decisions – decisions made by the political leaders.<sup>50</sup>

Professor Robert Hazell of the Constitution Unit, UCL, has suggested that the House of Commons should hold an investiture vote to help encourage certainty and public understanding of who governs in a hung parliament situation:

This conventional mechanism for testing confidence suffers from its obscure nature, which does not facilitate understanding of the process by which the government is formed amongst the general public. It might therefore be preferable for the House of Commons to hold an 'investiture vote' as in Scotland and many other countries, which would require MPs to vote on who should lead the new government. This change would not require any legal or constitutional change, as it could be on a motion that simply made a recommendation to the monarch on whom to appoint as PM.

If the election result were very close indeed, such that two party leaders both had plausible grounds to claim the ability to form a government, the debate on the investiture motion would offer an opportunity for the two aspiring PMs to make their cases, and for the parties holding the balance of power to explain their reasons for backing one or other of the candidates. It would therefore also have benefits in terms of accountability and transparency, helping to meet critics' concerns that government formation following an inconclusive election takes place largely behind closed doors, especially if it involves negotiations with minor or third parties.<sup>51</sup>

### 3.2 When should a dissolution be granted?

The draft Chapter of the Cabinet Manual published in February 2010 stated that:

A Prime Minister may request that the Monarch dissolves Parliament and hold a further election. The Monarch is not bound to accept such a request, especially when such a request is made soon after a dissolution. In those circumstances, the Monarch would normally wish the parties to ascertain that there was no potential government that could command the confidence of the House of Commons before granting a dissolution.<sup>52</sup>

On the question of dissolution, Vernon Bogdanor wrote in 2007 that:

The current convention is quite clear. It is that a dissolution should only be refused when it is obvious that there is an alternative government that can command the confidence of Parliament.

He went on to state that a dissolution "may only be refused when it is improperly sought":

If, for example, Edward Heath had sought a second dissolution immediately after the general election of February 1974, it would have been proper for the Queen to refuse it. For, not having been confirmed by Parliament, Heath would not have been in a constitutionally competent position to seek a dissolution. Until meeting Parliament, he was in effect a caretaker prime minister. The Queen would have been entitled to wait

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<sup>50</sup> Vernon Bogdanor, 'A hung parliament: a political problem, not a constitutional one' in Hansard Society, *No overall control? The impact of a 'hung parliament' on British politics*, 2008, p19

<sup>51</sup> Robert Hazell and Akash Paun eds., *Making Minority Government Work: Hung parliaments and the challenge for Westminster and Whitehall*, Institute for Government, 2009, 7.1.2, p83

<sup>52</sup> Cabinet Office, '[Chapter 6: Elections and Government Formation \(DRAFT\)](#)', *Cabinet Manual*, February 2010, para 18

until Heath had met the Commons. Had he obtained the confidence of the House, he would have been constitutionally entitled to seek a dissolution, although of course he would not then have needed one. But the Queen would be entitled to refuse a request for a dissolution if she had good reason to believe that an alternative government could be formed and would prove viable.<sup>53</sup>

Robert Blackburn has set out four key principles and procedures as follows:

*Procedures governing the monarch's exercise of the legal power of dissolution of Parliament*

- A Prime Minister who has lost a general election cannot request a dissolution. "Lost" here includes the government being defeated on an amendment to the Address (in reply to the Queen's Speech) expressing no confidence in the government taking place at the first meeting of the newly elected House of Commons.
- In a hung Parliament, where the Prime Minister's government wins or survives the debate on the Address, his advice to the monarch on dissolution affairs will thereafter be followed during his tenure in office.
- A Prime Minister who loses a no confidence vote in the Commons must request a dissolution of Parliament from the monarch, who will grant it. The Prime Minister is entitled to resign office (together with his government) instead, in which case the monarch will appoint the Leader of the Opposition as the new premier, who will advise on dissolution matters thereafter.
- De-selection of a Prime Minister as leader of the governing party causes him to lose his political authority to advise the monarch on dissolution affairs (or any other prerogative powers). A monarch is duty-bound to reject any request by a Prime Minister for a dissolution during a leadership contest.<sup>54</sup>

