GOVERNMENT RESPONSE TO THE HOUSE OF LORDS CONSTITUTION COMMITTEE REPORT: CONSTITUTIONAL IMPLICATIONS OF COALITION GOVERNMENT

1. Five days should not be taken as a template period for government formation. Governments should be formed as promptly as possible; no more or less time should be taken than is required to produce a government able to command the confidence of the House of Commons. It is important that the public and, particularly, the media are better informed about this matter. (Paragraph 22)

2. We recommend that a 12-day gap between a general election and the first meeting of a new Parliament should be the preferred choice following future general elections. (Paragraph 26)

The Government agrees that the arrangements for government formation and the first meeting of Parliament in 2010 should not be taken as a binding template.

Under the Fixed-term Parliaments Act, following dissolution Her Majesty may by Proclamation appoint the day for the first meeting of the new Parliament. This date can be varied by a further Proclamation. It is an important constitutional principle that the Sovereign acts on the advice of the Prime Minister on these matters who will consider circumstances as they pertain at the time. It is generally recognised that the 12-day gap was appropriate for the circumstances in 2010.

3. While there is no established duty on an incumbent Prime Minister after a hung parliament to remain in office until a new government can be formed, precedents have created an expectation that the Prime Minister will remain until a successor can be identified. The Cabinet Manual should emphasise this expectation and it is important that the public and the media be informed of the reasons underlying it. (Paragraph 31)

As the Cabinet Manual makes clear, the application of the principles regarding government formation depend on the particular circumstances which will arise. Recent precedent has suggested that a Prime Minister will remain in post until a successor has been identified. However, it is not for the Cabinet Manual to seek to define constitutional conventions, rather it is a document that seeks to record such conventions as and when they develop.
4. We recommend that, as in 2010, administrative support and factual briefings should be offered to parties involved in government-formation negotiations after future general elections. It is for the parties to decide what level of support they take up. We further recommend that the Government commit in advance of the next general election that this support will be given, rather than leaving the decision to the Prime Minister at the time of the election. (Paragraph 40)

The constitutional position of the civil service is to serve the government of the day as required in the Constitutional Reform and Governance Act 2010. The Government agrees that it should be for the parties involved to decide whether they wish to have civil service support in government formation negotiations. The nature of any such support will be in line with the principles of pre-election contacts and restricted to administrative support and factual briefings. Should the need arise in 2015, the Prime Minister has authorised civil service support for government-formation negotiations on similar lines as in 2010.

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

The Government agrees that there is no need for an investiture vote for a Prime Minister after an election. It would be a significant change to the UK’s constitutional processes for forming a government and it would be inappropriate in a system of Cabinet government. The House of Commons’ confidence in the Prime Minister cannot constitutionally be distinguished from its confidence in the government he or she leads and the government as a whole should collectively command the confidence of the House.

As the Committee acknowledged, the vote on the Queen’s speech after an election is a strong signal of the House’s confidence in the government and a separate vote on the investiture of the Prime Minister would only serve to risk confusion.

6. A vote of the House of Commons on the Queen’s Speech is a well-established and effective means of determining whether that House has confidence in the government of the day generally, and whether it supports its legislative programme in particular. The vote on a coalition government’s first Queen’s Speech acts as a vote on whether the House of Commons has confidence in the coalition or not. We do not think that a vote on future coalition agreements would improve the constitutional position; it could serve only to confuse matters. Accordingly we do not consider it desirable that future coalition agreements should be put to the House of Commons for a vote. (Paragraph 60)
The mechanisms by which the House of Commons can express its confidence in the government of the day following a Queen’s speech are a matter for the House of Commons. The procedures for triggering an early general election are set out in the Fixed-term Parliaments Act. Any other votes on the government’s programme or actions are a matter for the House.

7. Collective responsibility has served our constitution well. It promotes collective decision-making and ensures Parliament is able to hold the Government effectively to account for its actions, policies and decisions. It should continue to apply when there is a coalition government. (Paragraph 77)

We welcome the Committee’s finding on the importance of collective responsibility and agree that it should continue to apply when there is a coalition government.

8. We recognise that the parties in a coalition government will not automatically agree on everything; from time to time they will differ. However, it is incumbent on ministers to seek to reach a collective view on issues wherever possible. Having reached a collective view, it is essential that they can be held to account for it. Given its constitutional importance, the setting aside of the convention of collective responsibility should be rare, and only ever a last resort. (Paragraph 78)

We agree that collective responsibility is an important principle. The setting aside of this convention is rare and this should continue to be the case.

9. Where it is clear that no collective position can be reached on an issue, a proper process should be in place to govern any setting aside of collective responsibility. Such setting aside should be agreed by the Cabinet as a whole and be in respect of a specific issue. Ordinarily it would be for a specified period of time; rules should be set out by the Prime Minister governing how ministers may express their differing views. This process should be drawn up by the Prime Minister and Deputy Prime Minister for the remainder of this Parliament, and should be set out in future coalition agreements. (Paragraph 79)

As the Committee observes, within a Coalition Government it is natural that the parties will take a different view on certain issues. This is why the Coalition’s Programme for Government clearly set out areas in which collective agreement between two parties would be set aside. It is for the government of the day to decide on any process for setting aside collective responsibility.