Rodney Brazier has also written on this issue:

It is beyond doubt that the Sovereign can refuse a request for a dissolution of Parliament: the difficulty lies in identifying the situations in which such action would be constitutionally appropriate. That identification is made more awkward by the fact that no dissolution has been refused this century, something which could wrongly be seen as evidence that any refusal would become an acceptance if pressed. But this negative fact proves no more than that no Prime Minister has improperly requested a dissolution, and that therefore the Sovereign has had no reason to refuse...<sup>55</sup>

Brazier makes three propositions about the granting of dissolution:

- "If a government continues in office as a minority administration after an inconclusive general election obtained by its Prime Minister and is immediately defeated on an amendment to the loyal address in reply to the Queen's Speech, there is no precedent for such a Prime Minister seeking a second dissolution; rather there is ample precedent for him to resign."

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<sup>53</sup> Vernon Bogdanor, 'A hung parliament: a political problem, not a constitutional one' in Hansard Society, *No overall control? The impact of a 'hung parliament' on British politics*, 2008, p24

<sup>54</sup> Robert Blackburn, 'Monarchy and the Personal Prerogatives', *Public Law*, Spring 2004, p557

<sup>55</sup> Rodney Brazier, *Constitutional Practice*, 3<sup>rd</sup> Edition, 2001, p46

- “If either a minority or coalition government is formed from a hung House of Commons and the new Prime Minister had not obtained the first dissolution, then a request by him at any time for a general election should be granted.”
- “If a Prime Minister of either a minority or a coalition government in a hung Parliament were to ask for a general election, even for his first time, in order to forestall another majority and workable grouping supplanting his administration, then again refusal would be defensible if that alternative grouping in fact existed.”<sup>56</sup>

During evidence to the Justice Committee on 24 February 2010, two former Cabinet Secretaries, Lord Turnbull and Lord Butler, were asked about the circumstances in which a second general election could be granted:

**Q15 Dr Whitehead:** There may be alternative circumstances where the incumbent Prime Minister may go to the Palace and say: "This is an awful mess, is it not; there is no overall result; why do we not have another general election?" At what point does the Sovereign have a hand in that sort of situation?

Lord Turnbull of Enfield: That was dealt with in 1950 with the so-called "Senex letter" of Sir Alan Lascelles - he wrote under the pseudonym - which sets out some conditions under which a second dissolution could be denied. In other words, if the Sovereign thought there was a possibility that someone else could produce a workable majority, then they should be given that chance, rather than someone saying: "Can I have another election in a few weeks' time?" I think there are strong pressures against someone asking for a second election, saying, "I did not quite win last time but let me have one more go." Those principles have been around for 60 years.

**Q16 Chairman:** Is the letter to *The Times* in 1950 under a pseudonym Senex, which we now know is Alan Lascelles, a constitutional document that now guides us?

Lord Turnbull of Enfield: In a strange way, it is, yes; people have accepted the logic of the arguments that he put forward.

Lord Butler of Brockwell: I think that things have moved on in this respect, as Lord Turnbull said. There is a factor which protects the Queen from having to get into that position of refusing the incumbent Prime Minister a further election; and that is there is evidence that the British people so dislike being taken to the polls that if they were forced to have another general election they would heavily punish the person they saw as responsible for it. I think it very unlikely in those circumstances that the Prime Minister would say, "May we have another general election, Ma'am?" and hope to do well in it. I do not think it is likely that in practice the Queen would these days be put in a position of having to refuse a general election.

The Senex letter, as referred to by Lord Turnbull, stated that:

Sir, - It is surely indisputable (and common sense) that a Prime Minister may ask – not demand – that his Sovereign may grant him a dissolution of Parliament; and that the Sovereign, if he chooses, may refuse to grant this request. The problem of such a choice is entirely personal to the Sovereign, though he is, of course, free to seek informal advice from anybody whom he thinks fit to consult.

In so far as this matter can be publicly discussed, it can be properly assumed that no wise Sovereign – that is, one who has at heart the true interest of the country, the constitution, and the Monarchy – would deny a dissolution to his Prime Minister unless

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<sup>56</sup> *Ibid*

he were satisfied that: (1) the existing Parliament was still vital, viable and capable of doing its job; (2) a General Election would be detrimental to the national economy; (3) he could rely on finding another Prime Minister who could carry on his Government, for a reasonable period, with a working majority in the House of Commons. When Sir Patrick Duncan refused a dissolution to his Prime Minister in South Africa in 1939, all these conditions were satisfied: when Lord Byng did the same in Canada in 1926, they appeared to be, but in the event the third proved illusory.<sup>57</sup>

In July 2007 the Government published a green paper, *The Governance of Britain*, which proposed wide ranging constitutional reform. The green paper suggested that the Prime Minister and the Executive “should surrender or limit” some of its prerogative powers. It was proposed that, rather than the dissolution of Parliament occurring only at the request of the Prime Minister, or at the end of a five-year period, that the Prime Minister should have to seek the approval of the House of Commons before asking the Monarch to dissolve Parliament. Any new arrangements would have to provide for the situation in which it proves impossible to form a government which commands the support of the House of Commons yet Parliament refuses to dissolve itself. The Government announced that it would consult on these proposals and any change would be announced to Parliament and would become through precedent, a new convention.<sup>58</sup>

However, questions have been raised about how such a system would operate in a situation of no overall control. Vernon Bogdanor has commented that:

Under the normal circumstances of majority government, this would make no difference. With a minority government, however, a prime minister could not rely on securing a dissolution. The prime minister would have to persuade the House of Commons to agree. This would give the minor parties significant extra leverage in a hung parliament situation altering the political dynamics.<sup>59</sup>

Although the Modernisation Committee launched an inquiry into Recall and Dissolution in 2007, the Committee has since stopped holding regular meetings.<sup>60</sup>

The Conservative-Liberal Democrat Coalition Government has announced that:

We will establish five-year fixed-term Parliaments. We will put a binding motion before the House of Commons stating that the next general election will be held on the first Thursday of May 2015. Following this motion, we will legislate to make provision for fixed-term Parliaments of five years. This legislation will also provide for dissolution if 55% or more of the House votes in favour.<sup>61</sup>

This proposal is discussed in more detail in the Library Standard Notes, *Fixed Term Parliaments*, and *Fixed Term Parliaments: Early Dissolution Arrangements*.<sup>62</sup>

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<sup>57</sup> Letter to *The Times*, 29 April 1950

<sup>58</sup> Ministry of Justice, *The Governance of Britain*, July 2007, Cm 7170, paras 34-36

<sup>59</sup> Vernon Bogdanor, ‘A hung parliament: a political problem, not a constitutional one’ in Hansard Society, *No overall control? The impact of a ‘hung parliament’ on British politics*, 2008, p24

<sup>60</sup> Modernisation Select Committee, [http://www.parliament.uk/parliamentary\\_committees/select\\_committee\\_on\\_modernisation\\_of\\_the\\_house\\_of\\_commons.cfm](http://www.parliament.uk/parliamentary_committees/select_committee_on_modernisation_of_the_house_of_commons.cfm)

<sup>61</sup> HM Government, *The Coalition: Our Programme for Government*, 2010, p26

<sup>62</sup> Library Standard Note, SN/PC/831, *Fixed Term Parliaments*; Library Standard Note, SN/PC/5530, *Fixed Term Parliaments: Early Dissolution Arrangements*