10. It is clear that the powers of a Prime Minister to make and dismiss ministers under a coalition are significantly constrained. The Coalition agreement for stability and reform provides that the ultimate advice to the Queen on who to appoint or dismiss still comes from the Prime Minister. That is in keeping with constitutional practice. Other arrangements for appointing ministers are more a matter of politics than of constitutional principle. (Paragraph 88)
The position on the appointment and dismissal of all Ministers is as the Committee sets out, which is that the Prime Minister provides the ultimate advice to the Queen on who to appoint or dismiss. However, as recognised in the Coalition Agreement for Stability and Reform, for this Government, this power is exercised after consultation with the Deputy Prime Minister.

11. We regret the decline in the number of senior ministers in the House of Lords under the coalition Government. (Paragraph 92)

While the Government values the important work undertaken by the House of Lords, as the democratically elected chamber it is appropriate for the House of Commons to contain the greater number of senior Ministers.

12. We conclude that the Salisbury-Addison convention—whereby bills foreshadowed in a government's manifesto are given a second reading in the Lords, are not subject to wrecking amendments and are passed in reasonable time—does not, strictly speaking, apply to measures in a coalition agreement. This is because a coalition agreement cannot be said to have a mandate from the electorate in the way that a manifesto can. (Paragraph 98)

13. However, if all parties in a coalition made the same or a substantially similar commitment in their manifestos, then they should be entitled to the benefit of the Salisbury-Addison convention in respect of that commitment. (Paragraph 99)

The Government believes that conventions should be sufficiently flexible to develop according to circumstances and to take into account political realities. We consider that the Salisbury-Addison convention continues to apply as before in the context of the coalition government, that is to say, it applies to manifesto bills. We accept that the fact that this Government was elected under two manifestoes adds some further difficulty to establishing what is a manifesto bill but, as the Joint Committee on Conventions noted, there has never been a precise definition of that term.

14. We recognise that a practice has evolved that the House of Lords does not normally block government bills, whether they are in a manifesto or not. There is no reason why this practice should not apply when there is a coalition government. (Paragraph 100)

The Government agrees with the Committee. This is a reflection of the primacy of the Commons and that governments are formed and are sustained on the basis of the confidence of the House of Commons. There is no reason why this practice should not therefore apply to coalition bills, as well as single-party government bills.
15. We recommend that ministers should be able to commission confidential briefings from officials within their departments for the purpose of developing policy for the next Parliament without those briefings being disclosed to ministers from their coalition partners. Arrangements should be put in place in those departments where one party has no ministers to allow for briefing to that party. The Official Opposition should be granted pre-election contact with the civil service in the normal way. These arrangements should be added to the next edition of the Cabinet Manual. (Paragraph 109)

It is important to make clear that the constitutional position of the civil service is to serve the government of the day as provided for in the Constitutional Reform and Governance Act 2010. It is for the Prime Minister to determine the timing and scope of pre-election contacts between the civil service and the opposition, and the Prime Minister has recently authorised contacts in advance of the 2015 General Election from 1 October 2014. A copy of the correspondence between the Prime Minister and the Leader of the Official Opposition is at Annex A. Ministers may commission appropriate briefing from civil servants on a confidential basis, this should be in line with arrangements agreed by the Prime Minister, the Deputy Prime Minister and the Cabinet Secretary.

16. Although few important decisions are taken during the "purdah" period before a general election, constitutional conventions about the business of government—including collective decision-making and collective responsibility—must continue to apply. Appropriate guidance should be issued to civil servants. (Paragraph 119)

Guidance is issued before each election for civil servants, which covers the issues raised by the Committee, and guidance for the 2015 election will be issued in due course. There will be no change to long standing principles. For reference, the guidance from 2010 can be found online at:


17. While we agree with Lord Strathclyde that there should be no need for a "wash up" to take place before a scheduled election in a fixed-term Parliament, a more limited "wash up" than in the past may still take place. The Government should introduce legislation in the final session of the Parliament in good time for it to be passed on a normal timetable before Parliament is dissolved. (Paragraph 124)

The Fixed-term Parliaments Act makes the planning and management of the legislative programme in the final session more straightforward. The Government is better able to plan for the introduction of legislation in a way that allows sufficient time for consideration in both Houses before dissolution. A fully informed assessment of the extent and implications of any wash up must await the end of the Parliament.
18. We recommend that the convention on access to the papers of a previous administration should be retained. Its application needs adapting, though, to account for coalition governments: (Paragraph 131)

a. Where a coalition is renewed following an election, the convention should function as for a re-elected single-party government.

b. Where one party in government was previously in a coalition, they should be able to access papers of ministers from their party, but to access departmental papers of ministers from their former coalition partner party they must obtain permission from the relevant minister or the leader of that party.

c. Any party entering government (whether in a coalition or not) from opposition should require the permission of the relevant ministers or party leader (or leaders) to access the papers of the previous administration.

The Government agrees that the convention on access to the papers of a previous administration should be retained but the guidance will be updated to take account of coalition governments.