## 4 Caretaker administrations

After a general election is called, the current Government continues in office as a 'caretaker administration'. There is already general election guidance which advises that 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.<sup>63</sup>

The draft chapter of the Cabinet Manual published on 24 February 2010 explains that:

11. Once the Monarch has agreed to a dissolution and the Prime Minister has announced an election there are constraints on the way Government should conduct business. The Government retains its responsibility to govern and Ministers remain in charge of their Departments, although when Parliament is dissolved they are no longer Members of Parliament. Essential business is carried on. However, it is customary for Ministers to observe discretion in initiating any action of a continuing or long-term character once the election has been announced. Decisions on which a new Government might be expected to want the opportunity to take a different view from the incumbent 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.

12. Other options include making a decision time-limited or subject to a temporary arrangement, or consulting with the opposition parties. The observance of discretion does not involve hard and fast rules: much depends on the circumstances. As soon as a General Election is announced, the Cabinet Office issues guidance to Departments on their activities during the election period.

13. Between the announcement of the date for a general election and polling day, there are also restrictions on the degree to which some forms of activity may be carried out by civil servants and Government departments. The guidance to Government departments issued in 2005 is available at:

[http://www.cabinetoffice.gov.uk/media/cabinetoffice/propriety\\_and\\_ethics/assets/electguide.pdf](http://www.cabinetoffice.gov.uk/media/cabinetoffice/propriety_and_ethics/assets/electguide.pdf)

In a hung parliament situation, the draft chapter states that:

As long as there is significant doubt whether the Government has the confidence of the House of Commons, it would be prudent for it to observe discretion about taking significant decisions, as per the pre-election period. The normal and essential business of government at all levels, however, will need to be carried out.<sup>64</sup>

In his evidence to the Justice Select Committee on 24 February 2010 Peter Riddell of *The Times* and the *Institute for Government* suggested that the *purdah* rules should continue until a new government is formally inaugurated.<sup>65</sup> Robert Hazell agreed, adding that:

... I would like, if I may, to offer some suggestions as to how the caretaker convention could be made stronger. First, I think we should call it that and the government should announce that it is operating as a caretaker government if it is an incumbent

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<sup>63</sup> Library Standard Note, SN/PC/5262, *Purdah, or the pre-election period*

<sup>64</sup> Cabinet Office, 'Chapter 6: Elections and Government Formation (DRAFT)', *Cabinet Manual*, February 2010, para 20

<sup>65</sup> Uncorrected transcript of oral evidence taken before the Justice Select Committee on 24 February 2010, to be published as HC396-i, Q65

government which is staying in office in a new Parliament, where it is not yet clear who can command the confidence of Parliament. I think it should be made clear in the guidance about the caretaker convention and not simply a vague phrase like ‘it is prudent to observe discretion’; but clear that this covers any major policy, it covers any major public appointments and it covers any major government contracts. There also needs to be guidance on how to consult the opposition parties if that is deemed desirable. Such request I think should be routed through the Cabinet Office and the cabinet manual should state that.<sup>66</sup>

There was also some discussion of what would happen if the Cabinet Secretary’s advice on such matters was not taken, with some exploration of the idea that an exchange of letters setting out reasons could be published.<sup>67</sup>

In their March 2009 report, *Constitutional Processes following a General Election*, the Justice Committee argued that:

We agree with our witnesses that there should be more clarity in this area on a number of points:

- The term “caretaker” is clearer and more meaningful than “purdah” and should be used in the formal guidance.
- The period in which “caretaker” principles should apply should be defined (and the extra restrictions that apply to government activity, especially communications, in the run-up to polling day should also be set out).
- The fact that a “caretaking” period has commenced, or concluded, should be explicitly announced.
- The “caretaker” principles should be as clear as possible on the sorts of decisions that need to be avoided, deferred, and/or consulted upon with opposition parties. 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.
- 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 “caretaker” principles.<sup>68</sup>

## 5 The House of Commons and hung parliaments

### 5.1 The Queen’s speech

The first test of a new administration is the vote on the Queen’s speech debate. In January 1924, Baldwin’s minority Government fell when a Labour party amendment to the King’s Speech was passed, leading to a Labour minority administration taking its place. A Hansard Society/ Study of Parliament Group pamphlet has explained that:

The first significant parliamentary deadline is the Queen’s speech debate that usually occurs in the second or third week after a general election but which could be pushed up to a month or so later. This is the key test when the administration must ‘meet’ Parliament and demonstrate that it commands the confidence of the House of

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<sup>66</sup> *Ibid*, Q67

<sup>67</sup> *Ibid*, Qq34-43, and Qq89-92

<sup>68</sup> Justice Committee, *Const*

Commons. But even the Queen's Speech need not be a formal deadline for the conclusion of inter-party talks. The legislative programme put forward in the Address need not be a comprehensive document but merely an outline legislative programme setting out only those areas where the administration believes it can command support. At the end of the Address several key votes will be taken which will test the durability of the administration – a loss of any one of them would be tantamount to a loss of confidence and force the resignation of the government. The first few votes will be on amendments tabled by the opposition parties; the last will be the government's motion in favour of the address. This last vote will represent the most difficult hurdle for any administration for it will be politically easier for the opposition parties to coalesce in opposition to the government's motion than it will be to vote in favour of (and thereby offer perceived support to) any particular opposition party's amendment. But if the Queen's Speech votes are survived then the government in whatever form will have won time for itself before the next major parliamentary test, the Finance Bill, has to be faced.<sup>69</sup>

## 5.2 Casting votes

In a minority government situation, or one in which there is a small majority, the likelihood of a tied vote in the Chamber, although still unlikely, becomes a more real possibility. In the event of a tied vote, the Speaker has a casting vote. Erskine May explains that:

If the numbers in a division are equal, the Speaker must give the casting vote. In the performance of this duty to give a casting vote, the Speaker is at liberty to vote like any other Member, according to his conscience, without assigning a reason; but, in order to avoid any imputation upon his impartiality, it is usual for him, when practicable, to vote in such a manner as not to make the decision of the House final, and to explain his reasons, which are entered in the Journal.<sup>70</sup>

May then goes on to state that three basic principles have emerged in the way in which the casting vote is exercised. These are:

- (a) to allow further debate if that is possible
- (b) that, where no further discussion is possible, decisions require a majority and
- (c) that, on amendment to a bill, the bill should be left in its original form.

The same principles apply when the votes are equal in a Committee of the whole House or in a public bill or delegated legislation committee. The Chairman gives his or her casting vote, and in doing so is guided by the same principles as the Speaker in the House. For example, in a committee on a bill, on an amendment to leave out words, the Chairman would give his or her vote to their retention in the Bill as the House would have another opportunity to consider the same question on consideration of the bill, as amended. Similarly, if at the first sitting of a public bill committee the division on the programme motion resulted in an equality, the Chairman would give his vote with the noes.

The Speaker's casting vote cannot be used to approve an affirmative Statutory Instrument or a Business of the House motion.

The composition of select committees and public bill committees would be likely to be an area for negotiation between parties, and of increased significance, as membership is

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<sup>69</sup> Robert Blackburn et al, *Who Governs? Forming a coalition or a minority government in the event of a hung Parliament*, 2010, p7

<sup>70</sup> Erskine May, 23<sup>rd</sup> Edition, p413

allocated in accordance with party representation in the House of Commons. Most select committees have now had their membership limited at eleven members, as recommended by the Select Committee on Reform of the House of Commons. This may limit scope for negotiation by minority parties for places on committees. It might also have an impact on the distribution of committee chairs. Membership of public bill committees may be more fiercely contested, given that they deal directly with legislation.

### 5.3 Other issues arising in Parliament

Writing for the Hansard Society, Alex Brazier has considered how a hung parliament, or a small majority for the governing party, might affect proceedings and procedure in the House of Commons. He points out that a hung parliament would provide opportunities for individual MPs as well as small groups or parties to extract concessions from the government that a government with a large majority would not allow.<sup>71</sup>

Alex Brazier also asks “would a hung parliament pass legislation?”:

Past experience suggests a little drop in the number of bills passed. An incoming minority government might well want to press ahead with the flagship policies on which it was elected and challenge the other parties to frustrate the will of the electorate in the period leading up to a possible second general election.<sup>72</sup>

In their research, Robert Hazell and Akash Paun suggest that:

Parliament can become stronger under minority government, but cannot make policy or force the government to do anything against its will. Parliament may take longer to pass bills, and amend them more heavily, but the overall volume of legislation is unlikely to diminish greatly. Parliamentary reform to reduce the government’s dominance of parliamentary business will not happen without a clear agenda and champion who can make it happen.<sup>73</sup>

Philip Cowley, Professor of Politics and Nottingham University has stated that the view that a hung parliament strengthens Parliament by making the outcome of votes more unlikely, therefore empowering individual MPs may be true in a minority administration. However, it is “much less certain if there is any post-election coalition deal”.<sup>74</sup> This is because:

- (i) it may make those parties involved place a greater emphasis on unity: “there is little to be gained from a coalition deal if the party leaderships fail to deliver their supporters in important divisions” and
- (ii) because it could “dramatically reduce the current influence exercised by the House of Lords”.

A hung House of Commons where the Liberal Democrats were involved in a coalition might, he argued “deliver simultaneous success in the lower chamber and in the upper chamber... Legislation might well therefore navigate Parliament much easier under a coalition

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<sup>71</sup> Alex Brazier, ‘Parliamentary procedures without a Commons majority’, in Hansard Society, *No overall control? The impact of a ‘hung parliament’ on British politics*, 2008, p34

<sup>72</sup> *Ibid*, p35

<sup>73</sup> Robert Hazell and Akash Paun eds, *Making Minority Government Work: Hung Parliaments and the challenges for Westminster and Whitehall*, 2009, p5

<sup>74</sup> Philip Cowley, ‘It’s the trajectory stupid: backbench behaviour in a hung parliament’, in Hansard Society, *No overall control? The impact of a ‘hung parliament’ on British politics*, 2008, p41

government than under a situation in which one party has a majority in the Commons but faces a hung chamber in the Lords".<sup>75</sup>

Philip Cowley also has also stated that it is difficult to predict how backbench parliamentarians would act in a future hung parliament:

Given the change that has come over British MPs since the 1970s – MPs are now much more professional and assertive, and much more willing to defy the whips than before – it is difficult to see how much we can learn about the possible behaviour of MPs from their practice before the Second World War.<sup>76</sup>

He has argued that predictions about the behaviour of MPs would also depend on whether their political party was in ascent or descent. He points out that discipline for a first-term government party is likely to be high, whereas that for a party losing seats would be lower.<sup>77</sup>

The particular context of the 2010 general election has led Robert Blackburn, in a Study of Parliament Group/ Hansard Society publication, to argue that:

...in the next Parliament the impact on backbenchers may be difficult to predict given the influx of so many new members who lack knowledge of parliamentary procedure and how to utilise it. Many of the 2010 intake of MPs will be dependent on the whips and party managers for support and guidance which may in turn inhibit their ability or willingness to exploit the fluidity of a minority government's status to extract policy and legislative concessions.<sup>78</sup>

The pamphlet concludes that:

A hung Parliament will require everyone to re-evaluate the concept of parliamentary stability, confidence and legislative success. A government can lose a number of votes during the course of a parliamentary session but that need not undermine the prospects for its fundamental long-term survival. Ultimately, the votes that most count and that would threaten the longevity of an administration are motions of confidence and supply (money). A failure to win other divisions can be time consuming and a distraction but need not necessarily threaten the government providing it can win any confidence motion that follows. In July 1993, for example, the Conservative government lost a vote on the Maastricht Treaty social chapter but won the subsequent confidence motion by 110 votes. Similarly in 1978 the Labour government lost a motion on inflation strategy by two votes but won the subsequent confidence motion by 10 votes. And in the 1974 Parliament the Labour government lost 17 divisions in total but still survived. Similarly in Scotland in 2009 the SNP minority administration failed to secure its budget and had to renegotiate and make a number of concessions but was not brought down.<sup>79</sup>

## 6 Coalition governments in Scotland and Wales

The use of proportional voting systems for elections to the Scottish Parliament and National Assembly for Wales has led to governments being formed through power sharing arrangements. In a Constitution Unit publication published in 2004, (i.e. before the current SNP minority administration came to power) Ben Seyd considered the operation of coalition

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<sup>75</sup> *Ibid*

<sup>76</sup> *Ibid*, p37

<sup>77</sup> *Ibid*

<sup>78</sup> Robert Blackburn et al, *Who Governs? Forming a coalition or a minority government in the event of a hung Parliament*, Study of Parliament Group/ Hansard Society, 2010, p15

<sup>79</sup> *Ibid*, pp15-16

governance in both Scotland and Wales since devolution. He gives an overview of the coalition governments:

Scotland has been governed by a coalition since the first devolution elections in May 1999... It was always anticipated that the proportional voting system used in Scotland would deny any one party an overall majority in the Scottish Parliament. This is indeed what happened in both 1999 and 2003, with Labour gaining a clear plurality of seats after both elections (43% and 39% respectively), but falling some way short of an overall majority... After the first election in 1999, Labour entered into coalition with the Liberal Democrats, giving the parties 57 per cent of the total legislative seats (although on only 48% of the vote). In 2003, Labour's share of seats fell, forcing it to continue in coalition with the Liberal Democrats, this time on a bare majority (52% of seats).

In Wales, Labour had not expected to require the help of other parties to form a government in the Welsh Assembly. It had gained 55% of the principality's vote at the 1997 general election, and expected to command an overall majority in the Assembly. In the event, it fell just short, with 47% of seats. Given that links with the main potential coalition partner – were far weaker than in Scotland, Labour decided to govern alone as a minority administration. But, unable to rely on the Assembly to pass its measures, the Labour administration had to compromise on both policy issues and personnel (for example, the Speaker position, and many committee chairs, were allocated to the opposition parties). The government's impotence was demonstrated in February 2000 when the First Minister, Alun Michael, was unseated in a no confidence vote. Michael's successor, Rhodri Morgan, wanted his administration to have greater control over the policy process, and thus initiated talks with the Liberal Democrats to bring them into government. A coalition was established in October 2000, and lasted until the election in May 2003. At that election, Labour increased its seats to 30 out of the total 60. With Plaid Cymru taking the post of Speaker (who does not ordinarily participate in Assembly votes), Labour held a bare majority of one seat in the legislature. This was enough to encourage it to form a single party government, with the Liberal Democrats returning to opposition.<sup>80</sup>

The Library Standard Note, *The Scottish Parliamentary elections May 2007: The formation of the Scottish Executive and the election of a Presiding Officer*, explains the creation of the SNP led coalition.<sup>81</sup> In Wales, Labour has entered in coalition with Plaid Cymru. The Library Standard Note, *The Welsh Assembly elections May 2007: the formation of the Welsh Assembly Government and recent developments in the Assembly*, provides information on the coalition settlement in Wales.<sup>82</sup>

In his Constitution Unit report, which was written before the most recent elections to Scottish Parliament and National Assembly for Wales, Ben Seyd questioned the time limits on the coalition negotiation process. He stated that:

This concern would become particularly acute when the negotiating parties are unused to government, and have little tradition of co-operation with one another. In such a situation, the constitutional rules risk allowing too little time for the parties to gain official advice on their programme for government, and to engage the wider party in deliberations. The coalition negotiations were a well planned and executed process. It would be desirable to see similar arrangements underpinning any future negotiations.

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<sup>80</sup> Ben Seyd, *Coalition Governance in Scotland and Wales*, The Constitution Unit, 2004, p8

<sup>81</sup> Library Standard Note, SN/PC/04372, *The Scottish Parliamentary elections May 2007: The formation of the Scottish Executive and the election of a Presiding Officer*

<sup>82</sup> Library Standard Note, SN/PC/4407, *The Welsh Assembly elections May 2007: the formation of the Welsh Assembly Government and recent developments in the Assembly*

Yet this may not be possible under current rules which limit the length of the bargaining process.

He concluded that:

The internal management of the coalitions appears to have been broadly effective, and any changes in internal coalition processes have been ones of degree not kind. ... During their first terms, the coalitions were also faced with many representatives who did not approve of the compromises that coalition involved. These tensions have abated somewhat in Scotland, partly due to the acceptance amongst MSPs of the realities of coalition, and partly to the efforts made by the coalition partners to strengthen links between ministers and backbenchers, and between the two backbencher groups....

Drawing conclusions about the lessons for Westminster and Whitehall he stated:

...Coalitions in small territories can rely far more on personal contacts and informal processes than those in larger countries. To this extent, the coalitions in Edinburgh and Cardiff set a basic framework for any coalition in London, although making it work at Whitehall and Westminster would be considerably harder.

In the balance:

...the aftermath of an election can drive parties to behave in a promiscuous manner, seeking a coalition or minority deal with a range of unexpected partners. For example, in Wales in 2007, previously unthinkable coalitions emerged as serious possibilities – both a ‘Rainbow Coalition’ of Plaid Cymru, the Conservatives and the Liberal Democrats and a ‘Red-Green Alliance’ of Labour and Plaid Cymru. The latter coalition was in fact concluded and now forms the Welsh Assembly Government.<sup>83</sup>

## 7 Some further reading

- Mark Bell and Alasdair Murray eds., *In the balance: coalition and minority government in Britain and abroad*, 2007
- Vernon Bogdanor, *Coalition Government in Western Europe*, 1983
- Vernon Bogdanor, *No overall majority: forming a government in a multi-party parliament*, 1986
- Vernon Bogdanor, ‘Hung Parliaments: Governing without a majority’, in *The New British Constitution*,
- Rodney Brazier, *Constitutional Practice: The foundations of British Government*, 3<sup>rd</sup> Edition, 1999
- Robert Blackburn et al, *Who Governs? Forming a coalition or minority government in the event of a hung parliament*, Study of Parliament Group/ Hansard Society, 2010
- David Butler ed, *Coalitions in British Politics*, 1978
- David Butler, *Governing without a majority*, Second Edition, 1986

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<sup>83</sup> Ben Seyd, *Coalition Governance in Scotland and Wales*, The Constitution Unit, 2004, pp21-23

- John Curtice, *Dilemmas of a Hung Parliament: Political and Constitutional Perspectives*, 1992
- Hansard Society, *No overall control? The impact of a 'hung parliament' on British politics*, 2008
- Robert Hazell and Akash Paun, *Making Minority Government Work: Hung parliaments and the challenges for Westminster and Whitehall*, Institute for Government, 2009
- Lord Jenkins of Hillhead, *Learning the Lessons of History*, 1992
- Susanna Kalitowski, 'Hung-up over Nothing? The Impact of a Hung Parliament on British Politics', *Parliamentary Affairs*, Vol. 61 No. 2, 2008
- Mark Oaten, *Coalition: The politics and personalities of coalition government from 1850*, 2007
- Ben Seyd, *Coalition Governance in Scotland and Wales*, 2004